



REPUBLIC OF NAMIBIA

Ministry of Finance

Response to Matters Raised on Second Reading

of the

MICROLENDING BILL, 2017

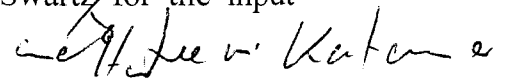
**Hon. Calle Schlettwein
MINISTER OF FINANCE**

10 APRIL 2018

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Honourable Speaker,

1. Let me, first of all, thank the House and the Honourable Members for the principle and general support for this important piece of legislation. I wish to thank the Honourable Members to have taken the floor to make input on the Bill. In this regard, I thank the Honourable Lucia Iipumbu, Hon. Elma Dienda, Hon. Heather Sibungo, and Hon. Sophia Swartz for the input provided and the principle support for the Bill.



2. The questions and matters raised mainly seek for clarification and, thus, to make the provisions of the Bill clearer, while others are proposed improvements on the Bill. Some such proposals will strengthen the provisions of the Bill, while others which do not need to be legislated will enhance the implementation modalities through conditions, regulations and standards.
3. The comments made and questions asked are in regard to (i) the policy behind the bill, (ii) definitions and (iii) input on specific provisions of the Bill, mainly in respect to the processes and modalities for implementing the provisions of the Bill.
4. This legislation is geared to providing effective risk-based regulation of the microlending industry, while promoting responsible borrowing.
5. The microlending industry services a large section of the underserved market with substantial vulnerability and increasing needs for financial inclusion.

6. *Honourable Speaker*, the matters raised during the *Second Reading* of the Bill pertain to some of the policy provisions and definitional matters while most of the aspects relate to.

Honourable Speaker,

7. Let me know address these specific matters raised:-

Policy Related Questions

8. As regards policy related matters, Honourable Sibungo raised concerns that the Bill gives little emphasis on consumer rights, consumer protection and conflict resolution mechanisms.
9. In this regard Honourable Speaker, the very essence of the Bill is to protect consumers through effective and consistent regulation of microlenders, while also ensuring the provision of microlending service in a well-regulated industry. It does so by first setting out the registration regime and affordability assessments, while Sections 23 and 24 are explicit in their provisions for prohibited activities and disclosure of information.
10. Besides access to courts, the Bill makes provision for complaints procedures to be determined by NAMFISA to be set out in the Standards.
11. *Honourable Speaker*, alternative dispute resolution mechanisms in the financial sector will be provided for in the Financial Services Adjudicator Bill, which I will table in the next session of Parliament. The Financial Services Adjudicator Bill is transformation and will seek to provide to provide an alternative dispute resolution platform for the financial services sector free of charge.

12. There were also questions raised regarding the cross-referencing to other laws some which are under Amendment, such as the Bank of Namibia Act. Reference to any law includes the principal Act and any amendments to the principal Act. With regard to allowable instruments to be used for microbusiness transactions, the Bill does not provide restrictions, but requires conformity with the payment Systems Management Act. Microlenders are at liberty to make use of any instruments allowed by the Payment System Management Act.

13. Questions were also raised about the powers of the Minister, with a concern that the Bill gives too many powers to the Minister in regard to microlending transactions or the power to make regulations. The legislation makes provision for the Minister to exercise powers delegated to him/her through the legislation. This is to allow the legislature to concentrate on more important issues than thresholds and tenures. Similar provisions are found in all legislation and also the Usury Act, which allows the Minister to determine thresholds and other operational matters. It is standard practice in legislation to authorise the Minister to make regulations necessary for the effective implementation of the legislation.

Matters of Definition

1. Questions of clarification were put about definitions of a “natural person” and “microlending business” and how money related transactions of pawn shops are regulated. *In this connection, the terms ‘microlending business’, microlender” and “microlending transactions” are all defined in the Bill. Transactions of pawn brokers and pawn shops which are money lending transactions will either fall within the ambit of the Usury Act or the Microlending Bill, depending on the nature of activities.*

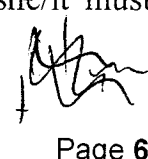
2. As defined, reference to ‘person’ includes both natural and legal persons. When it is necessary to distinguish a natural person from a legal person, the term ‘natural person’ is used. For purposes of section 7(1)(b), reference to ‘natural person’ means a human being and not any other person.

Registration Process

3. Unregistered person: Clarity was sought that the use of the word “suspect” appears to be inappropriate, and it was suggested to use substitute words such as “classify, conclude or determine”. *The purpose of the provision is to allow for NAMFISA to initiate the process that will eventually lead to a conclusion or determination that a person is in fact conducting the business of microlending whilst not registered. One cannot classify, conclude or determine that a person is indeed conducting microlending business without first verifying the facts. A suspicion that someone is carrying on the business of a microlender can, for example, arise from a complaint received. An inspection would then be necessary to verify facts in order to come to a conclusion in the matter.*
4. A concern was raised that there are provisions for registered sole traders but not for individuals and that use of the phrase ‘FIT and PROPER’ appear to be ambiguous. *Indeed the Bill makes provision for individuals to register as microlenders in addition to corporate entities. Section 6(c) deals with individual applicants specifically, while section 6(d) deals with applicants who are corporate entities.* The phrase ‘fit and proper’ is defined in the Bill and it is also consistent with other legislations such as the Financial Intelligence Act. The criteria of what constitutes “fit and proper” is given in the Schedule annexed the Bill of which solvency and business experience are some such criteria.

5. **Disqualified persons:** A question was raised whether microlenders are being treated differently as the Bill requires the majority interest or shareholdings to be owned by Namibians, else the microlender will be disqualified. This aspect is to be considered in the country and overall financial sector policy context. The Namibia Financial Sector Strategy is, in part, aimed at Namibianizing the financial services sector.
6. Some comments were also made on the use of name or change of name by the microlenders. *These concerns are adequately covered under Section 18(1) and (2) and Section 18(2)(a) and (b) of the Bill.*
7. It was also enquired whether borrowers can take out insurance on their loans. *This is provided for in Section 23(2) and (3) of the Bill as well as in Paragraph (c) of the definition of the "principal debt".*
8. It was articulated that a single person or partnership should be allowed to conduct microlending business. This is indeed the case because the term 'person' includes both a natural person and a legal person, meaning either an individual person (inclusive of partnerships) or a corporate entity may apply for registration as a microlender. Regardless, all currently registered microlenders, whether individuals, partnerships or corporate entities of whatever nature, must comply with the provisions of the Bill.
9. The other question raised was on the imposition of conditions and why is there now a provision for microlenders to have start-up capital. It should be noted that the Bill does not prescribe minimum start-up capital for microlenders, as it will exclude many persons from entering the industry. However, an applicant for registration must show that ~~he/she/it~~ has capital which can be disbursed in the form of loans, and ~~he/she/it~~ must also

the applicant



is available

~~adequately explain the source of the funds for purposes of the Financial Intelligence Act.~~

10. A concern was raised on the requirement for annual renewal of registration. The purpose of the renewal requirement is to ensure that microlenders continuously comply with the provisions of the Bill. This Bill is not the only piece of legislation which provides for annual renewals. For the microlenders, such renewals would enhance the reputation of the industry which, in turn, strengthens consumer protection.

Other Provisions of the Bill

11. *Honourable Speaker*, on the opening of additional microlending branches and the requirement to keeping track of their changing details, the question was why will we allowed them in the first place to operate at different addresses with different names? An additional branch is only an extension of the registered microlender. The aim of the Bill is not to unnecessarily restrict persons from doing business, but to regulate those businesses and additional branches. The process provided for under Section 21, is to keep track of changed details and additional key responsible persons etc, so that they can be properly supervised.

12. It is proposed to insert the word '*days*' after "14 " on Page 20, Section 21(5). This is accepted and I grant that type amendment be made.

13. A request was made to clarify in layman's language, what would the maximum finance charges if a person borrows, say, N\$10,000 from a micro-lender and what is the regulatory cap in terms of the Usury Amendment Act of 2017 and whether these finance charges are affordable.

14. In this regard, *Honourable Speaker*, Section 22, dealing with maximum finance charges, authorizes the Registrar to determine the maximum finance charges in terms of Usury Act.
15. Currently the maximum finance charges for a microlender are the average prime rate charged by commercial banks in Namibia, times 2, per annum. The maximum finance charges for a money lender are the average prime rate charged by commercial banks in Namibia, times 1.6, per annum. These charges will remain in place until the promulgation of the Bill.
16. The proposed new finance charges, after the promulgation of the Bill, will be a once-off 30% for microlenders disbursing loans over a period of 30 days up to 5 months, and average prime rate times 2 per annum for microlenders disbursing loans for periods exceeding 5 months up to 60 months.
17. As an example, if a borrower borrows N\$10 000,00 to be repaid over a period of up to 5 months, the finance charges would be N\$3000.00, i.e 30% once-off. It therefore follows that the monthly repayment would be N\$2600,00 per month if the loan is repaid over a 5-month period.
18. The higher risks associated with these types of loans result in higher finance charges. According to studies undertaken, these charges are in line with finance charges in other neighboring jurisdictions with similar risks and costs premia.
19. It was proposed that a microlender may not provide a loan to a minor or someone who is under legal disability. The law of contract deals with the legal capacity of minors and persons with diminished capacity to enter into contracts and these are the same rules which will apply to microlenders.

20. Considerations were also given to the confidentiality of information. At issue is what will happen if a microlender discloses any confidential information. First, the borrower will have the choice to stop doing business with that particular microlender and have the option to institute a claim for damages against the microlender if he/she suffered damages as a result of the unlawful disclosure of the information. Second, NAMFISA can take appropriate enforcement action through the issuing of Directives (section 34) or to, eventually, cancel the registration of the microlender (section 13). Either or both of these consequences may occur.

21. The remaining set of questions dealt with the supervisory powers conferred to Namfisa, especially the powers to remove the key responsible persons at the microlender business if Namfisa was not involved in the appointment of such persons. In this regard, NAMFISA is under obligation to ensure that only fit and proper individuals are involved in this sector; hence the corresponding power to intervene when a key responsible person does not meet the fit and proper criteria.

22. The last set of questions raised were with regard to the requirements and appointments of inspectors. Usually, the inspectors will be NAMFISA staff members to conduct regular on-site inspections. If circumstances warrant, specialised persons from outside NAMFISA may be appointed to assist NAMFISA in conducting inspections. NAMFISA applies risk based principle in undertaking on-site inspections and this is backed-up by consumer education and dissemination of information program.

Conclusion

23. To conclude, Honourable Speaker, the matters raised underscore the pertinent need for designate legislation to for the microlending industry. Clarification on these matters are contained in the Bill.
24. The policy objective is to promote responsible lending and borrowing, protect consumers, while promoting public awareness of the regulated industry. The microlending industry impacts on the lives of the majority of the underserved sections of the population. Hence, the proper regulation of this industry is of utmost importance. At present, the legal framework for this industry is very precarious, posing extreme risks to the objectives of consumer protection and the reputation of the industry.
25. Enough time has passed. We should not delay the promulgation of this important piece of legislation. With these proposals considered, I now seek for the support of the House.

Thank you.