

## MICROFINANCE ACT [CHAPTER 24:29]

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## ZIMBABWE

# ACT

To provide for the registration, supervision and regulation of persons conducting microfinance business in Zimbabwe; to amend the Moneylending and Rates of Interest Act [*Chapter 14:14*] and the Banking Act [*Chapter 24:20*] (Act No. 9 of 1999); and to provide for matters connected with or incidental to the foregoing.

ENACTED by the President and the Parliament of Zimbabwe.

### PART I

#### PRELIMINARY

#### 1 Short title

This Act may be cited as the Microfinance Act [*Chapter 24:29*].

#### 2 Interpretation

In this Act—

“board”, in relation to a corporate microfinancier or microfinance institution, means the board referred to in section 20;

“borrower” means a person to whom a microfinancier makes a loan or provides a credit facility, and includes a person to whom such a borrower’s rights and liabilities have passed, whether by assignment, delegation, cession or otherwise;

“chief accounting officer”, in relation to a microfinance institution, means a person who is responsible, under the direct authority of the institution’s chief executive officer, for—

- (a) preparing and maintaining the institution’s books of accounts and other financial records; and

(b) ensuring that the institution has systems of internal financial control that comply with this Act and any other enactment;

“chief executive officer”, in relation to a microfinance institution, means a person who is responsible, under the direct authority of the institution’s board, for conducting the institution’s banking business;

“company” means company incorporated or registered under the Companies Act [Chapter 24:03];

“corporate microfinancier” means a microfinancier that is a partnership or company referred to in section 7(1)(b)(ii) or (iii);

“credit-only microfinance business” means the business of providing loans or other credit facilities to persons who, for the most part—

(a) operate micro-, small or medium enterprises; or

(b) individuals whose monthly income is below the poverty datum line or households whose combined monthly income does not exceed five times the poverty datum line, as fixed from time to time by the Zimbabwe National Statistics Agency in terms of the Census and Statistics Act [Chapter 10:29] (Act No. 1 of 2007);

and where any interest accruing from loans and credit facilities is used to provide further such loans or credit facilities or to finance and extend the microfinance business;

“deposit” means an amount of money, whether made up of Zimbabwean or foreign currency or both; cheques or other negotiable or non-negotiable instruments, which a microfinance institution accepts for credit to an account in its books or those of another financial institution, but does not include money paid as security for performing a contract;

“deposit-taking microfinance business” means the business of accepting deposits from persons who, for the most part—

(a) operate micro-, small or medium enterprises; or

(b) individuals whose monthly income is below the poverty datum line or households whose combined monthly income does not exceed five times the poverty datum line, as fixed from time to time by the Zimbabwe National Statistics Agency in terms of the Census and Statistics Act [Chapter 10:29](Act No. 1 of 2007);

and the persons concerned are not members of the deposit-taking microfinance business concerned;

“financial institution” has the meaning given to that phrase by or under the Banking Act [Chapter 24:20];

“financial year”, in relation to a microfinancier, means the period of twelve months ending on the 31st of December in any year;

“inspector” means a person appointed or deemed to have been appointed as an inspector in terms of section 43;

“loan agreement” means a contract under which a microfinancier makes a loan or advances credit to a borrower;

“material change”, in relation to the particulars on the basis of which a microfinancier is registered, means a change of ownership or control (including amalgamation with or significant transfer of its assets and liabilities to, another microfinancier or person), directors, name or legal status of the microfinancier, or any change in the scope of its business;

“microfinance business” means any person who carries on, or who advertises or announces himself or herself or holds himself or herself out in any way as carrying on, either or both of the following—

- (a) moneylending business; or
- (b) credit-only microfinance business or deposit-taking microfinance business that is not conducted for the sole or exclusive benefit of the members of that business;

“microfinance institution” means a company whose microfinance business includes deposit-taking microfinance business;

“microfinancier” means a moneylender, corporate microfinancier or microfinance institution;

“micro-enterprise”, “small enterprise” and “medium enterprise” bear the meanings given to those terms by the Small and Medium Enterprises Act [Chapter 24:12] (Act No. 16 of 1983);

“Minister” means the Minister of Finance or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“moneylender” means any person who carries on a moneylending business;

“moneylending business” the business of providing loans or other credit facilities to persons, otherwise than as part of a credit-only microfinance business or deposit-taking microfinance business;

“Register” means a Register of Microfinanciers kept in terms of section 9;

“registered” in relation to a microfinancier, means registered in terms of section 7;

“Registrar” means the Registrar of Microfinanciers appointed in terms of section 4(1) or any person performing his or her functions in terms of section 4(3);

“registration certificate” means a registration certificate issued in terms of section 8(2);

“Reserve Bank” means the Reserve Bank of Zimbabwe established by the Reserve Bank of Zimbabwe Act [Chapter 22:10] (Act No. 5 of 1999);

“Secretary” means the Secretary of the Ministry to which this Act is assigned;

“supervisor” means a person appointed or deemed to have been appointed as a supervisor in terms of section 43;

“undesirable method of conducting business” means any conduct prohibited by the First Schedule.

### 3 Application of Act

(1) Subject to this section, this Act shall apply to—

- (a) all credit-only microfinance business and all deposit-taking microfinance business conducted by any entity otherwise than for the sole or exclusive benefit of the members of that entity; or
- (b) any subsidiary or division of—
  - (i) a banking institution registered as such under the Banking Act [Chapter 24:20] (Act No. 9 of 1999); or
  - (ii) a building society established under the Building Societies Act [Chapter 24:02]; or
  - (iii) People’s Own Savings Bank registered as such under the People’s Own Savings Bank Act [Chapter 24:22];

engaging exclusively or predominantly in any microfinance business referred to in paragraph (a);

- (c) all moneylending business not carried on as part of the business carried on by any of the entities referred to in paragraph (b).

- (2) This Act shall not apply to microfinance business conducted by—
- (a) a body corporate established or constituted, or re-established or reconstituted, directly by any enactment, to the extent that the body corporate carries out functions conferred or imposed upon it by the enactment; or
  - (b) a co-operative society registered in terms of the Co-operative Societies Act [Chapter 24:05], or a co-operative company registered in terms of the Companies Act [Chapter 24:05], to the extent that the society or company provides loans or other credit facilities to its members.

## PART II

### ADMINISTRATION

#### 4 Registrar of Microfinanciers and other officers

(1) The Reserve Bank shall appoint one of its employees to be the Registrar of Microfinanciers and shall assign such other of its other employees as may be necessary to assist the Registrar in giving effect to this Act.

(2) The Registrar shall be responsible for registering microfinanciers and cancelling their registration and performing such other functions as are conferred or imposed upon him or her by or in terms of this Act or any other enactment.

(3) Subject to the directions of the Registrar, the other officers referred to in subsection (1) shall perform such of the Registrar's functions as the Registrar may assign to them.

#### 5 Exercise of functions by Registrar

(1) The Registrar shall exercise his or her functions under this Act in accordance with any general policy directives that may be given to him or her by the Board of the Reserve Bank.

(2) The Registrar shall ensure that any policy directives referred to in subsection (1) are reduced to writing and kept in his or her offices, where (unless, for public policy reasons, any of them are expressed by the Reserve Bank to be confidential) they may be inspected by any member of the public, free of charge, during ordinary banking hours.

## PART III

### REGISTRATION OF MICROFINANCIERS

#### 6 Prohibitions in relation to conduct of microfinance business

(1) No person—

- (a) shall conduct any microfinance business unless he or she is registered in terms of this Act;
- (b) shall be registered as a microfinance institution unless that person is a company;
- (c) registered as a moneylender in terms of this Act shall conduct deposit-taking microfinance business.

(2) Any person who contravenes subsection (1)(a) or (c) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) Without derogating from subsection (2), where a person advances a loan or credit to another person in the course of microfinance business that is conducted in contravention of subsection (1)(a)—

- (a) no interest shall be payable on the loan or advance; and
- (b) the capital sum of the loan or advance shall not be recoverable from the borrower unless a competent court, on application by the lender, has condoned the lender's failure to comply with subsection (1).

(4) Subsection (3) applies whether or not there has been a prosecution for an offence referred to in subsection (2).

## 7 Application for registration as microfinancier

(1) An application for registration as a microfinancier shall be made to the Registrar in the prescribed form and manner and shall disclose or be accompanied by—

- (a) where the applicant operates or proposes to operate as a microfinance institution—
    - (i) the name of every person who holds five *per centum* or more of the applicant's voting stock and his or her physical address; and
    - (ii) the names of the applicant's directors, chief executive officer and chief accounting officer, their physical addresses and particulars of the qualifications or experience of each of them; and
    - (iii) certified copies of the applicant's certificate of incorporation as a company and the applicant's articles and memorandum of association; and
    - (iv) particulars of the applicant's authorised and paid-up share capital; and
    - (v) a business plan in the form prescribed in the Second Schedule;
  - (b) where the applicant operates or proposes to operate as a moneylender and—
    - (i) the applicant is an individual—
      - A. the name and physical address of the applicant, and particulars of the qualifications or experience, if any, of the applicant in the field of microfinance business; and
      - B. a business plan in the form prescribed in the Second Schedule;
    - (ii) the applicant is a partnership—
      - A. the names of the partners, their physical addresses, and particulars of the qualifications or experience, if any, of each partner in the field of microfinance business; and
      - B. a certified copy of the partnership agreement; and
      - C. a business plan in the form prescribed in the Second Schedule;
    - (iii) the applicant is a company, the same particulars as are required of a microfinance institution under paragraph (a);
- and
- (c) the physical address of the applicant's head office or principle place of business and any other premises where it carries on or proposes to carry on microfinance business; and
  - (d) the prescribed fee; and
  - (e) 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 the applicant has complied with the applicable requirements of subsection (1) and that—

- (a) in the case of an applicant who proposes to operate as a microfinance institution—
- (i) the applicant has, or on registration will have, sufficient capital to conduct the microfinance business which the applicant wishes to conduct; and
  - (ii) its business plan is appropriate for the microfinance business which the applicant wishes to conduct; and
  - (iii) the applicant's directors are fit and proper persons to be directors of a microfinance institution; and
  - (iv) the persons who will be the applicant's chief executive officer, chief accounting officer and such other officers as may be prescribed—
    - A. are fit and proper persons to hold the offices concerned; and
    - B. have sufficient qualifications and experience for the management of the microfinance business the applicant intends to conduct;and
  - (v) the applicant will not adopt any undesirable method of conducting business; and
  - (vi) the applicant will conduct its business in a prudent manner;
- and
- (b) in the case of a moneylender who operates or proposes to operate as—
- (i) an individual, he or she is a fit and proper person to conduct moneylending business, and his or her business plan is appropriate for the moneylending business which the applicant wishes to conduct; or
  - (ii) a partnership, the persons constituting a partnership are all fit and proper persons, and its business plan is appropriate for the moneylending business which the applicant wishes to conduct; or
  - (iii) a company, the Registrar is satisfied as to the same matters as those applicable to a microfinance institution under paragraph (a)(i), (ii), (iii), (iv) and (v);
- and
- (c) generally, the applicant will comply with such of the provisions of this Act as are applicable to the kind of business to be operated by the applicant;

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

(3) If on consideration of an application the Registrar—

- (a) is not satisfied as to any matter referred in subsection (2); or
- (b) considers that it will not be in public interest to register the applicant as a microfinance institution or moneylender, as the case may be;

he or she shall refuse to register the applicant concerned:

Provided that—

- (i) before refusing to register an applicant, he or she shall notify the applicant, in writing, of the proposed refusal and of the reasons for it, and shall afford the applicant at least thirty days to make representations in the matter; and
- (ii) if, after the period allowed for representations, the Registrar decides to refuse to register an applicant on any ground, he or she shall notify the applicant in writing, of the decision and of the reasons for it.



(4) The period between the Registrar's receipt of an application in terms of subsection (1) and all documents and information submitted in support of it, and the date on which he or she notifies the applicant of his or her decision or proposed decision in terms of subsection (2) or (3), as the case may be, shall not exceed sixty days, unless the applicant consents to an extension of the period:

Provided that, for the avoidance of doubt, it is declared that, non-compliance with this subsection by the Registrar does not imply that the applicant in question is entitled to registration.

## 8 Registration of microfinanciers

(1) Registration of a microfinancier shall be subject to such terms and conditions as may be prescribed.

(2) Upon registering a microfinancier, the Registrar shall issue the institution with a registration certificate, which shall be in the form prescribed and shall specify—

- (a) the name of the microfinancier; and
- (b) any terms and conditions subject to which the microfinancier is registered.

## 9 Register of Microfinanciers

(1) The Registrar shall maintain a register, to be called a Register of Microfinanciers, in which shall be recorded, in relation to each registered microfinancier—

- (a) the name of the microfinancier, and whether the microfinancier is registered as a microfinance institution or moneylender; and
- (b) any terms and conditions subject to which the microfinancier is registered; and
- (c) the address of the head office or principal place of business of the microfinancier; and
- (d) any amendment, cancellation or suspension of the microfinancier's registration; and
- (e) such other particulars as may be prescribed.

(2) The Register shall be open for inspection by members of the public at all reasonable times at the office of the Registrar on payment of the prescribed fee, if any.

## 10 Renewal of registration

(1) Every registration certificate shall be valid for a period of a year ending on 31st December of the year in which the microfinancier received the certificate, unless earlier surrendered to or cancelled by the Registrar.

(2) Upon expiry of a certificate, a microfinancier may renew it by making an application therefor no later than thirty-one (31) days after the expiry of the existing certificate by submitting—

- (a) where there has been no material change in the details of the application for the existing registration certificate, the prescribed registration renewal form together with the prescribed registration renewal fee:

Provided that if in the opinion of the Registrar circumstances require that new terms or conditions be imposed in the registration certificate, the Registrar may require the microfinancier to make application for a new registration certificate in terms of section 7; or

- (b) where there has been any material change in the details supplied in or with the original application for the existing certificate, the prescribed registration renewal form showing the material changes together with the prescribed application fee.
- (3) Upon receipt of an application for a registration renewal certificate—
  - (a) in terms of subsection (2)(a) or (b), the Registrar shall satisfy himself or herself that the prescribed registration renewal form has been properly completed, and if so satisfied, shall renew the certificate by endorsing the existing certificate accordingly; or
  - (b) in terms of the proviso to subsection (2)(a), the same procedure as is prescribed in section 7 for the original application for registration as a microfinancier shall apply.

#### 11 Amendment of registration

(1) Subject to this section, the Registrar may at any time amend a microfinancier's registration or any term or condition of its registration—

- (a) to correct any error; or
- (b) if microfinancier requests the amendment; or
- (c) if the Registrar considers the amendment necessary to reflect the true nature of the business which the microfinancier is conducting; or
- (d) if for any other reason the Registrar considers the amendment necessary or desirable in the public interest.

(2) Before amending a microfinancier's registration in terms of subsection (1), otherwise than at the microfinancier's request, the Registrar shall notify the microfinancier, in writing, of the nature of the amendment he or she proposes to make and of his or her reasons for wishing to make it, and shall give the microfinancier an adequate opportunity to make representations in the matter.

(3) If the Registrar refuses to make an amendment at the microfinancier's request, he or she shall, within ten days after reaching his or her decision, notify the microfinancier, in writing, of his or her decision and the reasons for it.

#### 12 Cancellation of registration

(1) Subject to subsection (2) and (3), the Registrar may, by notice in writing to microfinancier concerned, cancel a microfinancier's registration 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 by the microfinancier; or
  - (b) the microfinancier has contravened any provision of this Act or any other enactment that is applicable to it, in particular—
    - (i) in the case of a moneylender, the moneylender has contravened section 6(1)(c);
    - (ii) in the case of a microfinance institution, the institution has failed without just cause—
      - A. to comply with section 25(1);
      - B. to implement a plan referred to in section 34, to reduce a shareholder's shareholding to below twenty-five *per centum* of the institution's shares;
- or
- (c) the microfinancier has refused or failed to pay a monetary penalty imposed upon it in terms of this Act; or

- (d) the microfinancier has not complied with any instruction, requirement or condition imposed by the Registrar in terms of this Act; or
- (e) the microfinancier has failed to disclose any material change to its registration particulars in its application for the renewal of its registration; or
- (f) the microfinancier has failed to comply with a term or condition of its registration; or
- (g) the microfinancier misrepresents the facilities which it offers to the public; or
- (h) the microfinancier is engaging in undesirable methods of conducting business; or
- (i) the microfinancier has not conducted any microfinance business for one hundred and eighty consecutive days; or
- (j) in the case of a microfinance institution, the institution has not conducted its microfinance business in accordance with sound administrative, accounting or risk-management practices; or
- (k) the microfinancier is a subsidiary of a banking institution or building society which has ceased to be registered under the Banking Act [*Chapter 24:20*] (Act No. 9 of 1999) or the Building Societies Act [*Chapter 24:02*], as the case may be; or
- (l) it is in the public interest that the microfinancier's registration should be cancelled.

(2) Before cancelling the registration of a microfinancier, the Registrar shall notify the microfinancier, in writing, that he or she proposes to cancel the microfinancier's registration and of the reasons for it:

Provided that, if the Registrar believes on reasonable grounds that it is not possible to notify the microfinancier at its registered office, the Registrar shall publish a notice in the *Gazette* and in a newspaper circulating in the area in which the microfinancier's registered office is situated, stating that its registration will be cancelled unless the microfinancier lodges an appeal with the Minister in terms of section 50 within thirty days from the date of publication of the notice in the *Gazette*.

(3) The Registrar shall not cancel the registration of a microfinancier until—

- (a) the period within which an appeal may be lodged in terms of section 50 has elapsed; or
- (b) the thirty day period referred to in the proviso to subsection (2) has lapsed, where a notice was published in terms of that proviso;

unless the microfinancier has consented to the cancellation.

(4) The Registrar may cancel the registration of a microfinancier if the microfinancier so requests, and the Registrar is satisfied that the cancellation will be in the best interests of microfinancier's creditors, borrowers, depositors and members:

Provided that, if the Registrar decides not to cancel a microfinancier's registration in terms of this subsection, he or she shall, within ten days after reaching that decision, notify the microfinancier, in writing, of the decision and of the reasons for it.

### 13 Public notice of registration and cancellation of registration

Whenever the Registrar registers a microfinancier or cancels its registration in terms of this Part, he or she shall cause notice of the registration or cancellation to be published in the *Gazette* and in one or more issues of a newspaper circulating in the area in which the microfinancier intends to conduct its microfinance business or, as the case may be, has been carrying on its microfinance business.

### 14 Effect of cancellation of registration

(1) Upon the cancellation of its registration, a microfinancier shall immediately cease conducting any microfinance business, except to the extent that the Registrar may permit it to do so for the purpose of—

- (a) recovering any amounts due to it from any borrowers; or
- (b) settling its obligations towards any depositors; or
- (c) transferring its business to another registered microfinancier.

(2) A microfinancier whose registration has been cancelled shall within seven days of being notified of the cancellation return its registration certificate to the Registrar.

(3) Anyone who contravenes subsection (2) shall be guilty of an offence and shall be liable to a fine not exceeding level twelve.

## PART IV

### CONDUCT OF MICROFINANCIERS GENERALLY

### 15 Information to be displayed or published by microfinanciers

(1) Every microfinancier shall—

- (a) display conspicuously at the entrance to every place where the microfinancier conducts microfinance business an authenticated copy of its registration certificate; and
- (b) display, in easily legible letters and in the English language on every letter, advertisement or other communication published or issued by or on behalf of the microfinancier its name and a statement of the fact that it is registered as a microfinancier.

(2) Every microfinancier shall display the following information conspicuously, in easily legible letters, in every premises where it conducts a microfinance business—

- (a) the services offered by the microfinancier; and
- (b) the monthly and annual rates of interest it charges on loans and advances; and
- (c) details of all charges, other than interest, which it imposes on loans and advances; and
- (d) in the case of a corporate microfinancier, the names of the directors and chief executive officer and the name of the person in charge of the premises where the information is displayed; and
- (e) such information relating to the rights and responsibilities of borrowers and depositors as may be prescribed.

(3) The information referred to in subsection (2) shall be in the English language and in every other language that is spoken by a substantial number of borrowers or potential borrowers at the premises where the information is displayed.

(4) A microfinancier who or which contravenes subsection (1), (2) or (3) is guilty of an offence and, in the case of—

- (a) an individual microfinancier, is liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or to both such fine and such imprisonment;
- (b) a corporate microfinancier—
  - (i) is liable to a fine not exceeding level five; and
  - (ii) each one of its directors or partners, as the case may be, is liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

## 16 Requirements for loan agreements

(1) Every loan agreement to which a microfinancier is a party 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.

(2) Any provision of a loan agreement which purports to allow the microfinancier unilaterally to alter the rate of interest payable by the borrower, the repayment period, or any other obligation of the borrower, shall be void.

(3) If a microfinancier makes a loan or advances credit under a loan agreement which does not comply with subsection (1) or (2) no interest or other charge or fee whatsoever in connection with the loan or credit shall be payable on the loan or advance.

## 17 Microfinanciers code of conduct

Every microfinancier shall comply with the code of conduct set out in the First Schedule.

### PART V

#### CONDUCT OF CORPORATE MICROFINANCE BUSINESS

## 18 Application of Part V

In addition to complying with Part IV, corporate microfinanciers must comply with this Part.

## 19 Conduct of microfinance and other business by corporate microfinanciers

Subject to this Act, every corporate microfinancier shall conduct its microfinance business and other operations in accordance with sound administrative and accounting practices and procedures, adhering to proper risk-management policies, and shall comply with the terms and conditions of its registration and with any directions given to it by the Reserve Bank or the Registrar in terms of this Act.

## 20 Board of corporate microfinancier

(1) The operations of every corporate microfinancier (other than a partnership) shall be directed by a board consisting of at least—

- (a) three directors, in the case of a corporate microfinancier (other than a partnership) engaged exclusively in credit-only microfinance business; or

- (b) five directors, in the case of a microfinance institution that is engaged in deposit-taking microfinance business;

who shall be responsible for formulating policies relating to the microfinancier's microfinance business and supervising the conduct of that business.

(2) No person shall exercise any of the functions of a director of a corporate microfinancier following his or her appointment or re-appointment as a director, unless the Registrar has by written notice approved the appointment or re-appointment, as the case may be.

(3) The Registrar shall approve a person's appointment or re-appointment as a director of a corporate microfinancier if the Registrar is satisfied, having regard to—

- (a) the person's general probity; and
- (b) the person's competence and soundness of judgement; and
- (c) the diligence with which the person is likely to fulfil his or her responsibilities towards the corporate microfinancier;

that he or she is a fit and proper person to be a director of the microfinancier in question:

Provided that a person who is disqualified under the section 173 of the Companies Act [*Chapter 24:03*] from being a director of a company shall not be a fit and proper person to be a director of a corporate microfinancier.

(4) Where the Registrar is requested to approve the appointment or re-appointment of a director for the purposes of this section, the Registrar shall consider the matter and, within two weeks after receiving the request shall notify the microfinancier concerned, in writing—

- (a) of his or her decision on the application; and
- (b) if he or she refuses to approve the appointment of the person concerned, of the reasons for the refusal;

unless the applicant consents to the extension of the two-week period.

(5) Any corporate microfinancier (other than a partnership) which knowingly contravenes subsection (2) shall be guilty of an offence and—

- (a) shall be liable to a fine not exceeding level five; and
- (b) every director of the microfinancier shall be liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or both such fine and such imprisonment.

(6) The board of directors of every corporate microfinancier shall meet at least once every three months for the transaction of its business.

## 21 Records of transactions

(1) Every corporate microfinancier shall maintain within Zimbabwe such records as are necessary—

- (a) to reveal clearly and correctly the state of its business affairs and financial condition; and
- (b) to explain its transactions so as to enable the Registrar to determine whether the microfinancier has complied with this Act.

(2) Subject to subsection (3), every corporate microfinancier shall keep proper records of all transactions relating to its microfinance activities, and shall preserve them for such period as may be prescribed.

(3) Records and documents referred to in subsection (1) and (2) may be kept in their original form or in such other medium or form as may be prescribed.

(2) A microfinance institution which contravenes subsection (1) shall be guilty of an offence and—

- (a) shall be liable to a fine not exceeding level ten; and
- (b) every director of the microfinance institution shall be liable to a fine not exceeding level five.

### 34 Limits on shareholding and transfer of shares in microfinance institutions and corporate microfinanciers

- (1) Subject to this section, no person shall hold in relation to—
  - (a) a microfinance institution, more than twenty-five *per centum*; or
  - (b) a corporate microfinancier (other than a partnership), more than fifty *per centum*;

of the shares of a microfinance institution or corporate microfinancier, as the case may be.

(2) The Registrar may register a microfinance institution in which a person holds more than twenty-five *per centum* of its shares, if the institution has satisfied the Registrar that it will implement a plan to reduce the person's shareholding within four years from the date on which the institution is registered, in order to comply with subsection (1).

(3) Subsections (1) and (2) shall not apply in respect of—

- (a) a microfinance institution that is a wholly-owned subsidiary of a banking institution, a building society or another financial institution; or
- (b) such other microfinance institutions or corporate microfinanciers as may be prescribed.

(4) No person shall transfer, or cause to be transferred, more than ten *per centum* of the shares of a microfinance institution without the prior approval of the Registrar.

(5) A transfer of shares in contravention of subsection (4) shall be void to the extent of the contravention.

(6) Any person who contravenes subsection (1) or (4) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding six months or to both such a fine and such imprisonment.

### 35 Curatorship and winding up of microfinance institutions

Every microfinance institution shall be required to be a contributor for the purpose of the Deposit Protection Act [*Chapter 24:29*] (Act No. 7 of 2011) and accordingly that Act's provisions for curatorship, insolvency and winding up of contributors shall apply.

## PART VII

### SUPERVISION OF MICROFINACIERS

#### 36 Responsibilities of Reserve Bank

- (1) Subject to this Act, the Reserve Bank shall be responsible for—
  - (a) continuously monitoring and supervising microfinanciers to ensure that they comply with this Act; and
  - (b) conducting investigations into any particular microfinancier or class of such microfinanciers where the Reserve Bank considers such an investigation necessary for the purpose of preventing, investigating or detecting a contravention of this Act or any other law.

(2) The Reserve Bank's function of monitoring and supervising microfinanciers may be exercised through all or any of the following methods—

(3) A deposit-taking microfinance institution that contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level ten.

**30 Restriction on microfinance institution extending credit to officers, employees and certain shareholders and their relatives**

(1) In this section—

“significant interest” means a percentage of—

- (a) the share capital of a deposit-taking microfinance institution; or
  - (b) the voting rights of members of a microfinance institution;
- which exceeds such percentage as may be prescribed.

(2) No 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 microfinance industry, would extend credit to other persons of the same financial standing:

Provided that this subsection shall not prevent a 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.

**31 Principal officers of microfinance institution**

(1) Every microfinance institution shall appoint a chief executive officer, a chief accounting officer or other officer and such other officers as may be prescribed, and no person shall be appointed to hold two or more such posts at the same time unless approved by the Reserve Bank.

(2) Within fourteen days after appointing a chief executive officer, a chief accounting officer or other officer referred to in subsection (1), a registered microfinance institution shall notify the Registrar, in writing, of the appointment.

**32 Alteration of memorandum or articles of association by microfinance institution**

(1) No microfinance institution shall alter its memorandum or articles of association or other rules for the conduct of its business unless the Registrar has given his or her written consent to the alteration.

(2) The Registrar shall refuse to consent to any alteration if, in his or her opinion, the alteration conflicts with any provision of this Act.

(3) If the Registrar refuses to consent to an alteration, he or she shall, within ten days after reaching his or her decision, notify the applicant, in writing, of the decision and the reasons for it.

(4) A microfinance institution which contravenes subsection (1) shall be guilty of an offence and—

- (a) shall be liable to a fine not exceeding level five; and
- (b) every director of the microfinance institution shall be liable to a fine not exceeding level five.

**33 Minimum capital and reserves of microfinance institutions**

(1) Every microfinance institution shall maintain in Zimbabwe such minimum capital and reserves as may be prescribed.



(4) This section shall not be construed as limiting the application of any other enactment providing for the keeping and preservation of records or documents.

## 22 Accounts and financial records of corporate microfinanciers

(1) Every corporate microfinancier shall—

- (a) keep proper accounts and other records relating thereto; and
- (b) at the end of each financial year, prepare a financial statement;

reflecting, in accordance with sound accounting practices, the microfinancier's operations and financial condition.

(2) Without derogating from Part IV of the Companies Act [*Chapter 24:03*] dealing with group accounts, where a corporate microfinancier conducts microfinance business through more than one branch, the accounts and financial statements referred to in subsection (1) shall be kept and prepared in a consolidated form to cover all the branches.

(3) Subject to subsection (2), the accounts, records and statement referred to in subsection (1) shall be kept and prepared in such form and detail, and in accordance with such accounting standards, as may be prescribed.

## 23 Audit of accounts of microfinance institutions

(1) The accounts of a microfinance institution shall be audited by a person registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*].

(2) Every microfinance institution shall send the Registrar a copy of its audited accounts of the previous financial year, and the auditor's report thereon.

## PART VI

### PROVISIONS APPLYING SPECIFICALLY TO MICROFINANCE INSTITUTIONS

## 24 Application of Part VI

In addition to complying with Parts IV and V, microfinance institutions must comply with this Part.

## 25 Restriction on type of business that may be carried on by microfinance institutions

(1) A microfinance institution shall not (whether on its own account or through any branch, subsidiary or division) engage in—

- (a) issuing of third party cheques; or
- (b) opening current accounts; or
- (c) foreign trade operations; or
- (d) trust operations; or
- (e) investing in enterprise capital; or
- (f) underwriting or placement of securities; or
- (g) wholesale or retail trade; or
- (h) purchasing or otherwise acquiring any land except as may be reasonably necessary for the purpose of expanding the microfinance business; or
- (i) any other business except that approved under section 29; or
- (j) such other business as the Reserve Bank may prescribe.

(2) Anyone who contravenes subsection (1) shall be guilty of an offence and liable to imprisonment for up to five years or a fine not exceeding level twelve or both such fine and such imprisonment.

## **26 Requirements for lending by microfinance institutions**

(1) Before a microfinance institution makes a loan or advances credit to a borrower, the institution shall take reasonable steps to ensure that—

- (a) the borrower will be able to fulfil his or her obligations under the agreement while still being able to meet the necessary living expenses of himself or herself and his or her family; and
- (b) the borrower understands the essential terms of the loan agreement; and
- (c) a credit control advisor provides the borrower with the necessary information to enable him or her to manage his or her credit.

(2) A microfinance institution shall allow a borrower an opportunity to read the loan agreement or to have it read to him or her, before he or she signs it, and shall provide the borrower with a copy of the agreement when he or she had signed it.

(3) If a microfinance institution makes a loan or advances credit without complying with subsection (1) or (2)—

- (a) no interest shall be payable on the loan or advance; and
- (b) the capital sum of the loan or advance shall not be recoverable from the borrower unless a competent court, on application by the microfinance institution, has condoned the institution's failure to comply with the provision concerned.

## **27 Employees and agents of microfinance institutions**

Every microfinance institution shall ensure that all its employees and agents engaged in soliciting concluding and enforcing loan agreements are given adequate instruction in the requirements of this Act.

## **28 Restriction on payment of dividends by microfinance institutions**

A microfinance institution shall not pay a dividend to its shareholders unless it has made adequate provision against losses on loans and has taken adequate steps to ensure compliance with the financial requirements specified in this Act.

## **29 Restriction on other business that may be carried on by microfinance institutions**

(1) Subject to this section, without the Registrar's prior approval and on such terms and conditions as the Registrar may determine, no microfinance institution shall—

- (a) engage on its own account in; or
- (b) hold shares in a company which engages in;

any business or activity other than approved microfinance business:

Provided that a microfinance institution may hold shares—

- (i) which result from an arrangement whereby a loan owed to it by a company is converted into equity; or
- (ii) under any other arrangement entered into for the purpose of recovering a debt to the institution.

(2) If, on application being made, the Registrar refuses to grant approval for the purposes of subsection (1), he or she shall, within ten days after reaching his or her decision, notify the deposit-taking microfinance institution concerned, in writing, of his or her decision and of the reasons for it.

- (a) the analysis of documents and information supplied to it in terms of section 42;
  - (b) the inspection of documents and obtaining of information at the premises of microfinanciers concerned, and the analysis of such documents and information;
  - (c) any other lawful means the Reserve Bank thinks appropriate.
- (3) For the purposes of monitoring and supervising any microfinancier, a supervisor may, subject to subsection (4)—
- (a) at any time during normal working hours, without previous notice, enter any premises of the microfinanciers or any premises in which it is believed on reasonable grounds that records, accounts or documents pertaining to the microfinancier's business are kept;
  - (b) require any officer, employee or agent of the microfinancier to produce any of the microfinancier's books, records, accounts or documents;
  - (c) search any premises referred to in paragraph (a) for any moneys, securities, books, records, accounts or any documents pertaining to the business conducted by the microfinancier;
  - (d) open or cause to be opened any strong room, safe or other container in which it is suspected, on reasonable grounds, that there are any of the institution's moneys, securities, books, records, accounts or documents;
  - (e) examine and make extracts from and copies of any of the microfinancier's securities, books, records, accounts or documents;
  - (f) remove any of the microfinancier's securities, books, records, accounts or documents from the microfinancier's premises, for so long as may be necessary for the purpose of examining them or making extracts from or copies of them:
    - Provided that the supervisor shall give a full receipt for any such securities, books, records, accounts or documents so removed;
  - (g) require any officer, employee or agent of the microfinancier—
    - (i) to explain any entry in the microfinancier's books, records, accounts or documents;
    - (ii) to provide the supervisor with such information concerning the microfinancier's management or activities as the supervisor may reasonably require.

(4) The powers of entry and search conferred by subsection (3) shall not be exercised except with the consent of the microfinancier or person in charge of the premises concerned, unless there are reasonable grounds for believing that it is necessary to exercise them for the prevention, investigation or detection of an offence or for the obtaining of evidence relating to an offence.

**37 Action that may be taken by Reserve Bank where microfinancier found to have contravened the Act or condition of registration, etc**

(1) If, following a report by a supervisor and, where appropriate, after considering any representations made by the microfinancier concerned in terms of subsection (2), the Reserve Bank is satisfied that a microfinancier has contravened any term or condition of its registration or any provision of this Act or any direction, requirement or order made under this Act, the Reserve Bank may, subject to this section, do any one or more of the following—

- (a) issue a warning to the microfinancier;
- (b) require the microfinancier to appoint a person who, in the Reserve Bank's opinion, is qualified to advise the microfinancier on the proper conduct of its business;
- (c) issue a written instruction to the microfinancier to undertake remedial action specified in the instruction;
- (d) impose a monetary penalty not exceeding the equivalent of a fine of level ten a day for each day that the contravention has continued;
- (e) instruct the microfinancier to suspend or remove any of its directors, officers or employees from his or her duties;
- (f) direct the microfinancier to suspend all or any of its business;
- (g) appoint a supervisor to monitor the microfinancier's affairs;
- (h) convene a meeting of the shareholders or other owners of the microfinancier to discuss the remedial measures to be taken;
- (i) place the microfinancier under the management of a curator;
- (j) recommend to the Registrar—
  - (i) the imposition of any term or condition on the microfinancier's continued registration, or the deletion of any such term or condition; or
  - (ii) the cancellation of the microfinancier's registration.

(2) Before taking any action in terms of subsection (1), the Reserve Bank shall inform the microfinancier concerned, in writing, of—

- (a) the contravention of which it is believed to be guilty and, in substance, the grounds for that belief; and
- (b) the action the Reserve Bank proposes to take in respect of the alleged contravention;

and shall afford the microfinancier an adequate opportunity to make representations in the matter:

Provided that, where the Reserve Bank considers that immediate action is necessary to prevent irreparable harm to the institution or its depositors, creditors or shareholders, the Reserve Bank may take such action before affording the microfinancier an opportunity to make representations in terms of this subsection.

### 38 Investigation into microfinancier

(1) If—

- (a) a microfinancier has failed to furnish the Reserve Bank with any statement, document or information required under any provision of this Act within the period specified by or in terms of that provision, and has not furnished that statement, document or information within a period of thirty days, commencing on the date on which the Reserve Bank has reminded it, in writing, of its failure; or
- (b) a microfinancier has furnished incorrect or incomplete information to the Reserve Bank and has not furnished correct or complete information within a period of thirty days, commencing on the date on which the Reserve Bank has called upon it to correct or complete the information; or

- (c) any statement, document or information furnished by a microfinancier to the Reserve Bank shows that the microfinancier or any of its officers, employees or agents has failed to comply with any provision of this Act; or
- (d) the auditor of any microfinance institution has informed the institution or the Reserve Bank of an irregularity that requires correction and the institution has not corrected the irregularity within a period of thirty days, commencing on the date on which the Reserve Bank or a supervisor has called upon the institution in writing, to correct it; or
- (e) the Reserve Bank has reasonable grounds for believing that a microfinancier or any person connected with a microfinance institution has committed an offence under this Act, other than an offence arising out of conduct referred to in paragraph (a) or (b); or
- (f) the Reserve Bank has reasonable grounds for believing that the rights of any class of depositors with a microfinance institution are being prejudiced; or
- (g) the Reserve Bank has reason to believe that any person has or had any interest, direct or indirect, in a microfinancier or its business in contravention of this Act; or
- (h) a microfinancier or any of its officers, employees or agents has prevented a supervisor from exercising any of his or her powers in terms of this Part or in terms of section 9 of the Balance of Payments Reporting Act [*Chapter 22:16*];

and the Reserve Bank considers that an investigation is necessary for the purpose of preventing, investigating or detecting a contravention of this Act or any other law, the Reserve Bank may direct an inspector to conduct an investigation into the microfinancier concerned or any aspect of its management or activities.

(2) It shall not be necessary for the Reserve Bank to afford the microfinancier concerned an opportunity to make representations before it directs an inspector to conduct an investigation.

(3) For the purposes of an investigation in terms of subsection (1), an inspector may exercise any of the powers of a supervisor set out in section 36(3) and, in addition, may—

- (a) seize any securities, books, records, accounts or documents of the microfinancier concerned which in his or her opinion may afford evidence of an offence or irregularity:

Provided that—

- (i) the inspector shall issue a full receipt for any securities, books, records, accounts or documents so seized;
- (ii) any securities, books, records, accounts or documents so seized shall be retained only for so long as may be necessary for the purposes of the investigation;

- (b) examine, whether under oath or otherwise, any person who is or was a director, officer, employee, agent, auditor, legal adviser, valuator, debtor, creditor, policy-holder, shareholder or partner of the microfinancier concerned:

Provided that—

- (i) any person so examined shall be entitled to have his or her legal practitioner present at the examination;

- (ii) no person shall be required to answer any question which he or she would not be required to answer if he were a witness in a civil or criminal case before a court;
- (c) require any person referred to in paragraph (b) to produce any security, book, record, account or document of the microfinancier concerned to which he or she has access, or to give any information at his or her disposal relating to the management or affairs of the microfinancier:

Provided that no such person shall be required to produce anything or to answer any question which he or she would not be required to produce or answer, as the case may be, if he or she were a witness in a civil or criminal case before a court.

(4) A microfinancier whose securities, books, records, accounts or documents have been seized under this section shall be entitled, through its authorised representative, to examine, make entries in and make extracts from them during office hours under such supervision as an inspector may determine.

(5) In conducting an investigation in terms of subsection (1), an inspector shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, with such changes as may be necessary, in relation to an investigation made in terms of this section and to any person summoned to give or giving evidence at that investigation.

(6) Any person who, without just cause, hinders or obstructs an investigator in the exercise of his or her functions under this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

### 39 Procedure on completion of investigation

(1) On completion of an investigation in term of section 38, an inspector shall forward his or her report thereon to the Reserve Bank.

(2) On receipt of a report in terms of subsection (1), the Reserve Bank shall—

- (a) send a summary of the conclusions reached in the report, and any recommendations made therein, to the microfinancier which was the subject of the investigation; and
- (b) invite the microfinancier to make representations on the conclusions and recommendations set out in the summary.

(3) A microfinancier to which a summary of conclusions and recommendations has been sent in terms of subsection (2) may, within thirty days, submit to the Reserve Bank representations on any of the conclusions or recommendations.

### 40 Action by Reserve Bank following investigation

(1) If, after considering an inspector's report sent to it in terms of section 39(1), together with any representations made by the microfinancier concerned in terms of subsection (3) of that section, the Reserve Bank is satisfied that the microfinancier has contravened any term or condition of its registration or any provision of this Act or any direction, requirement or order made under this Act, the Reserve Bank may, subject to subsection (2), take any action referred to in section 37(1).

(2) Before taking any action referred to in subsection (1), the Reserve Bank shall—

- (a) inform the microfinancier concerned, in writing, of the action it proposes to take; and

- (b) afford the microfinancier concerned an adequate opportunity to make representations in the matter:

Provided that, where the Reserve Bank considers that immediate action is necessary to prevent irreparable harm to the microfinancier or its depositors, creditors or shareholders, the Reserve Bank may take such action before affording the microfinancier an opportunity to make representations in terms of this subsection.

#### 41 Expenses of investigation

(1) The Reserve Bank may recover from a microfinancier which has been investigated in terms of this Part all the expenses necessarily incurred in connection with the investigation.

(2) In any proceedings in a court for the recovery of any expenses referred to in subsection (1), a certificate purporting to be signed by the Governor or a Deputy Governor of the Reserve Bank and setting out the amount of the expenses concerned shall be *prima facie* proof of their amount.

#### 42 Statements and reports to be submitted by microfinanciers

(1) At such times as may be prescribed, every microfinancier shall submit to the Registrar a statement in such form as may be prescribed, reflecting the microfinancier's operations and condition.

(2) Within ninety days after the end of its financial year, every microfinancier shall submit to the Registrar a copy of the financial statement prepared in terms of section 22(1)(b) and certified (in the case of microfinance institutions) by the institution's auditor.

(3) If required to do so by the Registrar for the purpose of ensuring proper compliance with this Act, every microfinancier shall supply the Registrar with any document, report or information whatsoever relating to the microfinancier's business or transactions.

#### 43 Appointment of supervisors and inspectors

(1) The Reserve Bank may appoint—

- (a) as supervisors one or more of its officers or employees as supervisors for the purpose of monitoring and supervising microfinanciers and exercising any other function conferred or imposed on supervisors by or in terms of this Act; and
- (b) subject to the Public Service Act [Chapter 16:04], one or more persons as inspectors for the purpose of conducting an investigation into any microfinancier or class of such microfinancier and exercising any other function conferred or imposed on inspectors by or in terms of this Act.

(2) Reserve Bank may appoint an officer or employee to be both a supervisor and an inspector in terms of subsection (1).

(3) The Reserve Bank shall provide every supervisor and inspector with a document identifying him or her as a supervisor or inspector, as the case may be, and he or she shall produce it on request by any interested person.

(4) Any person appointed as a supervisor or inspector in terms of section 46 of the Banking Act [Chapter 24:20] (Act No. 9 of 1999) shall be entitled to carry out the functions of a supervisor or inspector, as the case may be, as if he or she had been appointed in terms of this section.

## PART VIII

## ENFORCEMENT OF MICROFINANCIERS' CODE OF CONDUCT

**44 Application of Part VIII**

(1) This Part applies to the investigation, hearing and, if necessary, punishment of any allegation that a microfinancier has engaged in any undesirable method of conducting business.

(2) For the avoidance of doubt it is declared that a microfinancier shall not be guilty of an undesirable method of conducting business by virtue of an act or omission of a person employed by it if it is proved that the responsible authority of the microfinancier did not know and could not reasonably be expected to have known of the act or omission.

**45 Disciplinary committee**

For the purpose of an investigation and hearing in terms of this Part there shall be a disciplinary committee composed of—

- (a) the Registrar or his or her authorised delegate, who shall be the chairperson of the disciplinary committee; and
- (b) a representative appointed by the Minister of any association of microfinanciers which, in the opinion of the Minister represents a substantial number of microfinanciers generally, or represents the class of microfinanciers to which the microfinancier subjected to an investigation under this Part belongs; and
- (c) a representative of the Reserve Bank appointed by the Governor of the Reserve Bank.

**46 Complaints against microfinanciers and initial investigation by disciplinary committee**

(1) A person who is aggrieved by any conduct on the part of a microfinancier that may constitute an undesirable method of conducting business may, within a reasonable time after the conduct giving rise to the complaint, lodge his or her complaint, in writing and in the prescribed form and manner, with the Registrar.

(2) If the Registrar receives a complaint or suspects on reasonable grounds that a microfinancier may be guilty of engaging in an undesirable method of conducting business, the Registrar shall inform the Secretary of the complaint or suspicion, and the Secretary shall thereupon instruct the disciplinary committee to meet and investigate the complaint or suspicion.

(3) For the purposes of an investigation under this section, the disciplinary committee may, through the Registrar or any of its members, at all reasonable times with or without notice—

- (a) visit and inspect the premises of the microfinancier concerned;
- (b) require the microfinancier concerned to provide it with such information as the committee considers may be relevant to the investigation.

(4) If the disciplinary committee finds that a *prima facie* case against the microfinancier concerned has been disclosed, it shall inform the Secretary, the microfinancier and any person who may have lodged a complaint accordingly, and shall then proceed in terms of this Part.



#### 47 Notice of complaint or of allegation of undesirable method of conducting business

Upon a finding in terms of section 46(4), the disciplinary committee shall notify the microfinancier concerned in writing of the complaint or allegation against it and of the grounds on which the committee considers there is a *prima facie* case against the microfinancier, and in that notice shall—

- (a) call upon the microfinancier to reply to the complaint or allegation, in writing, within such reasonable time as may be specified in the notice; and
- (b) advise the microfinancier that in its reply—
  - (i) it may admit or deny the truth of the complaint or allegation;
  - (ii) if it—
    - A. admits the truth of the complaint or allegation, it may make any statement in mitigation that it wishes the disciplinary committee to consider; or
    - B. denies the complaint or allegation, it may offer an explanation of its attitude to the complaint or allegation, indicating the basis of its defence;
  - (iii) it may indicate whether it wishes to be present through a member of its responsible authority or represented by a legal practitioner at an inquiry held to determine the truth of the complaint or allegation.

#### 48 Determination of complaint or allegation

(1) Having received a reply from a microfinancier in terms of section 47 or, if no such reply is received, after the expiry of the period within which the reply should have been sent, the disciplinary committee may proceed to determine the matter in accordance with this section.

(2) In determining a matter for the purposes of this section, the disciplinary committee shall—

- (a) ensure that the microfinancier concerned has been given adequate opportunity to make representations in the matter; and
- (b) hold a hearing if there are factual disputes which in the committee's opinion, cannot be resolved on the papers before the committee.

(3) If the disciplinary committee holds a hearing, it shall not be bound by the rules of evidence applicable to a court of law.

(4) For the purposes of a hearing into a complaint or allegation, the disciplinary committee may—

- (a) by subpoena, summon witnesses and require the production of any book, record, document or thing; and
- (b) through its chairperson, administer an oath to and take evidence from any witness; and
- (c) examine any book, record, document or thing produced to it.

(5) A subpoena summoning a witness to attend before the disciplinary committee or to produce to it a book, record, document or thing shall—

- (a) be in the prescribed form; and
- (b) be signed by the Registrar or by his or her authorised delegate.

(6) The disciplinary committee may, with the approval of the Secretary, pay from the funds of the Ministry the expenses incurred by a person for attendance as a witness at a hearing into a complaint or allegation under this Part:

Provided that—

- (i) no such payment shall exceed the amounts prescribed for attendance as a witness in a criminal trial held in a magistrates court; and
- (ii) any expenses incurred by the Ministry under this subsection shall, if the allegation against it is substantiated under this Part, be recoverable from the microfinancier concerned under an order as to costs referred to in subsection (10)(b).

(7) A person giving evidence at a hearing before the disciplinary committee shall be entitled to the same privileges and immunities as if he or she were a witness giving evidence in a civil or criminal trial in a magistrates court.

(8) If for the purposes of an investigation the disciplinary committee is required to determine an issue which has already been determined by a court of law, the committee may accept the court's determination and may rely on any indictment, record, judgment or other evidence of the court's proceedings or findings which the committee considers is reliable for the purposes of its own determination.

(9) Where the disciplinary committee has determined an issue on the basis of a court's previous determination, and the court's determination is subsequently set aside on appeal or review, the disciplinary committee shall reconsider the issue in the light of the decision on appeal or review.

(10) If the disciplinary committee finds that a microfinancier is guilty of an undesirable method of conducting business, it shall notify the microfinancier, in writing, of that finding and—

- (a) may—
  - (i) caution or reprimand the microfinancier; or
  - (ii) impose on the microfinancier a fine not exceeding level twelve, which shall be paid into the funds of the Reserve Bank; or
- (ii) vary or cancel the registration of the microfinancier:

Provided that the committee shall not impose any such penalty unless the microfinancier has been given an adequate opportunity to make representations as to the appropriate penalty to be imposed;

and

- (b) may make such order as to the costs of the proceedings as it thinks fit, including an order requiring the microfinancier to bear all the costs directly connected with the investigation.

(11) Where a microfinancier, upon being notified of a complaint or allegation against it—

- (a) admits in writing truth of the complaint or allegation, with or without mitigation; or
- (b) indicates that it does not wish to be present or be represented at a hearing under this section, whether or not it accompanies the indication with an explanation or its attitude to the complaint or allegation; or
- (c) does not appear at a hearing under this section;

the disciplinary committee may proceed to make a finding on the complaint or allegation without holding a hearing.

#### 49 Offences in connection with investigations under this Part

A person subpoenaed in terms of section 48(4)(a) shall obey the subpoena served on him or her, and any such person who, without just cause—

- (a) fails to attend and give evidence at a hearing under section 48 at the time and place specified in the subpoena; or
- (b) fails or refuses to be sworn when the chairperson of the disciplinary committee desires to administer an oath to him or her; or
- (c) fails to produce any book, record, document or thing that he or she had been required by subpoena to produce; or
- (d) fails to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

### PART IX

#### GENERAL

#### 50 Appeals

(1) Subject to this section, any person who is aggrieved by a decision, proposal or action of the Registrar or the Reserve Bank under this Act may appeal against the decision, proposal or action to the Minister.

(2) An appeal shall be made in the form and manner prescribed and shall be lodged with the Minister within thirty days after the appellant was notified of the decision, proposal or action appealed against.

(3) In an appeal the Minister may conduct or cause to be conducted such inquiry into the matter as he or she thinks appropriate and may confirm, vary or set aside the decision, proposal or action appealed against:

Provided that the Minister shall ensure that the appellant and the Registrar or Reserve Bank, as the case may be, are given an adequate opportunity to make representations in the matter.

(4) The Minister shall ensure that the appellant and the Registrar or Reserve Bank, as the case may be, are notified of any decision reached by him or her in terms of subsection (3).

(5) Any person who is aggrieved by a decision of the Minister on an appeal in terms of subsection (1) may appeal against his or her decision to the Administrative Court within the time and in the manner prescribed in rules of that court.

(6) In an appeal in terms of subsection (5), the Administrative Court may confirm, vary or set aside the decision, proposal or action appealed against and give such other order, whether as to costs or otherwise, as the Court considers just.

#### 51 Extension of time-limits

If a microfinancier is required to comply within a specified or prescribed period with any provision of this Act, or with any direction or requirement of the Registrar in terms of this Act, the Registrar may, on good cause shown, extend the period at the request of the microfinancier concerned.

**52 Translations of documents, etc, may be demanded**

Where any person for the purposes of this Act, submits any statement, document or other information to the Reserve Bank or the Registrar in a language other than the English language, the Reserve Bank or the Registrar, as the case may be, may direct him or her to provide, at his or her own expense, a translation of the statement, document or information, and until the person concerned complies with the direction the statement, document or information shall be deemed not to have been submitted for the purposes of this Act.

**53 Powers of Registrar where unregistered person is suspected of conducting microfinance business**

(1) Where the Registrar has reason to suspect that a person who is not registered is conducting any microfinance business, he or she may—

- (a) direct that person, by written notice, to supply, within a period stated in the notice, any document or information concerning the person's business or activities; or
- (b) direct a supervisor to examine that person's business in order to ascertain whether or not the suspicion is well-founded.

(2) Any person who fails to comply to the best of his or her ability with a notice in terms of subsection (1) (a) shall be guilty of an offence and liable to a fine not exceeding level six.

(3) For the purposes of an examination in terms of subsection (1)(b), a supervisor may exercise any of the powers conferred on a supervisor by section 47 of the Banking Act [Chapter 24:20], any references in that section to banking business and a banking institution being construed, respectively, as references to microfinance business and a person conducting or suspected of conducting microfinance business.

(4) Any person who, without just cause, hinders or obstructs a supervisor in the conduct of an examination in terms of subsection (1)(b) shall be guilty of an offence and liable to a fine not exceeding level six.

(5) Nothing in this section shall be construed as limiting the power of a police officer to investigate any offence in terms of this Act.

**54 Preservation of secrecy and use of confidential information for personal gain**

(1) The following persons, namely—

- (a) the Registrar or other officer referred to in section 4;
- (b) any officer or employee of the Reserve Bank;
- (c) any supervisor or inspector;
- (d) any auditor of a microfinancier;
- (e) any employee or agent of a person specified in paragraph (a), (b), (c) or (d);

shall not disclose any information which he or she has acquired in the performance of his or her functions under this Act and which relates to the business or other confidential affairs of a microfinancier.

(2) Except with the permission of the Reserve Bank, no microfinancier or employee or agent of a microfinancier shall disclose any information provided to it by the Reserve Bank in confidence in the performance of its functions under this Act.

(3) Subsection (1) and (2) shall not apply to—

- (a) any disclosure made by the person concerned in the performance of his or her functions under this Act or when required to do so by a court or in terms of any other enactment; or
- (b) the supplying of statistics in terms of section 55; or
- (c) the disclosure of information that is generally known to members of the public or a substantial section of the public; or
- (d) a disclosure of such information in such circumstances as may be prescribed.

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level six or imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(5) Subject to subsection (2), if any of the persons referred to in subsection (1) for personal gain makes use of any information which he or she has acquired in the performance of his or her functions under this Act and which relates to the affairs of a microfinancier he or she shall be guilty of an offence and liable to—

- (a) a fine not exceeding level ten or double the amount of his or her gain, whichever is the greater; or
- (b) imprisonment for a period not exceeding five years;

or both such fine and imprisonment.

(6) It shall be a defence to a charge under subsection (1) for the person charged to show that the information which he or she used was generally known to members of the public or to a substantial section of the public.

#### **55 Reserve Bank and Registrar may supply statistics**

For the purposes of the Census and Statistics Act [*Chapter 10:29*](Act No. 1 of 2007), the Reserve Bank and the Registrar shall supply the Director-General of the Zimbabwe National Statistics Agency such statistics relating to microfinanciers in Zimbabwe as may be required by or under the Census and Statistics Act [*Chapter 10:29*], but no such statistics shall reveal confidential information concerning any particular microfinancier or other person.

#### **56 Annual reports of Reserve Bank and Registrar**

(1) As soon as possible after the end of every calendar year, and in any event not more than three months thereafter, the Reserve Bank and the Registrar shall submit to the Minister a provisional report (which report shall relate exclusively to microfinance business) on microfinance business in Zimbabwe during that year.

(2) The Minister upon receiving a provisional report may—

- (a) approve it as a final report; or
- (b) require that the report include such further information or disclosures in the public interest as the Minister shall specify, and upon compliance therewith, the Minister shall approve the amended report as the final report.

(2) The Minister shall lay a copy of any report submitted to him or her in terms of subsection (1) before the House of Assembly on one of the fourteen days on which the House next sits after he or she has received it.

#### **57 Exercise of functions by Reserve Bank and Registrar**

(1) Any function of the Reserve Bank under this Act may be exercised on behalf of the Bank—

- (a) by the Governor of the Reserve Bank; or
- (b) subject to the directions of the Governor, by a Deputy Governor of the Reserve Bank specified by the Governor with the approval of the Board of Directors of the Reserve Bank.

(2) The Governor and Deputy Governor of the Reserve Bank shall exercise the said functions in accordance with any directions that the Board of Directors of the Reserve Bank may give them.

(3) Subsection (1) and (2) shall not be construed as limiting the Reserve Bank's power under any other law to delegate its functions under this Act to any of its officers or employees.

#### 58 Evidence and presumptions

- (1) Any document or copy thereof certified by—
- (a) the Registrar, as a document or copy thereof lodged with or furnished to or issued by the Registrar in terms of this Act; or
  - (b) the Reserve Bank, as a document or copy thereof lodged with or furnished to or issued by the Reserve Bank in terms of this Act;

shall be presumed to be such a document or a copy, as the case may be, and shall be admissible in evidence in any court on its production by any person.

- (2) A document purporting to be signed by the Registrar and—
- (a) stating that any person is not registered under this Act; or
  - (b) setting out the terms and conditions of any microfinancier's registration; or
  - (c) stating whether or not any microfinancier's registration has been cancelled or suspended;

shall be admissible in any proceedings in any court on its production by any person as proof of the facts stated therein.

#### 59 Amendment or substitution of First and Second Schedules

(1) Subject to subsection (1), the Minister, after consultation with the Registrar and the Reserve Bank, may by notice in a statutory instrument amend or replace the First or Second Schedule.

(2) When the Minister wishes to amend or replace the First or Second Schedule the Minister shall lay the draft statutory instrument amending or replacing the First or Second Schedule before the House of Assembly, and if the House makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is so laid before the House, the Minister shall cause it to be published in the *Gazette*.

#### 60 Regulations

(1) Subject to subsection (4), the Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Regulations may provide for—
- (a) the conduct of microfinance business, including the specification of undesirable methods of conducting business;
  - (b) limits on the amount that may be lent by a microfinancier to any one borrower or class of borrower;

- (c) the disclosure by microfinanciers of information concerning transactions, deposits and funds held or dealt with by them, where such information is required for the purposes of—
  - (i) detecting, investigating or preventing an offence, whether under Zimbabwean law or the law of any other country; or
  - (ii) recovering the proceeds of any offence referred to in subparagraph (i); or
  - (iii) complying with any obligation of Zimbabwe under an international convention, treaty or agreement;
- (d) the standard form of a microfinance loan agreement;
- (e) the preservation of records by microfinanciers;
- (f) the issue of directions by the Registrar or the Reserve Bank to microfinanciers in respect of any matter relating to their microfinance business;
- (g) fees and charges for anything done or provided in terms of this Act;
- (h) the application to microfinance institutions, with or without modifications, of any prudential guidelines issued by or under the Banking Act [*Chapter 24:20*] to banking institutions;
- (i) the setting up of any advisory council in connection with microfinance business.

(3) Regulations may provide penalties for contraventions thereof:

Provided that no such penalty shall exceed a fine of level seven or imprisonment for a period of six months or both such fine and such imprisonment.

(4) Except where the urgency of the circumstances otherwise requires, any regulations which have the effect of imposing additional requirements or obligations upon microfinanciers shall afford existing microfinanciers a reasonable time within which to comply with the regulations.

#### 61 Amendment of Cap. 14:14

The Moneylending and Rates of Interest Act [*Chapter 14:14*] is amended—

- (a) by repeal of sections 2A, 2B, 3, 4, 5, 6 and 7;
- (b) in section 20 (“Exempted transactions”) by the insertion after subsection (2) of the following subsection—

“(2a) Nothing in this Act, other than sections 8 to 16, shall apply to or in respect of a person registered as a microfinancier in terms of the Microfinance Act [*Chapter 24:29*].”;

- (c) in section 22 (“Regulations”)(2) by the repeal of subsections (a) and (b).

#### 62 Amendment of Cap. 24:20

The Banking Act [*Chapter 24:20*] is amended—

- (a) in section 2 (“Interpretation”)(1) by the repeal of the definition of “microfinance bank”;
- (b) in section 4 (“Registrar of Banking Institutions and other officers”) (1) by the deletion of the words “section 46” and the substitution of “section 59”;
- (c) in section 5 (“Banking business and banking activities not to be conducted except by registered banking institution”) by the repeal of subsection (5);

- (d) in section 6 ("Classes of banking business") by the repeal of paragraph (e);
- (e) in section 81 ("Regulations")(2) by the repeal of paragraph (g).

### 63 Transitional provision

Any person who, immediately before the date of commencement of this Act, was conducting any business for which he or she is required to be registered under this Act may continue to conduct that business—

- (a) for six months after the date of commencement of this Act; and
- (b) if he or she applies for registration in terms of this Act, until the application is finally determined.

### FIRST SCHEDULE (Section 2)

#### MICROFINANCIERS' CODE OF CONDUCT

In this Schedule, a microfinancier shall be considered to be adopting undesirable methods of conducting business if it fails to comply with any of the following ethical practices and rules of conduct—

#### *Treatment of clients generally*

1. In the conduct of their business all microfinanciers must follow practices built on respect, fair treatment, persuasion and courtesy towards clients.

#### *Operating guidelines and procedures*

2. A microfinancier must—

- (a) devise and keep up to date operating guidelines and procedures to ensure that clients and potential clients are treated with dignity, respect and sensitivity; and
- (b) ensure that the microfinancier's staff is trained and equipped to implement the foregoing guidelines and procedures.

#### *Pledged security*

3. (1) Every borrower shall pledge as security property that is not (subject to this paragraph) more than twice the value of the amount borrowed from the microfinancier, which security shall—

- (a) not be used by the microfinancier; and
- (b) not be pledged by the microfinancier as security if the borrower has defaulted; and
- (c) be kept in safe custody by the microfinancier.

(2) A borrower who has pledged security whose value is more than twice the value of the amount borrowed can at any time substitute a new security that is more commensurate to the value borrowed.

(3) Where a borrower pledges security worth more than the value of the money borrowed, the microfinancier must ensure, in the event that the borrower defaults, the return of the balance after subtracting the amount due to them.

(4) Pledged security held by the microfinancier shall be at the microfinancier's risk unless the microfinancier can satisfy the Registrar or a court, as the case may be, that—

- (a) the pledged security was held in a safe place of custody; and
- (b) the loss or destruction of the pledged security was not attributable to any negligence on the part of the microfinancier.



*Transparency*

4. There must be full disclosure to clients and potential clients of all terms and conditions (including any changes) attaching to any of the financial services offered by the microfinancier in plain and simple language understood by the client, including in particular the following in respect to its loan and credit services—

- (a) the microfinancier must provide to every client documents clearly indicating the rate of interest, terms of repayment, collateral required from the client and details of all charges other than interest (if any);
- (b) the microfinancier must provide to every client at his or her request without delay written periodical statements setting out all the charges levied upon the client, all the payments made by him or her, and the outstanding balance owed by him or her under the loan agreement.

*Avoiding overindebtedness*

5. (1) All microfinanciers must take reasonable steps to ensure that the credit services offered by them are based on the need and repayment capacity of each client and that this service will not put the borrowing client at significant risk of over-indebtedness.

(2) Before advancing a loan to a client or potential client a microfinance institution shall diligently investigate and consider the client's creditworthiness, debt history, sources of income, and the nature of the collateral that may be reasonably expected from him or her.

(3) All microfinanciers must avoid demanding collateral whose value exceeds the value of the loan, and in any case must not (subject to paragraph 3(2) and (3)) accept collateral exceeding twice the value of the loan.

*Appropriate Interaction and collection practices*

6. (1) Every microfinancier shall behave in a dignified manner towards clients, that is to say, in a way that does not humiliate or degrade them.

(2) Every microfinancier shall interact with clients in English and ChiShona or SiNdebele or any other indigenous language understood by the client

(3) Every microfinancier shall have a clearly defined procedure in the case of defaulting clients, and shall notify clients of such procedure as part of the terms and conditions of any loan or credit facility.

(4) No microfinancier shall, without the client's prior consent, visit a client's house or place of abode or place of employment for the collection of moneys due from the client, unless such visits have been expressly authorised as part of the terms and conditions of the agreement for the loan or credit facility, in which case every such visit must be conducted by persons identified to the client in advance, and must be carried out with the utmost regard for decency and courtesy.

(5) In any event, there must be no such visits during public holidays (including Sundays) or on any day on which the client or any member of his or her family is celebrating a marriage, or on any occasion set aside by the family of the client for memorialising a bereavement.

(6) Every microfinancier shall avoid stressful recovery methods and in particular microfinanciers shall not detain ATM cards or demand post-dated cheques as security for any loan or credit facility.

(7) Microfinanciers should promote a culture of social sensitivity towards their clients, and in particular should endeavour to foster a long-term and individualised relationship with each of their clients.

*Privacy of client's information*

7. Every microfinancier shall keep personal client information strictly confidential unless required to disclose it by a court order or for the purpose of legal proceedings.

*Client education and financial literacy*

8. (1) Microfinance institutions must adequately inform clients and potential clients of any information additional to that referred to in paragraph 3 that will enable them to make informed choices and decisions concerning the range of credit facilities or options available to them, whether or not such facilities or options are offered by the microfinancier concerned.

(2) Every corporate microfinancier shall have at least one credit control advisor to give credit control advice to clients or potential clients where needed, and such advisor must not also be involved in any way with offering credit facilities or loans to clients or potential clients.

*Feedback or grievance mechanism*

9. (1) Every corporate microfinancier shall—

- (a) institute a procedure for dealing with complaints from clients and ensure that—
  - (i) every complaint is attended to and, if possible and appropriate, remedied within a reasonable time; and
  - (ii) the complainant is made aware of his or her right to complain to the Registrar if his or her complaint is not remedied to his or her satisfaction;
- (b) keep a record of all complaints made, and avail such record to the Registrar or an inspector at his or her request.

**SECOND SCHEDULE (Section 7)****CONTENTS OF BUSINESS PLAN OF MICROFINANCIER***Identifying information*

1. (1) The name and location of the applicant microfinancier including the location of any branches.

(2) Description or diagram of the applicant's corporate structure, if it is a corporate microfinancier.

(3) A brief discussion of the origin of the applicant, including how its founders came together and the reasons for wanting to become a microfinancier.

*Business strategy and objectives*

2. Brief description of the services to be offered by the applicant.

*Capitalisation and additional capital sources*

3. (1) Description of the plans for financing growth, internally or externally, over the first four years of operation.

(2) Description of what additional capital sources are available should the need arise.

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) in the case of a microfinance institution—

- (i) a projected annual balance sheet for the first three years of operation;
- (ii) a projected annual income statement (profit and loss account) for the first three years of operation;
- (i) a projected cash flow statement for the first three years of operation:
- (b) in the case of a moneylender or partnership—
  - (i) a projected annual balance sheet for the first two years of operation;
  - (ii) a projected annual income statement (profit and loss account) for the first two years of operation;
  - (iii) a projected cash flow statement for the first two 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 operation of the external operation.

