



Republic of Namibia
Annotated Statutes

Microlending Act 7 of 2018

(GG 6664)

brought into force on 15 October 2018 by GN 261/2018 (GG 6736)

ACT

To regulate the carrying on of microlending business in Namibia; to establish an effective and consistent enforcement framework relating to microlending; to promote responsible borrowing and lending; and to provide for incidental matters.

(Signed by the President on 17 July 2018)

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BE IT ENACTED, as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

PART 1
PRELIMINARY PROVISIONS

Definitions

1. (1) In this Act, unless the context otherwise indicates -

“Banking Institutions Act” means the Banking Institutions Act, 1998 (Act No. 2 of 1998);

“banking institution” means a banking institution as defined in section 1 of the Banking Institutions Act;

“Board of NAMFISA” means the board referred to in section 1 of the NAMFISA Act;

“borrower” means a person to whom a microlender has advanced a loan in terms of a microlending transaction, or any person to whom the rights and obligations of a borrower in respect of a microlending transaction have passed, whether by delegation, cession or otherwise;

“branch manager” means a natural person appointed as such under section 21;

“credit bureau” means an entity specialised in the collection and sale of credit performance information for individuals and businesses and registered as a credit bureau;

“day” means any day except a Saturday, Sunday or public holiday;

“disqualified person” means a disqualified person as provided for in section 7;

“Exemption Notice” means the Notice in terms of section 15A of the Usury Act published under Government Notice No. 189 of 25 August 2004;

[GN 189/2004 was published in GG 3266.]

“finance charges” means the total of any valuable consideration a borrower owes to a microlender in terms of a microlending transaction, which does not form part of the principal debt, but does not include -

- (a) if judgment is obtained for the payment of the principal debt or finance charges owing thereon by the borrower, legal costs awarded in terms of such judgment, but -
 - (i) the court in awarding such legal costs may disregard the provisions of any agreement relating to costs between the parties concerned; and
 - (ii) such legal costs do not include any costs incurred by or on behalf of a microlender before the instructions to institute legal proceedings for the payment of such principal debt or finance charges were given;

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- (b) legal costs actually incurred by the microlender after legal proceedings were instituted for the payment of the principal debt or of finance charges owing on the principal debt and where payment of such principal debt or finance charges is made by or on behalf of the borrower, without judgment being obtained by virtue of such proceedings; and
- (c) any allowable service fee charged by a payment system service provider in relation to the facilitation of a payment from the borrower to the microlender;

“financial crime” means any of the following -

- (a) an offence that involves theft, fraud, forgery or uttering a forged document, perjury or an offence under the Anti-Corruption Act, 2003 (Act No. 8 of 2003);
- (b) financing, facilitating or being involved in financing or facilitating an offence relating to a financial institution;
- (c) dealing with the proceeds of an offence, whether or not related to a financial institution;
- (d) an offence under the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004);
- (e) an offence under the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014);
- (f) an offence under the Financial Intelligence Act; or
- (g) an offence under the Payment System Management Act;

“financial institution” means a financial institution as defined in section 1 of the NAMFISA Act;

“Financial Intelligence Act” means the Financial Intelligence Act, 2012 (Act No. 13 of 2012);

“fit and proper”, in relation to a key responsible person means a person that meets the fit and proper criteria as required by the standards and the Schedule;

[The comma after “fit and proper” should be removed, or else a comma should be added after the phrase “in relation to a key responsible person” to offset that phrase properly.]

“key responsible person”, in relation to a microlender means any shareholder, director, member, owner or person with at least a five percent ownership or decision-making role in the microlending business and the principal officer and, if relevant, the branch manager;

[The comma after “key responsible person” should be removed, or else a comma should be added after the phrase “in relation to a microlender” to offset that phrase properly.]

“licensed premises” means the premises from where the microlending business is or will be conducted;

“loan agreement” means a written agreement entered into between the microlender and borrower in terms of section 24;

“loan amount” means the sum of money disbursed to a borrower or on behalf of a borrower in terms of a microlending transaction, excluding finance charges, stamp duty, insurance premiums payable pursuant to paragraph (c) of the definition of principal debt and the levy payable pursuant to section 15(1) of this Act;

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“loan applicant” means a person who makes an application to a microlender for the purposes of obtaining a loan;

“microlender” means any person who, as a regular feature of the business advertises or conducts the business of advancing loans to borrowers in terms of microlending transactions;

“microlending business” means the business of advancing loans to borrowers in terms of microlending transactions as a regular feature;

“microlending transaction” means any loan transaction in respect of which -

- (a) the loan amount does not exceed the amount of N\$100 000 or any such other amount as may be determined by the Minister by notice in the *Gazette* under subsection (2); and
- (b) the principal debt, together with the finance charges which is owing by the borrower must be paid to the microlender, whether in instalments or otherwise, within 60 months or any such other period as may be determined by the Minister, by notice in the *Gazette* under subsection (2), from the date on which the loan amount has been advanced to the borrower,

excluding any money lending transaction in terms of which the finance charges do not exceed the annual finance charge rate prescribed by the Registrar in respect of money lending transactions under the Usury Act;

“Minister” means the Minister responsible for finance;

“money lending transaction” means a money lending transaction as defined in section 1 of the Usury Act;

“NAMFISA” means the Namibia Financial Institutions Supervisory Authority established under the NAMFISA Act;

“NAMFISA Act” means the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001);

“Payment System Management Act” means the Payment System Management Act, 2003 (Act No. 18 of 2003);

“prescribed” means prescribed by regulations made under this Act;

“Prescribed Rate of Interest Act” means the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975);

“principal debt” means -

- (a) the loan amount;
- (b) the costs in respect of stamp duties actually paid or to be paid by the microlender in connection with the microlending transaction and which are owing to the microlender by the borrower;
- (c) premiums actually paid or to be paid by the microlender to an insurer registered in terms of the Long-term Insurance Act, 1998 (Act No. 5 of 1998) as agreed between the insured and such insurer in respect of a life policy which is ceded to the microlender as security for the repayment of the loan; and

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- (d) the levy paid or to be paid by the microlender in connection with the microlending transaction pursuant to section 15(1);

“principal office” means a physical address within Namibia nominated as the main place of business or head office of the microlender;

“principal officer” means a natural person appointed as such under section 14;

“Registrar” means the Registrar as defined in section 1 of the Usury Act;

“Schedule” means the Schedule to this Act;

“standards” means the standards issued by NAMFISA under this Act;

“this Act” includes -

- (a) the regulations made by the Minister under this Act;
- (b) a government notice issued by the Minister under this Act; and
- (c) the standards issued by NAMFISA under this Act; and

“Usury Act” means the Usury Act, 1968 (Act No. 73 of 1968).

(2) The Minister may, by notice in the *Gazette*, determine the maximum loan amount and maximum repayment period which a loan transaction may not exceed in order to qualify as a microlending transaction.

(3) The Minister may, by notice in the *Gazette*, amend the Schedule.

Objects of Act

2. The objects of this Act are to -

- (a) foster -
 - (i) the highest standards of business conduct by microlenders;
 - (ii) fairness, efficiency, transparency and orderliness of the microlending industry;
 - (iii) the protection of borrowers and the promotion of responsible borrowing and lending;
 - (iv) the promotion of public awareness and understanding of the microlending industry; and
 - (v) the reduction and deterrence of financial crime;
- (b) regulate and supervise the microlenders as provided for in this Act; and
- (c) ensure that microlenders comply with the relevant provisions of the Usury Act.

Prohibition to conduct microlending business

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3. (1) A person may not conduct the business of a microlender unless that person -
- (a) is registered as a microlender in terms of section 5 or is registered as a microlender in terms of the Exemption Notice as contemplated in section 11 and carries on the microlending business pursuant to and in terms of a certificate of registration authorising the conduct of such business; and
 - (b) carries on that business in accordance with this Act.

(2) Any person who conducts the business of a microlender without being registered in terms of this Act or in terms of the Exemption Notice commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Unregistered persons

4. (1) In addition to the powers of inspection conferred upon NAMFISA in terms of section 37, where NAMFISA has reason to suspect that any person is carrying on the business of a microlender while not registered in terms of this Act or the Exemption Notice, NAMFISA may, by notice in writing, require that person to provide to NAMFISA, within the period stated in the notice, a copy of any documents and other information that NAMFISA may require in relation to the registration of the microlending business.

(2) If NAMFISA is not satisfied with the documents or other information referred to in subsection (1), or if the person fails to provide the documents and information, NAMFISA may require such person to produce at a place specified by NAMFISA the records, documents, statements and accounts relating to that business in order to enable NAMFISA to ascertain whether that business constitutes the business of a microlender.

(3) After considering the information obtained in terms of subsections (1) and (2) or section 37 and if NAMFISA is of the opinion that the person has or is indeed conducting the business of a microlender in contravention of this Act, NAMFISA must, in writing -

- (a) notify such person to cease the business of advancing loans in terms of microlending transactions to borrowers with immediate effect;
- (b) impose a penalty for each day, as may be prescribed by the Minister, for as long as the non-compliance with the provisions of this Act exists; and
- (c) if applicable, remedy the effects of contravening this Act by compensating borrowers who have suffered loss.

(4) A penalty imposed under subsection (3)(b) may provide for interest at rates not exceeding the rates specified under the Prescribed Rate of Interest Act payable from a date determined by NAMFISA.

(5) The penalty payable in terms of subsection (3)(b), and any interest, is a debt due to NAMFISA by the microlender and NAMFISA may recover such debt in terms of section 43.

(6) Despite subsection (3)(b) and (5), any person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

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REGISTRATION

Application for registration

5. (1) A person who conducts, or intends to conduct a microlending business must apply to NAMFISA for registration as a microlender.

(2) A microlender registered under this Act is regarded as a financial institution as defined in section 1 of the NAMFISA Act.

(3) An application referred to in subsection (1) must be -

- (a) made to NAMFISA in the form and manner as required by the standards;
- (b) signed by the applicant as well as the principal officer of the applicant;
- (c) accompanied by a non-refundable application fee as required by the standards;
- (d) accompanied by such information and documents regarding the fit and proper criteria for key responsible persons as required by the standards and the Schedule;
- (e) accompanied by such information as required by the standards pertaining to the licensed premises;
- (f) accompanied by such information disclosing the ownership structure of the proposed microlender; and
- (g) made subject to and in accordance with any other applicable provision of this Act, to satisfy NAMFISA that the applicant and relevant key responsible persons are fit and proper to conduct business as a microlender and that it is in the public interest to register the applicant as a microlender.

(4) On receipt of an application in terms of subsection (1), NAMFISA may require the applicant to furnish such further information and documents which NAMFISA may determine reasonably necessary in order to consider the application.

(5) Where a banking institution or building society registered in terms of the Building Societies Act, 1986 (Act No. 82 of 1986), intends to conduct business as a microlender, that banking institution or building society must establish a legal entity to conduct microlending transactions which are separate from the operations of such banking institution or such building society.

Registration requirements

6. NAMFISA must take the following factors into consideration when considering the application for registration of the applicant and NAMFISA may not register the applicant unless NAMFISA is on reasonable grounds satisfied that -

- (a) the registration of the microlender would not be contrary to this Act or the public interest;
- (b) the applicant and other relevant key responsible persons have the attributes reasonably necessary and adequate to -

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- (i) provide the microlending services in question with professional integrity, prudence, proper skill and due diligence; and
- (ii) comply with this Act;
- (c) where the applicant is an individual, the applicant and other relevant key responsible persons, are fit and proper;
- (d) where the applicant is a corporate entity -
 - (i) every relevant key responsible person is fit and proper;
 - (ii) the memorandum of association and articles, or other instrument constituting or defining the constitution of the corporate entity or other foundation documents of the applicant are not inconsistent with the provisions of this Act;
 - (iii) the direct or indirect control of the entity is not likely to be contrary to the interest of borrowers and consumers; and
 - (iv) the applicant will be in a position to ensure that its organisational or group structure will not be such as to hinder effective supervision by NAMFISA;
- (e) the name of the microlending business, the translation of the name, the shortened form or derivative of that name will not be offensive to the community it will serve, or is not similar to, or may be confused with, the name of any business conducted in terms of any existing certificate of registration;
- (f) the premises on which the intended microlending business is to be conducted meets the requirements set out in the standards in respect of a licensed premises and will not be in contravention of the applicable town planning requirements in respect of the usage of the premises;
- (g) the applicant has submitted all other information which, in the opinion of NAMFISA is necessary to assess the application, and such information has been found satisfactory by NAMFISA;
- (h) the applicant has complied with any other requirements contained in this Act which apply to the applicant; and
- (i) the applicant has complied with the relevant provisions of the Financial Intelligence Act.

Disqualified persons

7. (1) A person may not be registered as a microlender, hold a certificate of registration as a microlender or be appointed or act as a principal officer or branch manager of a microlender if such person -

- (a) has either in Namibia or elsewhere during the preceding 10 years under any law been convicted of an offence relating to -
 - (i) theft;
 - (ii) fraud;

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- (iii) dishonesty; or
- (iv) any financial crime;
- (b) being a natural person -
 - (i) is not a Namibian citizen; or
 - (ii) is not lawfully admitted to Namibia for permanent residence, and is not resident in Namibia;
- (c) being a corporate entity, is not registered in Namibia in terms of the relevant laws and the majority of the member's interest or shareholding is not owned by a Namibian citizen or a person lawfully admitted to Namibia for permanent residence;
- (d) is an unrehabilitated insolvent; or
- (e) has engaged in activities which brought the microlending sector into disrepute, as determined by NAMFISA and specified in the standards.

(2) The Minister may, by notice in the *Gazette*, exempt a person referred to in subsection (1)(b) or (c) from the provisions of subsection (1)(b) or (c) on such conditions and to such extent as the Minister may consider necessary and may at any time in the same manner revoke or amend any such exemption.

Imposing of conditions

8. NAMFISA may, when granting an application for registration as a microlender, or in terms of any other application made to NAMFISA in terms of this Act, impose such conditions on the applicant as it considers necessary, having regard, without limitation, to all the facts and information available to it pertaining to the applicant and any directives and standards issued by NAMFISA, inclusive of conditions and restrictions which -

- (a) prohibit or restrict the conduct of the microlending business on the licensed premises or certain parts of the licensed premises concerned;
- (b) require the applicant to effect alterations or improvements to the licensed premises or parts of the premises relating to the standard of confidentiality of transactions taking place on the licensed premises concerned;
- (c) pertain to the conducting of other business not related to the microlending business from the licensed premises or parts of the licensed premises;
- (d) are considered reasonable and necessary to ensure that the relevant key responsible persons indeed provide the microlending services with the necessary integrity, prudence, skill and diligence; and
- (e) are, in the opinion of NAMFISA, considered necessary or desirable or may be required in respect of the particular application concerned.

Certificate of registration

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9. (1) If NAMFISA approves the application for registration of the applicant as a microlender, NAMFISA must issue to the applicant a certificate of registration.

(2) The certificate of registration issued must contain full particulars in respect of -

- (a) the full name of the microlender;
- (b) the trade name of the microlending business, if any;
- (c) the date of commencement of the microlending business;
- (d) any conditions or restrictions imposed in terms of section 8, which -
 - (i) are to be complied with before the date of commencement of the microlending business or within a specified period of time after such date; or
 - (ii) apply for the duration of the registration of the microlender;
- (e) the date and place of issue of the certificate of registration;
- (f) the term of registration and the expiry date; and
- (g) such other particulars as may be stipulated by NAMFISA.

Term of registration and annual renewal of registration

10. (1) The registration of a microlender under this Act is valid for one year calculated from the date of registration and expires on the last day of such year unless an application for renewal has been made to NAMFISA in terms of subsection (2).

(2) The application for renewal, the form and manner and the fee payable as required by the standards, must be submitted to NAMFISA at least 60 days prior to the date of the expiry of the term of registration.

(3) If the application for renewal is not submitted to NAMFISA by the date referred to in subsection (2) but is submitted on or before the expiry of the term of registration, the microlender must, together with the application for renewal, pay a penalty for each day, as prescribed by the Minister, in respect of each day of the late submission of the application for renewal.

(4) The term of registration of a microlender referred to in subsection (1) does not expire where the microlender has submitted an application for renewal in terms of this section.

(5) NAMFISA must -

- (a) if the application for renewal is submitted to NAMFISA in terms of subsection (2); or
- (b) if the application for renewal is submitted to NAMFISA in terms of subsection (3) and on condition that the penalty payable in terms of subsection (3) is paid in full prior to the expiry of the term of the registration; and
- (c) if the microlender is in full compliance with the provisions of this Act before the date of the expiry of the term of registration,

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renew the registration of the microlender for another term of 12 months subject to such conditions as NAMFISA may impose in terms of section 8.

(6) If the application for renewal is submitted to NAMFISA in terms of subsections (2) or (3) but the microlender is not in full compliance with the provisions of this Act before the date of expiry of the term of registration, the registration of the microlender must be cancelled in terms of section 13.

Microlenders registered under Exemption Notice

11. (1) A person who is registered as a microlender under the Exemption Notice before the date of commencement of this Act must apply for registration as a microlender in terms of this Act within 12 months from the date of commencement of this Act and the Minister may by notice in the *Gazette* extend that period by such further period or periods as the Minister may determine.

(2) Where a microlender referred to in subsection (1) fails to make an application to NAMFISA for registration within the period referred to in subsection (1), the registration of that microlender lapses automatically.

(3) A microlender referred to in subsection (1) must, pending registration in terms of this Act, continue to comply with the conditions of registration imposed in terms of the Exemption Notice, subject to subsection (4).

(4) On the commencement of this Act, the provisions of this Act, excluding sections 5, 6, 7, 8, 9 and 10 and this section, apply to a microlender referred to in subsection (1).

Application for cancellation or variation of registration

12. (1) A microlender may at any time make an application to NAMFISA for the cancellation of the registration as a microlender or for the variation of the conditions subject to which the registration was granted.

(2) For purposes of considering an application under subsection (1), NAMFISA may require the applicant to furnish such information which NAMFISA may consider necessary in order to consider the application.

(3) If NAMFISA is of the opinion that it is reasonable to do so and it is not against the public interest, and provided that the microlender is in full compliance with all provisions of this Act, NAMFISA may, by notice to the microlender concerned -

- (a) cancel the registration;
- (b) vary the conditions of registration, but subject to the imposition of new or additional conditions in terms of section 8; or
- (c) take any other reasonable steps that NAMFISA may consider necessary.

Cancellation or variation of registration by NAMFISA

13. (1) Subject to this section, NAMFISA may, by written notice and from a date specified in such notice, cancel the registration of a microlender, if the microlender -

- (a) has made a material misrepresentation or failed to provide information that was materially relevant in the application for registration;

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- (b) has failed to comply with this Act;
- (c) no longer meets the requirements for registration;
- (d) fails to comply with any condition imposed upon it by NAMFISA;
- (e) has provided microlending services without professional integrity, prudence, proper skill and due diligence;
- (f) ceased to operate or has failed to commence operating within a reasonable time after being registered;
- (g) stipulates for, demands, or receives finance charges in excess of the maximum rate determined by the Registrar in terms of the Usury Act;
- (h) stipulates for, demands, or receives penalty interest, in the event of default by a borrower, in excess of the maximum as prescribed by the Minister;
- (i) retains as security or for collection arrangement purposes any bank card or personal information such as pin codes or original identification documents of the borrower;
- (j) uses a payment instrument that is not registered with the Bank of Namibia in terms of the Payment System Management Act to transact with a borrower or any other person;
- (k) employs any relevant key responsible persons that no longer meet the standards of fit and proper with reference to the criteria set out in the standards and the Schedule;
- (l) is convicted in respect of any financial crime;
- (m) is convicted of an offence under this Act; or
- (n) has failed to comply with the Payment System Management Act.

(2) If NAMFISA is satisfied that any of the circumstances described in subsection (1) exist, NAMFISA may take any of the following actions with respect to the microlender -

- (a) cancel its registration;
- (b) vary the conditions of its registration, inclusive of the imposition of new or additional conditions; or
- (c) take any other reasonable steps that the NAMFISA may consider necessary.

(3) NAMFISA must give notice to the microlender of its intention to take any action referred to in subsection (2), together with the reasons, and must give the microlender a reasonable opportunity to be heard by specifying a period of not less than 30 days during which the microlender may make representations to NAMFISA about the matter.

(4) NAMFISA must make public any cancellation of registration and the reasons for such cancellation by notice in the *Gazette* or by means of any other appropriate public statement.

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(5) The cancellation of the registration of the microlender in terms of subsection (2)(a) will not affect the legality of any lawful terms of any existing loan agreement entered into between the microlender and borrowers.

(6) Despite subsection (3), if a microlender fails to comply with the provisions of this Act and NAMFISA considers that it is necessary to act as a matter of urgency, NAMFISA may by written notice direct the microlender to summarily suspend the business of microlending for such period and subject to such conditions as NAMFISA may specify in that notice.

(7) The notice referred to in subsection (6) must be delivered -

- (a) between 08h00 and 17h00 on any day; and
- (b) to the principal officer of the microlender or to any person of the age of 16 years or older employed by the microlender, if the principal officer is not available.

(8) A microlender to whom a notice under subsection (6) has been delivered may, within 14 days after receipt of that notice, submit to NAMFISA written representations relating to that notice and to the suspension of the business of the microlender.

(9) NAMFISA may, after considering the representation made by the microlender under subsection (8), either -

- (a) confirm the suspension;
- (b) rescind the suspension; or
- (c) vary the conditions, if any, subject to which the business of the microlender was suspended.

PART 3
ADMINISTRATION

Principal office and principal officer

14. (1) Every microlender must have a principal office in Namibia and must appoint a principal officer.

(2) The principal officer must -

- (a) be a natural person who meets the fit and proper criteria as required by the standards and the Schedule;
- (b) subject to the direction and control of the microlender, be primarily responsible for the day-to-day conducting of microlending business;
- (c) perform the duties of a principal officer as required by the standards; and
- (d) be responsible for the compliance of the microlender with this Act.

(3) NAMFISA may address any enquiry in relation to a matter connected with the business of a microlender to the principal officer of that microlender and the principal officer must reply in writing not later than the date specified by NAMFISA.

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(4) NAMFISA must, on request and without charge, inform any person of the address of the principal office of a microlender and the name of its principal officer.

(5) Where it becomes necessary after registration for the microlender to change the address of the principal office, the microlender must within 14 days of such change of address notify NAMFISA in writing.

(6) Should the microlender be necessitated to, at any time, appoint a new principal officer, such appointment must be made within 30 days after the previous appointment came to an end and the microlender must, within 14 days of the new appointment, in writing, notify NAMFISA.

(7) If a microlender fails to appoint a principal officer or notify NAMFISA on or before the dates determined in subsection (5) and (6), the microlender is liable to pay a penalty for each day, as prescribed by the Minister, for as long as the non-compliance exists.

(8) A penalty imposed in terms of subsection (7) may provide for interest at rates not exceeding the rates specified under the Prescribed Rate of Interest Act payable from a date determined by NAMFISA.

(9) The penalty payable in terms of subsection (7), and any interest, is a debt due to NAMFISA by the microlender and NAMFISA may recover such debt in terms of section 43.

(10) The principal officer appointed in terms of subsection (6) must, within 30 days of his or her appointment, complete and submit to NAMFISA the required documentation pertaining to the fit and proper criteria as required by the standards and the Schedule.

(11) A person disqualified in terms of section 7 may not be appointed as a principal officer under subsection (1) and (6).

(12) If NAMFISA is of the opinion that the appointed principal officer does not have the capacity and the attributes reasonably necessary to provide the services with professional integrity, prudence, proper skill and due diligence, NAMFISA must -

- (a) give notice to the microlender requiring the removal of the principal officer from office and the appointment of another person in his or her place, together with the reasons; and
- (b) give the microlender a reasonable opportunity to be heard by specifying a period of not less than 30 days during which the microlender may make representations to NAMFISA about the matter.

(13) NAMFISA may, after considering the representations made by the microlender under subsection (12) -

- (a) issue a directive to require the immediate removal of the principal officer from office and the appointment of another person in his or her place; or
- (b) confirm the appointment of the principal officer, but subject to the imposition of conditions which NAMFISA considers reasonable and necessary to ensure that the principal officer indeed provides the services with the necessary integrity, prudence, skill and due diligence.

Levy payments

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15. (1) A microlender must pay the levies determined in terms of the NAMFISA Act.

(2) If a microlender fails to pay the levies on or before the dates determined in terms of subsection (1), the microlender must pay interest on the balance of the levy outstanding in accordance with the provisions of the NAMFISA Act, failing which the registration of the microlender may be cancelled in accordance with section 13.

Submission of returns

16. (1) A microlender must submit to NAMFISA periodical and other returns, statements and reports as required by the standards.

(2) If a microlender fails to submit the required return, statement or report referred to in subsection (1) -

- (a) the microlender is liable to pay a penalty for each day, as prescribed by the Minister, for as long as the non-compliance exists; and
- (b) the registration of the microlender may be cancelled in accordance with section 13.

(3) A penalty imposed in terms of subsection (2)(a) may provide for interest at rates not exceeding the rates specified under the Prescribed Rate of Interest Act payable from a date determined by NAMFISA.

(4) The penalty payable in terms of subsection (2)(a), and any interest, is a debt due to NAMFISA by the microlender and NAMFISA may recover such debt in terms of section 43.

(5) Despite the provisions of subsections (2) and (4), a microlender who contravenes a provision of this section or any requirements imposed by NAMFISA under this section commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Late submission or late payment

17. A microlender who fails to -

- (a) submit to NAMFISA a return, statement, report or any other document or information required by or under this Act within the period specified; or
- (b) pay the levy or any other fee on or before the due date,

may furnish the return, statement, report or other document or information or pay the levy or fee after the specified period or due date but subject to the payment of interest and of any penalties imposed in terms of section 15 and 16.

Use of name and change of name

18. (1) Every microlender must for all purposes, and in every document issued by the microlender, use the name under which the microlender is registered.

- (2) A microlender may not, without prior written approval from NAMFISA -
 - (a) change the name under which the microlender is registered;

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- (b) use or refer to itself by a name other than the name under which the microlender is registered; or
- (c) use or refer to itself by a shortened form or derivative of the name under which the microlender is not registered.

[It appears that the word “not” may have been included by mistake in paragraph (c), since this paragraph is, as it now stands, a subset of the prohibition covered by paragraph (b).]

(3) An application for approval of a change of name, use of another name or use of a shortened form or derivative of a name in terms of subsection (2) must be made to NAMFISA in the form and manner and be accompanied by such documents and fees as required by the standards.

(4) On receipt of an application referred to in subsection (2), and if NAMFISA is satisfied that the proposed name does not contravene the requirements of section 6(e), and that the applicant is in compliance with the provisions of any other law applicable to a change of name, NAMFISA must register the applicant under its new name and issue to such applicant a new certificate of registration under that name.

(5) A microlender who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Purchase, amalgamation or transfer of microlending business

19. (1) Any person who wishes to purchase the beneficial ownership of a registered microlender, or any microlender who intends to amalgamate its microlending business with that of another registered microlender, or any microlender who intends to transfer any part of its microlending business to another person or a registered microlender, must apply to NAMFISA, in the manner and form and the application must be accompanied by such documents and fees as required by the standards, for written approval prior to conducting such purchase, amalgamation or transfer.

(2) NAMFISA may, if it is of the opinion that it is reasonable to do so and not against the public interest, approve the application but subject to such conditions as NAMFISA may impose under section 8.

Conducting of other business on licensed premises

20. (1) A microlender who intends to conduct any other business not related to the microlending business from the licensed premises or parts of the licensed premises must apply for prior written approval from NAMFISA to conduct such business.

(2) An application for approval referred to in subsection (1) must be made to NAMFISA in the manner and form and be accompanied by such documents and fees as required by the standards.

(3) A microlender who intends to conduct such other business not related to the microlending business must have a separate bank account for the microlending business and keep the banking records of the microlending business separate from that of the other business.

(4) On receipt of an application referred to in subsection (2), and if NAMFISA is satisfied that the proposed business meets the required standards, will not contravene the provisions of this Act or be contrary to public interest, NAMFISA may approve such

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application subject to such conditions as NAMFISA may impose on the registration of the microlender in terms of section 8.

(5) NAMFISA must issue standards with respect to the criteria and requirements to be met before an application referred to in subsection (1) may be approved.

(6) A microlender who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Opening of additional microlending branches

21. (1) A microlender may not, without the prior written approval from NAMFISA, open additional microlending branches.

(2) An application for approval referred to in subsection (1) must be made to NAMFISA in the manner and form and be accompanied by such documents and fees as required by the standards.

(3) On receipt of an application referred to in subsection (2), and if NAMFISA is satisfied that -

- (a) the premises upon which the intended additional microlending branch is to be conducted meets the requirements set in the standards in respect of a licensed premises and will not be in contravention of the applicable town planning requirements in respect of the usage of the premises;
- (b) the microlender is in full compliance with the provisions of this Act; and
- (c) the intended additional microlending branch is not contrary to public interest,

NAMFISA may approve such application subject to such conditions as NAMFISA may impose on the registration of the microlender in terms of section 8.

(4) If NAMFISA approves the opening of an additional branch in terms of subsection (3), the microlender must appoint a branch manager within 30 days from the date of approval and the microlender must, within 14 days of the appointment, in writing, notify NAMFISA.

(5) Should the microlender be necessitated to, at any time, appoint a new branch manager, such appointment must be made within 30 days after the previous appointment came to an end and the microlender must, within 14 days of the new appointment, in writing, notify NAMFISA.

(6) If a microlender fails to appoint a branch manager or notify NAMFISA on or before the dates determined in subsection (4) or (5), the microlender is liable to pay a penalty for each day, as prescribed by the Minister, for as long as the non-compliance exists.

(7) A penalty imposed in terms of subsection (6) may provide for interest at rates not exceeding the rates specified under the Prescribed Rate of Interest Act payable from a date determined by NAMFISA.

(8) The penalty payable in terms of subsection (6), and any interest, is a debt due to NAMFISA by the microlender and NAMFISA may recover such debt in terms of section 43.

(9) The branch manager must -

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- (a) be a natural person who meets the fit and proper criteria as required by the standards and the Schedule; and
- (b) perform the duties of a branch manager as required by the standards.

(10) The appointed branch manager must, within 30 days of his or her appointment, complete and submit to NAMFISA the required documentation pertaining to the fit and proper criteria as required by the standards and the Schedule.

(11) A person disqualified in terms of section 7 may not be appointed as a branch manager under subsections (4) and (5).

(12) If NAMFISA is of the opinion that the appointed branch manager does not have the capacity and the attributes reasonably necessary to provide the services with professional integrity, prudence, proper skill and due diligence, NAMFISA must give notice to the microlender requiring the removal of the branch manager from office and the appointment of another person in his or her place, together with the reasons, and must give the microlender a reasonable opportunity to be heard by specifying a period of not less than 30 days during which the microlender may make representations to NAMFISA about the matter.

(13) NAMFISA may, after considering the representations made by the microlender under subsection (12) -

- (a) issue a directive to require the immediate removal of the branch manager from office and the appointment of another person in his or her place; or
- (b) confirm the appointment of the branch manager, but subject to the imposition of conditions which NAMFISA considers reasonable and necessary to ensure that the branch manager indeed provides the services with the necessary integrity, prudence, skill and diligence.

(14) A microlender who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

PART 4 CONDUCT OF MICROLENDER

Maximum finance charges

22. (1) A microlender may not, in connection with any microlending transaction stipulate for, demand or receive finance charges at a rate greater than the percentage determined by the Registrar in terms of the Usury Act.

(2) Different percentages may be determined under subsection (1) depending on the term of a microlending transaction.

(3) A microlender who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Prohibited conduct

- 23.** (1) A microlender may not -

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- (a) require a loan applicant or borrower to sign any blank or incomplete documents, inclusive of an acknowledgment of debt or a consent to judgment or any document in terms of which the loan applicant or borrower will incur liabilities or waive any legal rights, during the application process or at the conclusion of a microlending transaction or use such documents for any purpose;
- (b) provide a loan to a person unless an affordability assessment of the loan application, the features of such assessment as required by the standards, clearly demonstrates the ability of the loan applicant or borrower to service the loan having regard to all his or her existing obligations;
- (c) provide a loan to a person who already has an existing loan, unless the affordability assessment of the loan application clearly demonstrates the ability of the loan applicant or borrower to service the additional loan having regard to all his or her existing obligations;
- (d) institute legal proceedings against the borrower without prior written notice to the borrower;
- (e) solicit or accept deposits from the public in contravention of the Banking Institutions Act;
- (f) as security or for collection arrangement purposes, keep in possession or make use of any bank cards or personal information such as pin codes or original identification documents, original passports or original driver's licences of the borrower;
- (g) make use of any collection method not authorised by law, including -
 - (i) attachment of the property of the borrower without a court order;
 - (ii) threats of physical or other harm; and
 - (iii) using payment methods in violation of the Payment System Management Act;
- (h) despite any provision to the contrary contained in the loan agreement between the microlender and the borrower, collect or attempt to collect any amount in respect of costs exceeding costs allowed on a party and party scale in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) or the High Court Act, 1990 (Act No. 16 of 1990);
- (i) directly or indirectly require or induce a loan applicant or borrower to enter into a supplementary agreement linked or related to the microlending transaction, or sign any document that contains a provision that would be unlawful if it were included in a main loan agreement;
- (j) request or demand a loan applicant or borrower to -
 - (i) give the microlender temporary or permanent possession of an identity document or banking card or document; or
 - (ii) reveal any personal identification code or banking password;

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- (k) direct, or knowingly permit, any other person to do anything referred to in this section on behalf or for the benefit of the microlender;
- (l) stipulate for, demand or receive finance charges in excess of the maximum rate determined by the Registrar in terms of the Usury Act;
- (m) stipulate for, demand or receive penalty interest in the event of default by a borrower, in excess of the maximum prescribed by the Minister; or
- (n) use or accept a payment instrument that is not registered with the Bank of Namibia in terms of the Payment System Management Act to transact with a borrower or any other person.

(2) A microlender may not provide a loan or offer to provide a loan to a loan applicant or borrower on condition that the loan applicant or borrower must take out insurance.

(3) Despite subsection (2), where, for the purposes of securing a debt arising from a transaction contemplated in that subsection, it is reasonable, having regard to the creditworthiness of the loan applicant or borrower for the microlender to require the loan applicant or borrower to take out insurance, the microlender must provide the loan applicant or borrower, before the transaction is entered into, with a written statement indicating, in bold face type of at least 15 points, that the loan applicant or borrower has -

- (a) no obligation to acquire such insurance from the microlender; and
- (b) a reasonable period of time, which must not be less than 48 hours, to provide other alternative sources for such insurance from one or more registered insurers.

(4) If a microlender fails to comply with any of the provisions of subsection (1), (2) or (3), the microlender is liable to pay a penalty, as prescribed by the Minister.

(5) A penalty imposed under subsection (4) may provide for interest at rates not exceeding the rates specified under the Prescribed Rate of Interest Act payable from a date determined by NAMFISA.

(6) The penalty payable in terms of subsection (4), and any interest, is a debt due to NAMFISA by the microlender and NAMFISA may recover such debt in terms of section 43.

(7) Despite subsection (4) and (6), a microlender who contravenes or fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Obligations of microlender

24. (1) A microlender must, at every licensed premises where the microlender conducts the microlending business -

- (a) keep available a copy of this Act, the regulations and the standards issued under this Act which must, on request, be made available to the loan applicant or borrower for perusal;
- (b) keep available a copy of the complaint procedures as required by the standards, which must be made available to the borrower on request;

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- (c) keep available copies of the complaint intake forms as required by the standards, which must be made available to the borrower on request;
- (d) display prominently, in the form of an A3 poster, the complaint procedures as required by the standards;
- (e) display in a form required by the standards the maximum finance charges determined by the Registrar in terms of the Usury Act; and
- (f) display prominently the registration certificate of the microlender issued by NAMFISA.

(2) A microlender must use standard written loan agreements, the terms of which must be approved by NAMFISA and as required by the standards, containing all the terms and conditions of the microlending transaction and clearly reflecting the rights and obligations of the borrower and the microlender.

(3) A microlender must enter into a written loan agreement, as stipulated in subsection (2), with every borrower in respect of each loan disbursed.

(4) A microlender must, before the conclusion of the microlending transaction -

(a) perform a credit check through a registered credit bureau on a loan applicant and must carry out an affordability assessment to satisfy himself or herself that the loan applicant is or will be able to satisfy in a timely manner all the obligations under the loan agreement to which that loan applicant is a party, having regard to the -

- (i) financial means, prospects and obligations; and
- (ii) probable propensity to satisfy in a timely manner all the obligations under all loan or credit agreements to which the loan applicant is a party, as indicated by the loan applicant's history of debt repayments,

of the loan applicant;

(b) provide the loan applicant with a schedule in writing setting out -

- (i) the principal debt in Namibia Dollars and cents;
- (ii) the amount of finance charges in Namibia Dollars and cents at the applicable rate over the repayment period and the elements comprising the finance charges;
- (iii) the total amount repayable in Namibia Dollars and cents at the then current interest rate, over the repayment period;
- (iv) the finance charge rate, whether this is fixed or variable and, if variable, how it may vary;
- (v) the nature and amount of any insurance, if required, including the name of the insurer and the amount of the premiums payable;
- (vi) the penalty interest and any additional costs that would become payable in the case of default by the loan applicant and how that would be calculated;

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- (vii) the instalment amount in Namibia Dollars and cents, at the then current interest rate, and the number of instalments;
 - (viii) the period of the microlending transaction; and
 - (ix) any other costs and expenses;
- (c) explain to the loan applicant the terms and conditions of the agreement in a language which the loan applicant understands, if necessary with the assistance of an interpreter provided by the loan applicant, so as to ensure that the meaning and consequences of the agreement are understood; and
- (d) allow the loan applicant an opportunity to read the agreement, or have it read to the loan applicant if he or she is illiterate.
- (5) A microlender must, after the conclusion of the microlending transaction -
- (a) provide the borrower, at no cost, with a copy of the signed loan agreement before or at the time of advancing the loan amount and, if applicable, a copy of the insurance contract pertaining to the microlending transaction; and
 - (b) provide the borrower with a written or electronic statement, the frequency and the costs of which is to be as required by the standards, of his or her loan position setting out all the charges levied, all the payments made and the balance outstanding.
- (6) A microlender must, at the request of the borrower, provide the borrower with a statement setting out all the charges levied, all the payments made and the balance outstanding, and may impose a charge for the provision of a duplicate copy of the statement but in no case may the charge exceed the amount per page of the statement as required by the standards.
- (7) A microlender must maintain a proper set of accounting records, in the manner and form required by the standards, reflecting full details of all monies advanced, finance charges and other charges raised, repayments received and all amounts outstanding.
- (8) If a microlender refuses to approve a loan application based on the reason of an adverse credit record, then the name and details of the credit bureau must be provided to the loan applicant so as to enable the loan applicant to check the accuracy of the credit information held by the credit bureau.
- (9) A microlender must, at least 28 days before the microlender forwards any adverse information on the borrower to a credit bureau, which information will be capable of being accessed by subscribers to the credit bureau, inform the borrower by way of a notice addressed to the chosen address of the borrower of the intention of the microlender to do so.
- (10) A microlender must -
- (a) subscribe to a credit bureau;
 - (b) be a member of a microlenders' representative body approved by NAMFISA; and
 - (c) comply with the relevant provisions of the Usury Act and the Financial Intelligence Act.

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(11) If a microlender fails to comply with any of the provisions of this section, the microlender is liable to pay a penalty, as prescribed by the Minister.

(12) A penalty imposed in terms of subsection (11) may provide for interest at rates not exceeding the rates specified under the Prescribed Rate of Interest Act payable from a date determined by NAMFISA.

(13) The penalty payable in terms of subsection (11), and any interest, is a debt due to NAMFISA by the microlender and NAMFISA may recover such debt in terms of section 43.

(14) Despite subsection (11) and (13), a microlender who contravenes or fails to comply with the provisions of this section commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Consideration

25. (1) A microlender may not charge any fee to be paid by the loan applicant in circumstances where a microlending transaction is not concluded.

(2) The borrower may make additional payments or settle the outstanding amount early in one or more payments without any penalties being levied for early settlement and the microlender may, in the event of early settlement, only stipulate for, demand or receive from the borrower *pro rata* finance charges at the rate applicable to that microlending transaction.

(3) A microlender who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Cooling-off period

26. (1) A microlender must, in terms of the provisions of the loan agreement entered into with the borrower, allow the borrower to terminate the microlending transaction within a period of three days after the signing of the agreement and if the loan amount has been advanced to the borrower, to simultaneously repay the loan amount so advanced to the microlender.

(2) If the borrower terminates the microlending transaction within the period referred to in subsection (1) and simultaneously repays the loan amount to the microlender, the microlender may only stipulate for, demand or receive from the borrower *pro rata* finance charges at the rate applicable to that microlending transaction.

Confidentiality

27. (1) Apart from disclosing relevant information to a registered credit bureau, or when lawfully required to do so by a court having jurisdiction or under any law, a microlender may not, without the express consent of the loan applicant or borrower, disclose any confidential information obtained in the course of a microlending transaction.

(2) A loan applicant or borrower may not be compelled to sign general waivers in terms of which he or she forfeits his or her right to privacy.

(3) If a microlender wishes to obtain from, or to disclose to a third party, other than a registered credit bureau, the credit record and payment history of the loan applicant or borrower, the consent of the loan applicant or borrower must be obtained through specific and prominent

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clauses in the application for the relevant microlending transaction or other documentation signed by the loan applicant or borrower.

[There should be a comma after the phrase “or to disclose to”,
to offset that phrase properly.]

Alteration of original or amended loan agreement

28. An amendment to or variation of a loan agreement is not valid after the agreement is signed by the borrower, unless -

- (a) the change reduces the liabilities of the borrower under the agreement; or
- (b) the change is recorded in writing and signed by both parties to the agreement.

PART 5
RIGHTS AND OBLIGATIONS OF BORROWERS

Right of borrower to information in plain and understandable language

29. (1) A microlending loan agreement must be drafted in plain language.

(2) A microlending loan agreement is in plain language if it is reasonable to conclude that an ordinary loan applicant or borrower of the class of persons for whom the document is intended, with average literacy skills and minimal credit experience, could be expected to understand the content, significance, and import of the document without undue effort, having regard to the -

- (a) context, comprehensiveness and consistency of the document;
- (b) organisation, form and style of the document;
- (c) vocabulary, usage and sentence structure of the text; and
- (d) use of any illustrations, examples, headings, or other aids to reading and understanding.

(3) NAMFISA may issue guidelines, in a standard, for methods of assessing whether a document satisfies the requirements of subsection (2).

Obligations of borrowers

30. (1) A loan applicant or borrower must fully and truthfully answer any questions posed by the microlender and must supply full and accurate information to the microlender as part of the application for a loan or the affordability assessment.

(2) A borrower must ensure that the information pertaining to his or her ability to repay the loan, contact details and all other important information is updated with the microlender at all times for the duration of the loan agreement.

PART 6
REGULATION AND SUPERVISION

Power of NAMFISA to remove key responsible persons

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31. (1) If the relevant key responsible persons of a microlender are not in compliance with this Act, or no longer meet the fit and proper criteria as required by the standards and the Schedule, NAMFISA may, after giving the microlender and the person concerned an opportunity to be heard, direct the removal of that person from office and the appointment of another person in his or her place.

(2) NAMFISA may, upon receipt of a written request made by a microlender before the date determined in terms of subsection (1) and on good cause shown, in writing grant an extension of time to such microlender for the removal of that person from office and subject to such conditions as NAMFISA may impose.

(3) If a microlender fails to comply with the directive of NAMFISA in terms of subsection (1) or within the extended period of time, if any, granted by NAMFISA under subsection (2) -

- (a) the microlender is liable to pay a penalty per day, as prescribed by the Minister, for as long as the non-compliance exists; and
- (b) the registration of the microlender may be cancelled in terms of section 13.

(4) A penalty imposed under subsection (3)(a) may provide for interest at rates not exceeding the rates specified under the Prescribed Rate of Interest Act payable from a date determined by NAMFISA.

(5) The penalty payable in terms of subsection (3)(a) and any interest, is a debt due to NAMFISA by the microlender and NAMFISA may recover such debt in terms of section 43.

(6) Despite the provisions of subsections (3) and (5), any microlender or other person who fails to comply with a directive issued by NAMFISA under subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Declaration of practices as irregular or undesirable

32. (1) NAMFISA may issue a standard under section 35(2)(k) declaring a specific practice or method of conducting business as an irregular or undesirable practice or an undesirable method of conducting business.

(2) In determining whether to issue the declaration referred to subsection (1), NAMFISA must consider whether the practice concerned, directly or indirectly, has or is likely to have the following effects:

- (a) harming the relations between microlenders, loan applicants and borrowers;
- (b) unreasonably prejudicing a loan applicant or borrower;
- (c) deceiving a loan applicant or borrower;
- (d) unfairly affecting a loan applicant or borrower; or
- (e) if the practice is allowed to continue, whether one or more of the objects of NAMFISA or of this Act will or is likely to be defeated.

(3) A microlender may not, on or after the issue of the standard referred to in subsection (1), carry on a business practice or method of conducting business that has been

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declared as an irregular or undesirable practice or an undesirable method of conducting business.

(4) NAMFISA may by notice to the microlender concerned, direct a microlender which carries on an irregular or undesirable practice or an undesirable method of conducting business practice or method of conducting business, after the issue of the standard referred to in subsection (1), to -

- (a) rectify;
- (b) repair; or
- (c) repay,

to the satisfaction of NAMFISA any damage or other undesirable consequence which was caused by, or arose out of, that business practice or method of conducting business.

(5) A microlender who is directed to rectify, repair or repay any damage or undesirable consequence in terms of subsection (4) must do so within 60 days after the microlender is so directed.

(6) If a microlender fails to comply with the standard issued in terms of subsection (1) or with a directive issued in terms of subsection (4) -

- (a) the microlender is liable to pay a penalty per day, as prescribed by the Minister, for as long as the non-compliance exists; and
- (b) the registration of the microlender may be cancelled in terms of section 13.

(7) A penalty imposed under subsection (6)(a) may provide for interest at rates not exceeding the rates specified under the Prescribed Rate of Interest Act payable from a date determined by NAMFISA.

(8) The penalty payable in terms of subsection (6)(a) and any interest is a debt due to NAMFISA by the microlender and NAMFISA may recover such debt in terms of section 43.

(9) Despite the provisions of subsections (6) and (8), any person who fails to comply with subsection (3) or (4) commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Power of NAMFISA to verify information

33. For the purposes of determining whether a key responsible person meets the fit and proper criteria as required by the standards and the Schedule, NAMFISA may verify any information at the disposal of NAMFISA by making enquiries from any government office, ministry or agency, credit bureau or any other source of information, or by obtaining evidence from any other person.

Directives

34. (1) NAMFISA may issue written directives with respect to any matter governed by this Act, or in any situation where NAMFISA is of the opinion that a microlender is contravening or failing to comply with, or has contravened or failed to comply with any provisions of this Act, or if an act or course of action has been or is about to be undertaken or an

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omission has occurred or is about to occur on the part of the microlender that may prejudice loan applicants or borrowers or is against the public interest.

[There should be a comma after the phrase “or has contravened or failed to comply with”, to offset that phrase properly.]

(2) Without limiting the generality of subsection (1), NAMFISA may issue a directive with respect to -

- (a) the furnishing to NAMFISA of any information or documents in the possession or under the control of the microlender or any relevant key responsible person within the period specified in the directive;
- (b) any contravention of this Act which is likely to prejudice the interests of loan applicants or borrowers;
- (c) a microlender who is conducting its affairs in an improper or reckless manner;
- (d) a microlender or any key responsible person who is convicted of a financial crime;
- (e) the protection of the interests of loan applicants or borrowers;
- (f) the removal of a relevant key responsible person from office and the appointment of another person;
- (g) the prohibition or restriction of a key responsible person from performing specified activities;
- (h) requiring the microlender to undertake a specified act, or to refrain from undertaking a specified act in order to remedy the effects of a contravention of this Act and to ensure that the microlender does not commit any further contraventions of this Act; and
- (i) any other matter which under this Act is required or permitted to be determined by directive.

(3) NAMFISA may revoke a directive at any time by notice to the microlender concerned.

(4) If a microlender fails to comply with a directive of NAMFISA in terms of subsection (1) -

- (a) the microlender is liable to pay a penalty per day, as prescribed by the Minister, for as long as the non-compliance exists; and
- (b) the registration of the microlender may be cancelled in terms of section 13.

(5) A penalty imposed in terms of subsection (4)(a) may provide for interest at rates not exceeding the rates specified under the Prescribed Rate of Interest Act payable from a date determined by NAMFISA.

(6) The penalty payable in terms of subsection (4)(a) and any interest is a debt due to NAMFISA by the microlender and NAMFISA may recover such debt in terms of section 43.

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(7) Despite subsection (4) and (6), any person who fails to comply with a directive issued by NAMFISA under this Act commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Standards

35. (1) NAMFISA may by notice in the *Gazette*, issue standards that NAMFISA may consider necessary to achieve the objects and intent of this Act.

(2) Without limiting the generality of subsection (1), NAMFISA may issue standards with respect to -

- (a) the form and manner of any application required to be made to NAMFISA under this Act, the documents, information and material which must accompany such application and any fee payable;
- (b) the activities which will be regarded to bring the microlending sector into disrepute;
- (c) the fit and proper criteria required for any key responsible person to be appointed and the documents, information and material which must be submitted to NAMFISA;
- (d) the dates, intervals and manner of submission and the determination as to which returns, statements and reports are to be submitted to NAMFISA;
- (e) the suitability requirements in respect of the licensed premises;
- (f) the manner, place, content and form of the accounting records to be kept by a microlender;
- (g) the form and content of the affordability assessment to be performed by a microlender in respect of each microlending transaction;
- (h) the standard terms and conditions which must form part of the loan agreement to be entered into between the microlender and the borrower, inclusive of how a loan applicant must acknowledge that the terms and conditions of a loan agreement were explained to him or her in a language which he or she understood, if necessary with the assistance of an interpreter provided by the loan applicant, so as to ensure that the meaning and consequences of the loan agreement are understood;
- (i) the guidelines to assess whether a loan agreement is in plain language;
- (j) the charge for each page for the provision of a duplicate copy of the statement, which sets out all the charges levied, the payments made and the balance outstanding, to the borrower;
- (k) the declaration of a specific practice or method of conducting business as an irregular or undesirable practice or an undesirable method of conducting business;
- (l) the complaint procedures available to borrowers as well as the content and form of the complaint intake forms;
- (m) the form in which the maximum finance charges must be displayed;

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- (n) the frequency of the written or electronic statement to be issued, which sets out all the charges levied, the payments made and the balance outstanding, to the borrower;
- (o) the duties to be performed by a principal officer and branch manager; and
- (p) any other matter which under this Act is required or permitted to be determined by a standard.

(3) The notice referred to in subsection (1) must state the date on which the standard comes into effect.

(4) Before issuing a standard, NAMFISA must -

- (a) obtain the approval of the Board of NAMFISA;
- (b) publish a draft of the proposed standard in the *Gazette*;
- (c) give the affected persons at least 30 days after the date of publication of the proposed standard to make representations in writing to NAMFISA with respect to the proposed standard; and
- (d) take any such representations into account in determining whether to issue the standard as originally published or in a modified form.

(5) If NAMFISA considers it necessary on an urgent basis, NAMFISA may issue a standard without following the procedure set out in subsection (4), but any such standard ceases to have effect at the end of 90 days after it has been issued, unless the procedure referred to in subsection (4) has been followed.

(6) NAMFISA may by notice in the *Gazette*, revoke or amend a standard, subject to the procedure referred to in subsection (4).

(7) If a microlender fails to comply with a standard issued by NAMFISA in terms of subsection (1) -

- (a) the microlender is liable to pay a penalty for each day, as prescribed by the Minister, for as long as the non-compliance exists; and
- (b) the registration of the microlender may be cancelled in terms of section 13.

(8) A penalty imposed in terms of subsection (7)(a) may provide for interest at rates not exceeding the rates specified under the Prescribed Rate of Interest Act payable from a date determined by NAMFISA.

(9) The penalty payable in terms of subsection (7)(a) and any interest is a debt due to NAMFISA by the microlender and NAMFISA may recover such debt in terms of section 43.

(10) Despite the provisions of subsections (7) and (9), any person who fails to comply with a directive issued by NAMFISA under this Act commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Regulations

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36. (1) The Minister may make regulations not inconsistent with this Act, relating to -
- (a) any matter or aspect considered necessary for the protection of present and future loan applicants or borrowers;
 - (b) any matter or aspect considered necessary for the protection and furtherance of the integrity, stability and growth of the microlending sector in Namibia;
 - (c) the promotion of generally accepted principles of sound and ethical business practices and public regulation;
 - (d) the maximum loan amount and the maximum repayment period in respect of microlending transactions;
 - (e) the maximum penalty interest which a microlender can charge in the event of default by a borrower;
 - (f) the manner of payment and the respective rates or percentages of penalties payable by a microlender in case of any non-compliance of any provision of this Act;
 - (g) the criteria and guidelines that must be used or taken into consideration by NAMFISA or any other person in determining what constitutes or amounts to “public interest” or “in the public interest” for purposes of this Act;

[The word “criteria” is misspelt in the *Government Gazette*, as reproduced above.]

- (h) any other matter which is required or permitted under this Act to be prescribed; and
- (i) generally, any matter in respect of which the Minister considers it necessary or expedient to make regulations to achieve the objectives of this Act.

(2) A regulation made under subsection (1) may, in respect of a contravention with or a failure to comply with the regulation, prescribe a penalty not exceeding a fine of N\$500 000 or imprisonment for a period not exceeding five years, or both such fine and such imprisonment.

[The phrase “in respect of a contravention with” was probably intended to be “in respect of a contravention of”.]

- (3) A regulation made under subsection (1) must be published in the *Gazette*.

Inspections

37. (1) NAMFISA may, without prior notification to a microlender registered in terms of section 5 or registered in terms of the Exemption Notice as contemplated in section 11 or a person suspected of carrying on the business of a microlender while not registered in terms of this Act or the Exemption Notice, authorise an inspector appointed under section 38 to conduct an on-site inspection of the business and affairs of such microlender or such unregistered person, in this section and sections 38, 39, 40 and 41 referred to as a “person under inspection”.

(2) An inspector conducting an on-site inspection referred to in subsection (1) may, at any time between 08h00 and 17h00 on any day -

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- (a) subject to section 39, enter the premises of the person under inspection and require the production of the accounts, accounting and other records, books, documents or other items of the person under inspection or related to the inspection;
 - (b) subject to section 39, search any premises occupied by the person under inspection for the accounts, accounting and other records, books, documents or other items of the person under inspection or related to the inspection;
 - (c) open or cause to be opened any strong room, safe or other container in which the inspector suspects the accounts, accounting and other records, books, documents or other items of the person under inspection or related to the inspection are kept;
 - (d) examine, make extracts from and copy the accounts, accounting and other records, books, documents or items of the person under inspection or related to the inspection or, against the issue of a receipt, temporarily remove the accounts, accounting and other records, books, documents or other items of the person under inspection or related to the inspection;
 - (e) require the person under inspection to produce at a specified time and place the accounts, accounting and other records, books, documents or other items that are in the possession or under the control of the person under inspection;
 - (f) require any person holding or accountable for the accounts, accounting and other records, books, documents or other items of the person under inspection or related to the inspection to provide information and an explanation of the accounts, accounting and other records, books, documents or other items of the person under inspection or related to the inspection;
 - (g) against a full receipt, seize the accounts, accounting and other records, books, documents or other items of the person under inspection or related to the inspection which in the opinion of the inspector may afford evidence of non-compliance with the Act, an offence or other irregularity; and
 - (h) retain any such seized accounts, accounting and other records, books, documents or other items for as long as they may be required for any criminal or other proceedings including proceedings under this Act.
- (3) An inspector may, with the written authority of NAMFISA, also inspect the accounts, accounting and other records, books, documents or other items of any person or corporate entity if NAMFISA -
- (a) has reason to believe that the person under inspection has or had a direct or indirect interest in the business of that person or corporate entity;
 - (b) has reason to believe that such person or corporate entity has or had a direct or indirect interest in the business of the person under inspection; or
 - (c) considers it necessary for a proper inspection of the affairs of the person under inspection that those accounts, accounting and other records, books, documents or other items be inspected,

and the provisions of subsection (2) apply with the necessary changes in respect of such an inspection.

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(4) For the purposes of subsection (3)(b), a person who holds shares as a nominee or in trust on behalf of another person in a microlender, is deemed to have an interest in the person under inspection, and must on request of the inspector disclose the name of that other person.

(5) An inspector must on demand produce the certificate of appointment as an inspector furnished by NAMFISA under section 38 or the written authority granted to him or her by NAMFISA under subsection (3).

(6) The person under inspection whose accounts, accounting and other records, books, documents or items have been seized under subsection (2)(g) or its lawful representative is entitled to examine, make entries in and make extracts from them during office hours under such supervision as NAMFISA or an inspector may determine.

(7) Following an inspection referred to in this Act, if NAMFISA considers that the person under inspection is contravening or failing to comply with, or has contravened or failed to comply with, any provision of this Act, NAMFISA may -

- (a) issue a directive, in terms of section 34, to the person under inspection or any key responsible person to take any steps, or to refrain from performing or continuing to perform any act, in order to terminate or remedy any irregularity, undesirable practice or state of affairs disclosed by the inspection;
- (b) issue a directive, in terms of section 34, to the person under inspection or any key responsible person to prohibit or restrict specified activities performed by such person if NAMFISA believes that such person no longer meets the standards of fit and proper with reference to the criteria set out in the standards and the Schedule; or
- (c) refer the matter to the appropriate authority to investigate whether a financial crime has been committed.

(8) A person who refuses or fails to comply with a directive of NAMFISA issued in terms of this section commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

(9) On completion of an inspection in terms of this Act, or at such intervals as NAMFISA may determine, the inspector must prepare a report which must be submitted to NAMFISA, and NAMFISA must transmit a copy of such report to the person under inspection.

(10) NAMFISA may, by notice published in the *Gazette* or by means of any other appropriate public statement, make known the status, outcome and details of an inspection carried out in terms of this Act, if such disclosure is in the public interest.

Appointment of inspectors

38. (1) NAMFISA may from time to time appoint one or more inspectors and must issue to any such inspector a certificate of appointment signed by NAMFISA.

(2) An inspector may, with the consent of NAMFISA, appoint one or more persons to assist in carrying out an inspection and on such appointment NAMFISA must issue any such person with a certificate of appointment signed by NAMFISA, provided that NAMFISA may withdraw such certificate of appointment at any time.

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(3) In exercising any power or performing any duty under this Act, any inspector and any person referred to in subsection (2) must be in possession of the certificate of appointment referred to in subsection (1) or (2), and must produce the certificate at the request of any person having an interest in the matter concerned.

Entry on and search of premises

39. (1) An inspector may, for the purpose of this Act, enter and search premises subject to the other provisions of this Act.

(2) Any entry or search of any premises for the purposes of section 37 must be conducted with due regard to decency, good order and the dignity of the person under inspection.

(3) An inspector may be accompanied by one or more police officers during any entry and search of premises in terms of this Act.

(4) An inspector may enter and search any premises for the purposes of section 37 only on the authority of a warrant issued by a judge or a magistrate, but may, without a warrant, enter and search the following category of premises -

- (a) licensed premises;
- (b) premises occupied by a person registered as a microlender in terms of this Act or the Exemption Notice and used for the purposes of the microlending business;
- (c) premises occupied by a person suspected of carrying on the business of a microlender while not registered in terms of this Act or the Exemption Notice and used for the purposes of the microlending business; or
- (d) premises entered by the inspector with the consent of the owner or person in physical control of the premises after that owner or person was informed that there is no obligation to admit the inspector in the absence of a warrant.

(5) An inspector may, without a warrant enter any premises for which a warrant is required in terms of subsection (4) if the inspector believes there are reasonable grounds that -

- (a) a warrant will be issued under subsection (6) if the inspector applies for such warrant; and
- (b) the delay in obtaining a warrant would prejudice the object of the investigation, or failure to act immediately may prejudice securing the accounts, accounting and other records, books, documents or other items for supervisory or enforcement action by NAMFISA.

(6) On application by an inspector, a judge or a magistrate having jurisdiction in the area where the premises in question are located may issue a warrant referred to in subsection (4).

(7) A judge or a magistrate may only issue a warrant referred to in subsection (6) on written application by an inspector setting out under oath or affirmation the grounds why it is necessary for the inspector to gain access to the relevant premises.

(8) In the event that during an entry or search of any premises, a person claims that -

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- (a) any accounts, accounting and other records, books, documents or other items contains privileged information; and
- (b) for that reason refuses the inspection or removal of accounts, accounting and other records, books, documents or items,

and the inspector is reasonably satisfied that the accounts, accounting and other records, books, documents or items contains information relevant to the inspection, the inspector may request a police officer to seize and remove such accounts, accounting and other records, books, documents or items for safe custody until a court has made a ruling on the question of privilege.

[The verb “contains” should be “contain” to be grammatically correct.]

(9) In so far as this section provides for a limitation of the fundamental rights contemplated in Article 13(1) of the Namibian Constitution, in that it authorises interference with the privacy of the home of a person, correspondence or communications, that limitation is enacted upon the authority of Sub-Article (2) of that Article.

Costs of inspections

40. If NAMFISA, after considering the results of an inspection in terms of this Act, is satisfied that it is reasonable to do so, the expenses incurred by and the remuneration of, an inspector appointed under section 38 may be recovered from the person under inspection.

Offences and penalties in respect to inspections

- 41.** A person who -
- (a) willfully -
 - (i) gives any false information to NAMFISA or an inspector; or
 - (ii) hinders NAMFISA or an inspector in the exercise of the powers or performance of the duties of NAMFISA or the inspector;
 - (b) without lawful excuse, refuses or fails to -
 - (i) provide information or explanation to the inspector which relates to the affairs of a person under inspection; or
 - (ii) comply with any reasonable request by NAMFISA or an inspector,

commits an offence and is liable on conviction to a fine not exceeding N\$500,000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Disclosure of information to certain parties

42. (1) An inspector or NAMFISA may not disclose any information acquired by such inspector or NAMFISA in the exercise of powers or performance of functions in terms of this Act concerning the private or confidential affairs of any microlender, except -

- (a) to the extent that such disclosure is necessary for, and made, in the exercise of those powers or functions; or
- (b) if that inspector is -

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- (i) summoned to give evidence as a witness before a court or a tribunal and NAMFISA has authorised that inspector to disclose the information; or
 - (ii) required to do so by a court;
 - (c) if the microlender that will be affected by the disclosure has consented to the disclosure; or
 - (d) to an authorised person in terms of subsection (2).
- (2) For the purposes of subsection (1)(d) information may be disclosed to -
- (a) any government office, ministry or agency and such information must be confined to information necessary for enforcing legislation administered by the government office, ministry or agency;
 - (b) the Namibian Police Force, the Prosecutor-General, the Anti-Corruption Commission or an authority referred to in section 37(7)(c) and such information must be confined to information relating to the alleged commission of an offence;
 - (c) the Governor of the Bank of Namibia, and such information must be confined to information required for the performance of the functions of the Governor in terms of the Banking Institutions Act;
 - (d) the Director of the Financial Intelligence Centre and such information must be confined to information required for the performance of the functions of the Director in terms of the Financial Intelligence Act; or
 - (e) a regulatory or supervisory authority, a self-regulatory or self-supervisory authority or a statutory board charged with supervisory or regulatory duties in respect of financial institutions created by statute, whether within Namibia or elsewhere.

PART 7
ENFORCEMENT

Debts due to NAMFISA

43. (1) Any penalty or interest payable under this Act is, when it becomes due and payable, a debt due to NAMFISA and may be recovered by NAMFISA in the manner provided for in this section.

(2) Subject to subsection (4), if a microlender fails to pay any penalty or interest in accordance with the provisions of this Act when it becomes due and payable, NAMFISA may file with the clerk or registrar of a court of competent jurisdiction a statement certified by it as correct stating -

- (a) the amount of penalty and any interest that has accrued to NAMFISA as well as any payments made by the microlender;
- (b) the date on which the payment was due;
- (c) the amount still outstanding; and
- (d) the name of the microlender.

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(3) A statement filed under subsection (2) must be registered by the clerk or registrar of the court and has, for all purposes, the effect of, and any proceedings may be taken thereon as if it were, a civil judgment of the court at which that statement had been so filed, in favour of NAMFISA for a liquid debt in the amount specified in that statement.

(4) NAMFISA must before filing a statement in terms of subsection (2), serve a notice accompanied by a copy of that statement on the microlender concerned informing the microlender of its intention to file such a statement after a lapse of 30 days after having served such notice and must give the microlender an opportunity to be heard by making representations to NAMFISA about the matter before the expiry of the 30 days.

(5) NAMFISA may by notice in writing, addressed to the clerk or registrar of the relevant court, withdraw any statement filed with that clerk or registrar and that statement ceases to have any effect.

(6) NAMFISA may institute proceedings afresh under subsection (2) in respect of the penalties or interest to which a statement withdrawn under subsection (5) relates.

Court orders to enforce Act

44. (1) Where a microlender has contravened any provision of this Act, the court may at the instance of NAMFISA, make any order considered appropriate for the purposes of enforcing this Act or protecting the interests of borrowers.

(2) Without limiting the generality of subsection (1), orders of the court under that subsection may -

- (a) direct the person to undertake a specified act, or refrain from undertaking a specified act, in order to -
 - (i) remedy the effects of the contravention;
 - (ii) compensate persons who have suffered loss because of the contravention;
 - (iii) ensure that the microlender does not commit further contraventions of this Act; or
 - (iv) prevent the disposal of evidence; and
- (b) include an order for the attachment of assets to prevent their concealment, removal, dissipation or destruction.

(3) The court may in appropriate circumstances issue an interim order pending the final determination of the matter.

(4) NAMFISA is considered to have the necessary *locus standi* or other procedural requirement for an applicant or plaintiff for the purposes of launching proceedings in a court.

(5) NAMFISA may apply to the High Court for a declaratory order on the interpretation or application of any provision of this Act.

Right of appeal

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45. (1) The board of appeal, established in terms of the NAMFISA Act, has primary jurisdiction to hear and determine any appeal brought under this Act.

(2) A person aggrieved by a decision of NAMFISA of an administrative or enforcement nature made in terms of a power conferred or a duty imposed upon NAMFISA by or under this Act, may appeal against that decision to the board of appeal referred to in subsection (1).

(3) An appeal must be lodged with the board of appeal referred to in subsection (1) within the period, in the manner and on payment of such fees as provided for in the NAMFISA Act.

PART 8
GENERAL PROVISIONS

Decisions and actions by NAMFISA

46. Unless otherwise stated in the NAMFISA Act, whenever it is stated in this Act that a decision or action is required or permitted to be made or taken by NAMFISA, it must be made or taken by the chief executive officer or by another officer or employee of NAMFISA to whom the power to make such decision or take such action has been duly delegated in writing by the chief executive officer.

Short title and commencement

47. (1) This Act is called the Microlending Act, 2018, and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions or Parts of this Act.

(3) Any reference in this Act to the commencement of this Act must be construed as a reference to the date determined under subsection (1) or (2).

SCHEDULE

Criteria used by NAMFISA to determine whether a key responsible person meets the fit and proper standards**Qualities, competencies and experience of key responsible person**

1. (1) Key responsible persons must have the necessary qualities, competencies and experience that will allow them to perform the duties and carry out the responsibilities required of the position in the most effective manner. The expectations on the suitability of persons in key positions are an extension of the corporate governance framework and are also aimed at ensuring that the microlender is led by persons of integrity, credibility, and competency.

(2) NAMFISA must exercise judgment and discretion in assessing fitness and propriety of key responsible persons. In exercising such judgement and discretion, NAMFISA will take into account all relevant matters including, but not limited to the following:

- (a) honesty and integrity;

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- (b) competence and operational ability; and
- (c) financial soundness,

to ensure that a key responsible person is not likely to have significant implications for the sound and prudent management of a microlender.

Honesty and integrity

2. (1) Key responsible persons must be honest, diligent and act ethically with integrity and fairness for the good reputation and trustworthiness of the microlending industry in general and of the individual entity.

(2) In determining the honesty, integrity and reputation of the key responsible person, NAMFISA may consider among other things, whether the person has been convicted of an offence relating to theft, fraud, dishonesty or any financial crime during the preceding 10 years.

- (3) A key responsible person is fit and proper in terms of this component if that person -
 - (a) is not disqualified from being a director of a company in terms of section 225 and section 226 of the Companies Act, 2004 (Act No. 28 of 2004);
 - (b) has not breached a fiduciary obligation;
 - (c) has not perpetrated or participated in grossly negligent, deceitful, or otherwise discreditable business or professional practices;
 - (d) has not been reprimanded, or disqualified, or removed by a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct;
 - (e) has not been involved in the management of a business or company which has failed, where that failure has been occasioned in part by deficiencies of honesty, integrity, fairness or ethical behaviour in that management;
 - (f) is not of bad repute in any business or financial community or any market;
 - (g) was not the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the person (including by the person consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the person's competence, diligence, judgment, honesty or integrity; or
 - (h) has been candid and truthful in all his or her dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.

Competence and operational ability

3. (1) Competence and operational ability are demonstrated by a person who possesses the relevant competence, experience and ability to understand the technical requirements of the business, the inherent risks and the management process required to perform his or her role as a key responsible person in the relevant capacity effectively. The key

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responsible person must show that he or she is competent to undertake the relevant functions or activities.

(2) In assessing a person's competence and capability, NAMFISA should consider matters including, but not limited to the following:

- (a) whether the person has the appropriate qualification, training, skills, practical experience and commitment to effectively fulfil the role and responsibilities of the position and to operate and manage the business of a microlender, and, in the case of directors, having regard to their other commitments;
- (b) whether the person has satisfactory past performance or expertise in the nature of the business being conducted; and
- (c) whether the person was previously registered as a microlender or was appointed or acted as a key responsible person of a microlender and was found to be non-compliant with the provisions of this Act and the extent of such non-compliance.

(3) A key responsible person is fit and proper in terms of this component if that person has met the educational and experience requirements set out in the standards.

(4) To demonstrate competence, the key responsible person must act in a knowledgeable professional and efficient manner, complying with the prevailing regulations.

(5) Operational ability includes the applicant's office set-up and whether it conforms to NAMFISA's basic office infrastructure requirements in terms of the existence of:

- (a) personal computer with subscription to a credit bureau which has been established in terms of the relevant laws;
- (b) office tables and chairs; and
- (c) filing cabinet.

Financial Soundness

[Capitalisation in this heading is reproduced as it appears in the *Government Gazette*.]

4. (1) Financial soundness relate to the adequacy of the applicant's financial standing (i.e. capital adequacy requirements) of the legal entity. This assessment is conducted at the institution level and not at the personal level of the directors, managers and other key responsible persons, save for where the registered entity is, for example, a sole trader where there is no difference between the person and the entity.

[The verb "relate" should be "relates", to be grammatically correct.]

(2) In determining the financial soundness of the key responsible person, NAMFISA must consider matters such as, but not limited to:

- (a) whether relevant solvency requirements are met;
- (b) whether the person has seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failure caused loss to others;

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- (c) whether the person has been subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period;
- (d) whether the person has made arrangements with creditors, filed for sequestration or liquidation or been adjudged bankrupt or had assets sequestered;
- (e) whether the person has been able to provide NAMFISA with a satisfactory credit reference; or
- (f) whether there are any indicators that the person will not be able to meet his or her debts as they fall due.

Continuing obligations of fit and proper requirements

5. (1) The key responsible persons will be expected to remain competent for the positions they hold. Failure to maintain appropriate qualifications, where they are relevant, would raise doubts about the person's continuing fitness and would have to be reviewed by NAMFISA.

(2) The institution will be expected to remain financially sound and the business operations should always conform to NAMFISA's infrastructure requirements. Periodic reviews of fit and proper requirements will be done by NAMFISA.