



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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WINDHOEK - 23 December 2020

No. 7425

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Government Notice

MINISTRY OF FINANCE

No. 320

2020

REGULATIONS RELATING TO PENALTIES PAYABLE FOR NON-COMPLIANCE WITH MICROLENDING ACT: MICROLENDING ACT, 2018

Under section 36(1)(f) of the Microlending Act, 2018 (Act No. 7 of 2018), I have made the regulations set out in the Schedule.

I. SHIMI
MINISTER OF FINANCE

Windhoek, 11 December 2020

SCHEDULE

Definitions

1. In these regulations, unless the context indicates otherwise, “the Act” means the Microlending Act, 2018 (Act No. 7 of 2018), and a word or an expression to which a meaning has been assigned in the Act, has that meaning.

Administrative penalties

2. (1) The penalties which NAMFISA may impose, are -

- (a) in the case of a penalty referred to in section 4(3)(b) of the Act, a penalty which does not exceed N\$500.00 for each day for which such non-compliance exists;
- (b) in the case of a penalty referred to in section 10(3), 14(7), 16(2)(a), 21(6), 31(3)(a), 32(6)(a), 34(4)(a) or 35(7)(a) of the Act, a penalty which does not exceed the amount calculated in the manner specified in Column 3 of Annexure 1 opposite the contravention specified in Column 2 of that Annexure for each day for which the contravention in question exists;
- (c) in the case of a penalty referred to in terms of section 23(4) of the Act, a penalty which does not exceed the amount calculated in column 3 of Annexure 2 opposite the contravention specified in Column 2 of that Annexure for each day, provided that the penalty imposed must not exceed N\$500,000.00;
- (d) in the case of a penalty referred to in terms of section 24(11) of the Act, a penalty which does not exceed the amount calculated in column 3 of Annexure 3 opposite the contravention specified in Column 2 of that Annexure for each day, provided that the penalty imposed must not exceed N\$500,000.00.

(2) Subject to regulation (1), a penalty imposed in respect of non-compliance with a particular provision must cumulatively not exceed N\$500,000.00.

Annexure 1

Penalties prescribed by the Minister according to sections 10(3), 14(7), 16(2)(a), 21(6), 31(3)(a), 32(6)(a), 34(4)(a) and 35(7)(a) of the Act:

Section	Description of Contravention	Rate per day
Section 10(2)	Late submission of an application for renewal in terms of section 10(2).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 365.
Section 14(5) or 14(6)	Failure to notify NAMFISA of a change of address of the principal office in terms of section 14(5), or failure to appoint a principal officer or to notify NAMFISA of the appointment in terms of section 14(6).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 365.
Section 16(1)	Failure to submit a required return, statement or report in terms of section 16(1).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 12.
Section 21(4) or 21(5)	Failure to appoint a branch manager or to notify NAMFISA of the appointment in terms of section 21(4) and (5).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 365.
Section 31(1)	Failure to remove a key responsible person in terms of section 31(1) or to appoint another person in his or her place.	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 12.
Section 32(1) or 32(4)	Failure to comply with a standard issued by NAMFISA in terms of section 32(1) or a directive issued in terms of section 32(4).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 12.
Section 34(1)	Failure to comply with a directive issued by NAMFISA in terms of section 34(1).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 365.
Section 35(1)	Failure to comply with a standard issued by NAMFISA in terms of section 35(1).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 12.

Annexure 2

Penalties prescribed by the Minister according to section 23(4) of the Act:

Section	Description of Contravention	Rate
Section 23(1)(a)	Required a loan applicant or borrower to sign blank or incomplete documents in contravention of section 23(1)(a).	10% of Annual value of loan disbursements in the immediate preceding financial year.
Section 23(1)(b)	Provided a loan in contravention of section 23(1)(b).	10% of Annual value of loan disbursements in the immediate preceding financial year.
Section 23(1)(c)	Provided a loan in contravention of section 23(1)(c).	10% of Annual value of loan disbursements in the immediate preceding financial year.
Section 23(1)(d)	Instituted legal proceedings against a borrower without prior written notice to the borrower.	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 365 multiplied by the number of times the provision was contravened.
Section 23(1)(e)	Solicited or accepted deposits from the public in contravention of the Banking Institutions Act.	10% of Annual value of loan disbursements in the immediate preceding financial year.
Section 23(1)(f)	Kept or made use of bank cards or personal information such as pin codes or original identification documents, original passports or original driver's licences as security or for collection arrangement purposes.	10% of Annual value of loan disbursements in the immediate preceding financial year.
Section 23(1)(g)	Made use of collection method not authorised by law.	10% of Annual value of loan disbursements in the immediate preceding financial year.
Section 23(1)(h)	Collected or attempted 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).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 12.
23(1)(i)	Directly or indirectly required or induced a loan applicant or borrower to enter into a supplementary agreement linked or related to the microlending transaction, or to sign a document that contains a provision that would be unlawful if it were included in a main loan agreement.	10% of Annual value of loan disbursements in the immediate preceding financial year.
23(1)(j)	Made a request or demand in contravention of section 23(1)(j).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 12.
23(1)(k)	Directed, or knowingly permitted, another person to do something in contravention of section 23, on behalf, or for the benefit, of the microlender.	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 12.
23(1)(l)	Stipulated for, demanded or received finance charges in excess of the maximum rate determined by the Registrar in terms of the Usury Act.	10% of Annual value of loan disbursements in the immediate preceding financial year.
23(1)(m)	Stipulated for, demanded or received penalty interest in respect of default by a borrower, in excess of the maximum prescribed by the Minister.	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 12.
23(1)(n)	Used or accepted a payment instrument in contravention of section 23(1)(n).	10% of Annual value of loan disbursements in the immediate preceding financial year.

23(2), read with section 23(3)	Provided a loan or offered to provide a loan to a loan applicant or borrower on condition that the loan applicant or borrower must take out insurance in contravention of section 23(3).	10% of Annual value of loan disbursements in the immediate preceding financial year.
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Annexure 3

Penalties prescribed by the Minister according to section 24(11) of the Act:

Section	Description of Contravention	Rate
Section 24(1)(a), (b), (c), (d), (e) or (f)	Failure to comply with any provision of section 24(1)(a), (b), (c), (d), (e) or (f).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 12.
Section 24(2)	Failure to use a standard written loan agreement in terms of section 24(2), read with section 24(3).	10% of Annual value of loan disbursements in the immediate preceding financial year.
Section 24(3)	Failure to enter into a written loan agreement as required in terms of section 24(3).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 365 multiplied by the number of times the provision was contravened.
Section 24(4)(a) or (b)	Failure to comply with section 24(4)(a) or (b).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 365 multiplied by the number of times the provision was contravened.
24(4)(c) or (d)	Failure to comply with section 24(4)(c) or (d).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 12.
24(5)(a) or (b)	Failure to comply with section 24(5)(a) or (b).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 365 multiplied by the number of times the provision was contravened.
24(6)	Failure to comply with section 24(6).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 365 multiplied by the number of times the provision was contravened.
24(7)	Failure to comply with section 24(7).	10% of Annual value of loan disbursements in the immediate preceding financial year.
24(8)	Failure to comply with section 24(8).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 365 multiplied by the number of times the provision was contravened.
24(9)	Failure to comply with section 24(9).	10% of Annual value of loan disbursements in the immediate preceding financial year.
24(10)(a)	Failure to subscribe to a credit bureau in terms of section 24(10)(a).	10% of Annual value of loan disbursements in the immediate preceding financial year.
24(10)(b)	Failure to be a member of a microlenders' representative body, approved by NAMFISA, in terms of section 24(10)(b).	10% of Annual value of loan disbursements in the immediate preceding financial year divided by 12.
24(10)(c)	Failure to comply with the relevant provisions of the Usury Act and the Financial Intelligence Act in terms of section 24(10)(c).	10% of Annual value of loan disbursements in the immediate preceding financial year.