



MICROFINANCE INSTITUTIONS MODEL LAW, 2023

A model law to provide for the harmonisation of licensing, regulation and supervision of microfinance institutions in the Southern Africa Development Community member states; and to provide for matters connected with, or incidental to the foregoing.

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PART 1

PRELIMINARY

1. Short title

This Model Law shall be cited as the Microfinance Institutions Model Law, 2023.

2. Definitions

In this Model Law—

Agency Banking: refers to the provision of microfinance services through agents or third-party intermediaries by registered MFIs

“Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing” shall have the meaning as defined in the domestic law governing Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing matters and Financial Action Task Force standards;

“auditor” means a person registered and certified to practise as an auditor in terms of the domestic law;

“beneficial owner” subject to the domestic law, means the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted; it also incorporates those persons who exercise ultimate effective control over a legal person or arrangement, and “beneficial shareholder” shall be construed accordingly;

“board” means the governing body of a microfinance institution where a board exists in the structure of the microfinance institution ;

“borrower” means a person to whom a microfinance institution provides micro-credit, including a person to whom such borrower’s rights have passed, whether by assignment, delegation cession or otherwise;

“capital” means paid-up minimum capital requirement and unimpaired reserves;

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“Committee of Insurance, Securities, and Non-Banking Financial Authorities” means a committee of authorities responsible for the supervision of insurance, securities, and non- banking financial institutions in Southern African Development Community

member states, which was established under the Protocol on Finance and Investment of the Southern African Development Community;

“domestic law” means a law prevailing in a respective member state;

“financial service” means a service provided by a financial institution and as prescribed under the domestic law;

“key responsible person” means—

- (a) any person that manages, controls, formulates the policy and strategy, directs the affairs of a microfinance institution or has the authority to exercise the powers and perform such functions;
 - (b) any person other than a person referred in (a) who makes or participates in making decisions that affects the whole or substantial part of the business of the microfinance institution or has the capacity to affect significantly the financial standing of the microfinance institution; and
 - (c) any person in charge of a control function including compliance, internal audit or risk management;
- and key responsible personnel shall be construed accordingly;

“micro credit” means the provision of a type or size of credit classified as micro in the domestic laws;

“microfinance institution” means an authorised provider of microfinance services;

“microfinance intermediary” means an authorised person who provides services or advice in respect of the introduction of a person, or the ongoing provision of service or advice in respect of access to, benefits of services offered by a microfinance institution;

“microfinance services” means provision of financial services that relates to credit extension and deposit taking as prescribed in the domestic law;

“person” includes an individual, a body corporate, a partnership, an association, and any other group of persons acting in concert, whether incorporated or not;

“principal office” means a physical address nominated as the main place of business or head office of the microfinance institution;

“regulatory authority” means a body responsible for the regulation and supervision of microfinance institutions.

3. Application of the Model Law

Southern African Development Community member states are required to benchmark their domestic laws governing the regulation and supervision of microfinance institutions to meet the minimum requirements as set out in this Model Law.

4. Objective of the Model Law

The objective of the Model Law shall be to—

- (a) promote harmonisation of laws governing microfinance institutions across Southern African Development Community members states;
- (b) promote a fair, safe and stable market for microfinance institutions;
- (c) promote prudent management of microfinance institutions;

- (d) provide for the licensing and winding up of microfinance institutions; and
- (e) to provide for matters connected therein inclusive of consumer protection principles, as prescribed in the domestic law.

5. Objectives, responsibilities and powers of the regulatory authority

- (1) The objectives of the regulatory authority shall be to—
 - (a) promote the maintenance of a fair, safe and stable microfinance market; and
 - (b) contribute to financial stability in the financial sector.
- (2) The regulatory authority shall have the responsibility for the following —
 - (a) licensing;
 - (b) market conduct supervision;
 - (c) prudential supervision;
 - (d) Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing supervision.
- (3) The regulatory authority shall have powers to—
 - (a) issue rules, standards and guidelines by administrative means;
 - (b) enforce rules, standards and guidelines by administrative means;
 - (c) take immediate and/or adequate actions;
 - (d) initiate and propose amendments to legislation;
 - (e) subject to domestic law, regulate and supervise for Anti-Money Laundering, Combating Financing of Terrorism and Proliferation Financing;
 - (f) exercising of such other powers as conferred upon it in terms of the domestic law.

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PART II LICENSING

6. Licensing of microfinance institutions

(1) No person shall carry on the business of microfinance or provide microfinance services unless licensed by the regulatory authority, or authorised in terms of applicable domestic law.

(2) Notwithstanding subsection (1), a licensed financial institution may provide microfinance services, if it is licensed to do so in the domestic law.

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7. Powers of regulatory authority against unlicensed microfinance institutions

Where a regulatory authority has reason to suspect that a person who is not licensed is conducting microfinance business, the regulatory authority shall—

- (a) by written notice, direct that person to supply, within a period stated in the notice, any documentation or information concerning the person's business or activities; or
- (b) direct an inspector or investigator to examine that person's business to ascertain whether the suspicion is well-founded.

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8. Application for licensing as a microfinance institution

(1) An application for licensing to conduct microfinance services shall be in the manner and format as prescribed in the domestic law shall be accompanied, where required, by the following—

- (a) full details, qualifications and experience for key responsible persons;
- (b) certified copies of the incorporation documents or other instruments constituting or defining the entity;
- (c) where relevant, evidence of availability of the required minimum capital as prescribed by the regulatory authority;
- (d) disclosure of the evidence of the source of capital resources to be invested in the microfinance business;
- (e) where relevant, a business plan clearly articulating the business case for setting up a microfinance institution, containing the following—
 - (i) objectives for setting up the microfinance business and strategies to meet the intended objectives;
 - (ii) market analysis of the target market;
 - (iii) microfinance services to be offered;
 - (iv) cost of credit applicable;
 - (v) projected financial statements for the prescribed time and the economic assumption, the basis on which the financial projections were made, and the projected financial statements that shall include the statement of comprehensive income, statement of financial position and cash flow statement;
 - (vi) strategies to ensure compliance with the consumer protection principles as outlined in the schedule;
- (f) proof of the applicable application fees; and
- (g) such other relevant information as may be requested by the regulatory authority.

(2) The regulatory authority shall, within a prescribed period from the date of receipt of a complete application, and all documentation and information in support of the application, consider the application.

(3) Where the regulatory authority is satisfied that the applicant has satisfied the requirements for licensing as a microfinance institution, the regulatory authority shall, within a prescribed period, approve the application and issue a licence to the applicant in the prescribed format.

(4) Where the regulatory authority is not satisfied that the applicant has complied with the requirements for licensing as a microfinance institution, the regulatory authority shall refuse to grant a licence and shall, within a prescribed period, notify the applicant of the reasons for the rejection of the application.

(5) Any person aggrieved by the decision of the regulatory authority not to approve his application for a licence, may with a prescribed period, appeal against the decision in accordance with the domestic law.

9. Shareholding and limits to shareholding

(1) Subject to the domestic law, a regulatory authority may prescribe shareholding limits in a microfinance institution.

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(2) Subject to thresholds that may be prescribed by the regulatory authority, no person shall transfer or cause to transfer shares in a microfinance institution without prior, written approval of the regulatory authority.

(3) Juristic persons, natural persons, shareholders and ultimate beneficial shareholders should meet fitness and probity requirements as shall be provided in the domestic law.

10. Licensing terms and conditions

(1) The licence of a microfinance institution shall be subject to such terms and conditions as may be prescribed by the regulatory authority, which shall include the following—

- (a) specifying offered microfinance services; and
- (b) conducting of the business at the principal office of the microfinance institution specified in the licence.

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(3) A microfinance institution which intends to change the category of its licence shall apply to the regulatory authority for the change within such period as may be determined by the regulatory authority, and the regulatory authority, shall, upon receipt of the application, evaluate and make a decision, and notify the institution concerned.

(4) Where the regulatory authority rejects an application made by a microfinance institution in terms of subsection (3), it shall, within a prescribed period, notify the microfinance institution of the rejection and the reasons for it.

11. Fit and proper requirements

(1) No person shall be licensed to operate as a microfinance institution, a microfinance intermediary or be a key responsible person if the person—

- (a) is an rehabilitated insolvent or has been placed under judicial management;
- (b) is not a person of integrity and honesty;
- (c) is prohibited from appointment as a director of a company in terms of the laws which regulates companies;
- (d) has been found guilty of an offence having acted fraudulently, dishonestly, unprofessionally or dishonourably in any criminal or civil proceedings by a court of law or appropriate tribunal locally or elsewhere;

- (e) has been disqualified or found guilty by any professional body, or regulatory authority either in the local jurisdiction or elsewhere, of having acted dishonestly, fraudulently or incompetently;
- (f) subject to the domestic law, presided over a failed financial institution or mismanaged a failed financial institution either locally or elsewhere;
- (g) had authority to carry on business refused, suspended or withdrawn by any regulatory authority or professional body on account of incompetence, mismanagement, dishonesty, or negligence; or
- (h) lacks the necessary legal capacity or has been—declared mentally incapacitated by a certifying authority.

(2) Any authorised person who becomes disqualified in terms of subsection (1) after the date of licence or approval, must notify the regulatory authority of his disqualification as soon as he becomes aware of the same.

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12. Scope and duration of licence

(1) The licence of a microfinance institution shall remain valid for a period prescribed by the regulatory authority, and shall remain valid unless it is revoked, suspended, or surrendered to the regulatory authority, or it expires.

(2) Subject to the domestic law, the duration of the renewal period will depend on the prescribed terms and conditions in the issued licence.

(3) A microfinance licence shall not be transferred, assigned, sold or encumbered in any way:

Provided that a licence may be transferred in the event of an amalgamation or similar corporate restructuring transaction, on such terms and conditions as the regulatory authority may approve.

(4) Contracts entered into between the microfinance institution and customer shall remain enforceable as long as the period of the contract has not expired, and enforceability is not dependent on whether the business licence has expired or not.

(5) Where a microfinance institution fails to renew its licence following its expiration, it shall put in place arrangements for ensuring that all clients with unexpired contracts are protected and fairly treated, and such arrangements shall be approved by the regulatory authority.

13. Suspension and cancellation of licence

(1) The regulatory authority may, by notice in writing to the microfinance institution concerned, cancel or suspend the licence if—

- (a) there are reasonable grounds to believe that the license was obtained fraudulently, or by error, or misrepresentation of material facts by the microfinance institution;
- (b) the microfinance institution has failed to commence microfinance business, within such period to be specified by the regulatory authority;
- (c) the microfinance institution has failed to comply with the terms and conditions of its licence;

- (d) the microfinance institution has failed to conduct business in accordance with —
- (i) sound administrative, accounting and risk management systems;
 - (ii) fair treatment of consumers as outlined under the Schedule;
- or
- (e) it is in the public interest that the licence of the microfinance institution be cancelled or suspended.

(2) Before suspending or cancelling the licence of a microfinance institution, the regulatory authority shall notify the concerned microfinance institution, in writing, of the intention to suspend or cancel the microfinance institution's licence and the reasons for the suspension or cancellation, and provide the microfinance institution with an opportunity to make representations within a prescribed time.

(3) The regulatory authority may suspend or revoke a licence upon request by the microfinance institution concerned to surrender its licence, if the regulatory authority is satisfied that it is in the interest of the microfinance institution, its clients and creditors, and in the case of deposit-taking microfinance institutions, in the interests of the depositors.

(4) Where a licence is suspended or cancelled, the concerned microfinance institution shall within a prescribed time surrender the licence to the regulatory authority.

(5) The suspension of a licence under this section shall prohibit a microfinance institution from entering into any agreement or business transaction under the microfinance licence other than to discharge any outstanding obligations it may have towards any client.

(6) The regulatory authority shall, within a prescribed period, publish a notice of the suspension or cancellation of the licence.

(7) Any person aggrieved by the decision of the regulatory authority to suspend or cancel a licence may appeal to the authority having jurisdiction in terms of the domestic law, and the decision of the regulatory authority shall remain in force until such time as it is set aside by the said appeal authority.

(8) The cancellation of licence shall not relieve the concerned microfinance institution of any obligation incurred or assumed by the microfinance institution during the period of validity of the licence.

(9) Any existing obligation which a client may have towards a microfinance institution shall be enforceable, notwithstanding the cancellation of the licence.

14. Amendment of licence

(1) The regulatory authority may at any time amend a microfinance institution's licence, or terms and conditions—

- (a) to correct an error;
- (b) on application by a microfinance institution;
- (c) if the regulatory authority considers the amendments necessary to correctly reflect the true nature of business which the microfinance institution is conducting; or
- (d) if the regulatory authority considers it in the public interest to make the amendment.

(2) Before making such amendments referred to under subsection (1) (a), (c) and (d), the regulatory authority must notify the microfinance institution concerned, in writing, of its intention

to amend the licence of the microfinance institution and the reasons for the amendments and provide the microfinance institution with an opportunity to make representations within a prescribed period.

(3) Where the amendment of a licence is at the instance of the microfinance institution as stated under subsection (1) (b), the microfinance institution shall furnish the regulatory authority with the reasons for the proposed amendment.

PART III

GOVERNANCE AND CONDUCT OF MICROFINANCE BUSINESS

15. Information to be displayed by microfinance institutions

A licensed microfinance institution shall, in a visible place, at the principal office, every other branch and all digital platforms display or exhibit—

- (a) its licence;
- (b) terms and conditions;
- (c) details on interest rates, and any other finance charges and how costs related to the microfinance services offered by the institution are determined.

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16. Notification of changes

(1) A licensed microfinance institution must notify the regulatory authority in writing of any changes in its circumstances.

(2) The changes referred to subsection (1) shall include the following—

- (a) ownership or control of the microfinance institution;
- (b) beneficial ownership in the microfinance institution;
- (c) name and contact details of key responsible persons;
- (d) fitness and probity of the key responsible persons;
- (e) intentions to change—
 - (i) physical or virtual address of the principal office
 - (ii) terms and conditions of the licence; and
 - (iii) any other notifications in line with the domestic law.
- (f) corporate governance structures of the micro-finance institution.

17. Governance and risk management processes

(1) Every credit-only microfinance institution shall be governed by a board consisting of a prescribed minimum number of directors, the majority of whom shall be non-executive directors, who shall be responsible for, among other things and in accordance with accepted principles of good corporate governance, formulating policies relating to the microfinance business and supervising the conduct of microfinance business.

(2) Every deposit-taking microfinance institution shall be governed by a board of directors consisting of a prescribed minimum number of directors, the majority of whom shall be non-

executive directors who shall be responsible for, among other things and in accordance with accepted principles of good corporate governance, formulating policies relating to the microfinance business and supervising the conduct of microfinance business:

Provided that the regulatory authority shall ensure that the prescribed minimum number of directors for a deposit taking microfinance institution enables the establishment of board committees that ensure adequate protection of customer deposits.

(3) No person shall exercise any of the functions of a key responsible person of a microfinance institution without his appointment being approved or not being objected by the regulatory authority.

(4) The board of every microfinance institution shall ensure an effective risk management system is in place which shall at a minimum cover the following—

- (a) liquidity risk policy;
- (b) operational risk policy;
- (c) interest rate risk policy;
- (d) market risk policy;
- (e) credit risk policy.

(5) Subject to the domestic law, a microfinance institution shall develop a framework to provide for cybersecurity and data protection matters.

(6) Any change in any key responsible person of a microfinance institution, shall be approved or not objected by the regulatory authority prior to such change.

(7) The regulatory authority shall approve or not object the appointment of a key responsible person of a microfinance institution if the regulatory authority is satisfied with regards to—

- (a) fitness and probity of the incumbent;
- (b) the person's competence; and
- (c) the diligence with which the person is likely to fulfil the responsibilities towards the microfinance institution.

(9) Key responsible persons of a microfinance institution shall be capable of demonstrating an understanding of the microfinance institution's financial performance, including the reporting requirements.

(9) The frequency of meetings of a microfinance institution shall be prescribed in the domestic law.

18. Key responsible persons of a microfinance institution

(1) The management of a microfinance institution shall include—

- (a) a chief executive officer or whichever name the microfinance institution may call him;
- (b) a chief financial officer or whichever name the microfinance institution may call him;
- and
- (c) any other senior management.

(2) The positions referred to in subsection (1) shall not be vested in one person.

(3) A person shall not be appointed as a director, chief executive officer, chief financial officer or manager of a microfinance institution if that person—

- (a) is not a natural person;
- (b) is below the age limit prescribed in the domestic law; or
- (c) is not a fit and proper person as shall be prescribed in the domestic law.

19. Extension of micro-credit to key responsible persons and employees of microfinance institution

(1) No microfinance institution shall extend micro-credit to or for the benefit of—

- (a) any of its key responsible persons and employees;
- (b) any person holding significant interest in the institution;
- (c) any shareholder of the institution;
- (d) employees of the regulatory authority; or
- (e) the relatives of persons referred to in (a), (b) and (c);

on terms and conditions that are more favourable than those on which the institution applying criteria normally applied in the microfinance industry, would extend micro-credit to other persons of the same financial standing.

(2) Notwithstanding subsection (1), a microfinance institution may extend micro-credit to its employees, where the micro-credit is extended as part of the employee's condition of service.

20. Minimum capital requirements

(1) A microfinance institution shall maintain such minimum capital and reserves as may be prescribed in the domestic law.

(2) The minimum capital shall comprise—

- (a) issued and fully paid-up ordinary shares or common stock;
- (b) paid up non-cumulative irredeemable preference shares;
- (c) reserves consisting of—
 - (i) non-repayable share premiums;
 - (ii) disclosed reserves created by a charge to net income in the financial year immediately preceding the current one;
 - (iii) published retained earnings for the current year, including interim earnings, where these have been verified by external auditors;
 - (iv) minority interests in subsidiaries arising on consolidation; and
 - (v) any other as may be prescribed in the domestic law.

(3) Notwithstanding subsection (2), a non-deposit taking microfinance institution may not be required to comply with minimum capital requirements.

21. Requirements for microcredit agreements

(1) A micro-credit agreement shall—

- (a) be in writing, setting out clearly all its material terms and conditions;
- (b) permit the borrower to make partial payments of any amounts owed by him under the contract;

- (c) permit the borrower to make total pre-payment or early settlement, without incurring any penalties and that only pro-rata finance charges may be charged; and
- (d) contain such terms and conditions as may be prescribed by the regulatory authority.

(2) Any provision of a micro-credit agreement which purports to allow the microfinance institution to unilaterally change the rate of interest payable by the borrower, to alter the repayment period or any other obligation of the borrower, shall be void.

22. Agency Banking

- (1) A microfinance institution, may upon prior authorisation from a regulatory authority, contract with an agent for the provision of branchless services on behalf of the institution.

23. Lender's code of conduct

(1) In conducting its business, a microfinance institution shall be governed by the following treating customers fairly outcomes—

- (a) fair treatment culture;
- (b) appropriate financial services design and distribution;
- (c) clear and relevant information;
- (d) proper advice;
- (e) financial services perform as promised or expected and at an acceptable standard;
- (f) no unreasonable post sale barriers; and
- (g) privacy and data protection.

(2) The elaborative requirements under each outcome shall be as provided for in the Schedule.

(3) A microfinance institution shall establish and maintain a clear whistle blowing mechanism.

PART IV

BORROWER'S RIGHTS AND OBLIGATIONS

24. Right of borrower to information in plain and understandable language

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

(2) A microfinance 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) The regulatory authority may issue guidelines or standards, for methods of assessing whether a document satisfies the requirements of subsection (2).

25. Obligations of borrowers

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

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

PART V

REPORTING REQUIREMENTS OF MICROFINANCE INSTITUTIONS

26. Submission of statutory returns

(1) Microfinance institutions shall submit periodical and other required statements and reports as required by the regulatory authority.

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(2) The regulatory authority shall prescribe reporting formats and the frequency of reporting for a microfinance institution, including for—

- (a) financial statements;
- (b) repayment schedules; and
- (c) such other relevant information that the regulatory authority may consider necessary.

27. Accounts and financial statements

(1) A microfinance institution shall—

- (a) keep proper accounts and records relating thereto; and
- (b) at the end of each financial year, prepare a financial statement reflecting, in accordance with sound accounting practices, the microfinance institution's operations and financial condition.

(2) The microfinance institution shall prepare its financial statements in accordance with the standards prescribed by International Financial Reporting Standards or any other international standard as prescribed in the domestic law, and submit to the regulatory authority within the period prescribed in the domestic law.

(3) The regulatory authority may under circumstances specified by the regulatory authority, by written notice, direct a microfinance institution to have his accounts, records and financial statements audited at the microfinance institution's costs and to submit the results of such an audit to the regulatory authority within the time specified in the notice.

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28. Appointment of auditor

(1) Every microfinance institution required by the domestic law to be audited shall appoint an auditor to audit the microfinance institution.

(2) The auditor shall be a person who is—

- (a) accredited and certified as an auditor in terms of the relevant domestic law;

- (b) selected for appointment by the microfinance institution's board committee responsible for audit; and
- (c) approved or not objected by the regulatory authority.

(3) The regulatory authority shall prescribe the number of years an auditor may be appointed as an auditor for the microfinance institution.

(4) If the regulatory authority refuses to grant its approval for the appointment of an auditor in terms of subsection (2), it shall, within the period specified in the domestic law after reaching its decision, notify the microfinance institution concerned, in writing, of its decision and of the reasons for it.

29. Disqualifications from appointment as an auditor

(1) A person shall not qualify for appointment as an auditor of a microfinance institution if he is—

- (a) a key responsible person of the microfinance institution or of a body corporate which controls or is controlled by the microfinance institution;
- (b) an officer or employee of the microfinance institution or of any associate of the microfinance institution;
- (c) a partner or employee of a person referred to in paragraph (a) or (b);
- (d) an employer of a person referred to in paragraph (a); or
- (e) a person who by himself or herself, or his partner or his employee, regularly performs the duties of secretary or record keeper to the microfinance institution or to any associate of the microfinance institution;
- (f) any other circumstance where conflict of interest may arise.

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(2) If an auditor's appointment is terminated for any reason, including by way of resignation, the auditor must submit to the regulatory authority a statement of what the reasons are, or what the auditor believes to be the reasons, for the termination.

30. Powers of auditor

(1) Subject to the domestic law, every auditor of a microfinance institution shall—

- (a) have a right of access at all reasonable times to the microfinance institution's books/documents, records, accounts, vouchers and financial products; and
- (b) be entitled to require such information and explanations from any key responsible person or representative of the microfinance institution as is, in his opinion, necessary to perform his duties as an auditor;

(2) An auditor of a microfinance institution shall prepare a report which shall contain the following information—

- (a) any irregularity or illegal act which he has ascertained, or which he suspects, has occurred in relation to the microfinance institution's business;
- (b) any act which has contributed to a loss of any of the microfinance institution's moneys or assets;
- (c) any other matter which, in the auditor's opinion, requires rectification or attention by the microfinance institution; and
- (d) any recommendations for improving the microfinance institution's financial administration of his business.

(3) The auditor must provide any report or information as required by the regulatory authority despite the provisions of any contrary domestic law or a provision of a code of professional conduct to which the auditor is subject.

(4) The regulatory authority shall be entitled to require an auditor of a microfinance institution to provide such information and explanations as the regulatory authority, may reasonably require, for the purpose of monitoring and supervising the microfinance institution concerned.

(5) An auditor of a microfinance institution shall be responsible for communicating to the regulatory authority any evidence he may have that irregularities or illegal acts have been committed by—

(a) any key responsible person of the microfinance institution; or

(b) any person;

if there is a reasonable possibility that such irregularities or illegal acts may cause prejudice to clients or significant damage to the financial stability of the microfinance institution.

(6) No person shall without just cause—

(a) refuse an auditor access to the required information or documents; or

(b) refuse to comply with a requirement in terms of subsection (1) (b).

(7) The domestic law may prescribe more powers that may be conferred on an auditor.

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PARTVI

KEEPING OF RECORDS

31. Keeping of records of transactions

(1) Subject to domestic law governing Anti-Money Laundering/Combating Financing of Terrorism and Proliferation Financing, every microfinance institution shall maintain, in a safe place within the member state or where the records can be easily accessible, all records pertaining to the microfinance institution's operations, both domestic and international, which may be in physical or electronic form, for a period of not less than five years following completion of the transaction or termination of the business relationship.

(2) The microfinance institution's records maintained in terms of subsection (1) must be sufficient in such nature as to—

(a) reveal clearly and correctly the microfinance institution's state of the business affairs and financial condition;

(b) explain the transactions so as to enable the regulatory authority to determine whether the microfinance institution has complied with the prescribed requirements;

(c) identify clearly assets and financial products held on behalf of the clients; and

(d) reconstruct in detail all transactions undertaken on behalf of the clients.

(3) Notwithstanding the generality of subsection (2), records kept in terms of subsection (1), where appropriate, must—

(a) include full client account records and information for all trades or dealings made by the microfinance institution on a business day;

(b) specify, for each transaction dealt with by the microfinance institution—

- (i) the name and address of the account holder for whom the transaction was concluded;
- (ii) the amount borrowed or deposited;
- (iii) the place, date and time of the transaction;
- (iv) the name of the individual who handled the transaction for the microfinance institution;
- (v) where the transaction involves an associated company, the name of that company.

PART VI

REGULATION AND SUPERVISION OF MICROFINANCE INSTITUTIONS

32. Inspection and investigation by regulatory authority

(1) The regulatory authority shall—

- (a) be responsible for continuously monitoring and supervising microfinance institutions to ensure that they comply with the law;
- (b) as part of its supervisory approach, have the power to conduct on-site and off-site inspections into the affairs of a microfinance institution;
- (c) have the power to conduct investigations into the affairs of any particular microfinance institution, where the regulatory authority considers such an investigation necessary for the purpose of preventing, investigating or detecting a contravention of the law;
- (d) have the power to appoint an inspector who may assist the regulatory authority to conduct inspections or investigations referred to in subsection (2) and to ensure compliance with the law.

(2) Subject to the domestic law, the regulatory authority or any person authorised or appointed by the regulatory authority, may at any time during business hours, conduct an inspection or investigation on the business of a microfinance institution.

(3) The microfinance institution shall cause its books and accounts to be produced to an inspector or investigator and shall ensure that its employees or agent of the microfinance institution furnishes such information as the inspector or investigator may reasonably require for the purposes of the inspection or investigation.

(4) No person must obstruct or hinder an inspector or inspection of a microfinance institution or its books and accounts.

(5) The powers of an inspector shall be as prescribed in the domestic law.

(6) The regulatory authority may recover the costs of the investigation from the microfinance institution.

33. Actions that may be taken by regulatory authority in case of non-compliance

If the regulatory authority is satisfied that the microfinance institution has contravened any of the terms and conditions of its licence, or any regulations, standards or directives issued, the regulatory authority may, after following due process, do any one or more of the following—

- (c) issue a warning to the microfinance institution;
- (d) issue a written directive for the microfinance institution to take remedial action;

- (e) instruct the microfinance institution to suspend or remove its key responsible persons from their duties;
- (f) direct the microfinance institution to suspend any or all its business;
- (g) appoint an administrator to manage the microfinance institution's affairs;
- (h) suspend or cancel the microfinance institution's licence.

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34. Procedure on completion of investigation

(1) On completion of an investigation, an inspector shall forward his report thereon to the regulatory authority.

(2) On receipt of a report in terms of subsection (1), the regulatory authority shall, subject to the domestic law and as may be determined by the regulatory authority—

- (a) communicate the findings of the inspection to the microfinance institution; and
- (b) invite the microfinance institution to make representations on the contents of the report.

(3) A microfinance institution to whom a report has been sent in terms of subsection (2) may, if he so wishes, submit to the regulatory authority representations on any of the contents of the report, within the time set by the regulatory authority.

35. Action by regulatory authority following investigation

If, after considering an inspector's report sent to it by an inspector, together with any representations made by the microfinance institution concerned, the regulatory authority is satisfied that the microfinance institution has contravened any provision of the law or any directive, requirement or order, the regulatory authority shall within a period specified by the regulatory authority take any action referred to in section 32.

36. Curatorship and winding up of microfinance institution

(1) The regulatory authority may place a microfinance institution under curatorship or causing the winding up of a microfinance institution where—

- (a) a microfinance institution is in an unsound financial condition;
- (b) a microfinance institution is not operating in accordance with sound administrative and accounting practices and procedures, and not adhering to proper internal controls systems;
- (c) a microfinance institution failing to comply with the prescribed minimum financial requirements and the regulatory authority considers that it is unlikely to comply with them unless it is placed in curatorship; or
- (d) the microfinance institution fails to meet any requirement as may be prescribed in the domestic law.

(2) The domestic law shall—

- (a) prescribe the procedure the regulatory authority shall follow when placing a microfinance institution under curatorship, causing the winding up of a microfinance institution or for voluntary winding up of a microfinance institution;
- (b) state the effect of placing a microfinance institution under curatorship;
- (c) prescribe the duties of curator.

(3) Subject to the provisions of other applicable domestic laws, the regulatory authority may have the right to apply to a court of competent jurisdiction for the winding up of the microfinance

institution if the regulatory authority is satisfied that the microfinance institution has solvency challenges or other challenges that may be prescribed in the domestic law which makes it difficult for the microfinance institution to meet its liabilities and continue with its business or for any other reason which is appropriate and in the public interest.

(4) The domestic law shall provide for the procedures to be followed by the regulatory authority before applying to court for the winding up of a microfinance institution.

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37. Amalgamation or transfer of microfinance institution

(1) No microfinance institution shall, without the approval of the regulatory authority—

- (a) amalgamate with one or more other financial institutions; or
- (b) transfer its business or any part thereof to another financial institution;
- (c) take transfer from another financial institution of the whole or part of any of its business.

(2) The application procedure to be complied with the applicant for an amalgamation or transfer shall be as prescribed in the domestic law.

(3) The application procedure referred to in subsection (2) shall include matters relating to—

- (a) publication of a notice of the proposed amalgamation or transfer using a media with wide circulation;
- (b) lodging of objections or representations in regard to the application within such period as may be specified in the notice.

(4) If the regulatory authority is of the opinion that the amalgamation or transfer will not prejudice the interests of clients concerned or to the public interest, it shall approve it subject to such conditions as regulatory authority thinks fit:

Provided that the regulatory authority shall ensure that objections raised are addressed before approving the amalgamation or transfer.

(5) Where an amalgamation or transfer has been approved by the regulatory authority in terms of subsection (4), it shall cause a notice to be published in a media with wide circulation stating that the amalgamation or transfer has been approved.

(6) The merging financial institutions or transferee and transferor microfinance institution shall ensure client data is transferred to the microfinance institution or transferee microfinance institution after an amalgamation and that data is not lost during the transfer or merging process.

(7) The new microfinance institution shall not, without the consent of the client, change the rights and obligations provided for in the transferred financial services.

(8) The domestic law shall prescribe the obligations of the microfinance institution after the amalgamation or transfer.

PART VIII

GENERAL

38. Register of microfinance institutions

(1) Every regulatory authority shall maintain a register which shall record the following—

- (a) name of the microfinance institution;
- (b) physical address of the principal office of the microfinance institution;
- (c) name and contact details of the key responsible persons;
- (d) terms and conditions of the licence; and
- (e) such other information as may be required.

(2) The register shall be open to members of the public under such terms and conditions as may be set by the regulatory authority.

(3) The register may be disclosed on the regulatory authority's website.

(4) The register shall be maintained such that a status of those not licensed to operate is reflected as closed.

39. Exemptions

(1) Subject to domestic law, the regulatory authority may exempt certain microfinance institutions from complying with certain sections of this Model Law as shall be specified in the domestic law.

(2) The exemptions referred to in subsection (1) shall be exercised depending on the nature, size and complexity of the microfinance institutions.

40. Preventive measures, corrective measures and sanctions

(1) The regulatory authority shall—

- (c) take prompt and effective action to deal with cases of non-compliance with measures designed to prevent a breach of the legislation from occurring, where such non-compliance could put clients at risk or impinge on any other regulatory objectives;
- (d) quickly enforce corrective action where problems involving microfinance institutions are identified;
- (e) issue formal directions to microfinance institutions to take particular actions or to desist from taking particular actions to address problems identified;
- (f) impose restrictions on the business activities of a microfinance institution;
- (g) take measures, or to require others to take measures, to reinforce the financial position of a microfinance institution;
- (h) have mechanisms in place to check compliance by the microfinance institution once corrective action has been taken or remedial measures, directions or sanctions have been imposed;
- (i) have mechanisms in place to assess effectiveness of the corrective action taken or remedial measures, directions or sanctions imposed on a microfinance institution.

(2) The regulatory authority may replace or restrict the power of the following persons as a means of addressing management and governance problems—

- (a) board members;
- (b) external auditor;
- (c) key responsible persons;
- (d) significant owners.

(3) The regulatory authority may, in extreme cases where a microfinance institution is failing to meet prudential or other requirements, take the following actions—

- (a) impose curatorship over a microfinance institution;
- (b) appoint other specified officials or receivers to take control of a microfinance institution;
- (c) make other arrangements for the benefit of the clients;
- (d) impose a fine;
- (e) suspension of a licence;
- (f) cancellation of a licence.

(4) The regulatory authority shall have the power to enforce preventive and corrective measures and impose sanctions which are timely, necessary to achieve the objectives of supervision of microfinance institutions, and based on clear, objective, consistent, and publicly disclosed general criteria.

(5) The regulatory authority shall ensure that there is a progressive escalation in actions or remedial measures that are to be taken if the problems become worse or a microfinance institution ignores requests from the regulatory authority to take preventive and corrective action.

(6) The regulatory authority shall—

- (a) require the microfinance institution to take actions that address the regulatory authority's identified concerns;
- (b) have the power to require a microfinance institution to develop an acceptable plan for prevention and correction of problems;
- (c) periodically check that the microfinance institution is taking action and assesses the effectiveness of the microfinance institution's actions.

41. General offences and penalties

(1) The regulatory authority shall have the power to impose penalties and sanctions on microfinance institutions and individuals proportionate to the breach of regulatory requirements or other misconduct.

(2) The sanctions and penalties the regulatory authority may impose on a microfinance institution and individuals and the circumstances under which the sanctions may be imposed shall be clearly defined in the domestic law.

(3) The domestic law shall set out the procedures to be followed by the regulatory authority in imposing sanctions and penalties.

(4) The procedures set out in subsection (3) shall take into account the right of the alleged defaulting person to be heard before a penalty or sanction is imposed against such person.

42. Appeals

(1) Any person aggrieved by the regulatory authority's decision may appeal to the relevant authority as set out in the domestic law.

(2) The appeal authority referred to in subsection (1) must be independent

(3) The procedures an aggrieved person may follow to lodge an appeal against a regulatory authority's decisions shall be as set out in the domestic law.

(4) The procedures referred to in subsection (3) shall—

- (a) be specific and balanced to preserve supervisory independence and effectiveness;
- (b) not unduly impede the ability of the regulatory authority to make timely interventions in order to protect clients' or public interests.

SCHEDULE (*SECTION 22*)

TREATING CUSTOMERS FAIRLY OUTCOMES

1. Outcome 1: Fair treatment culture

This outcome is the underlying driver for all other Treating Customers Fairly Outcomes and aims at ensuring amongst others that—

- (a) microfinance institutions must embrace principles on treating customers fairly in their corporate values and standards, and are undertaken in internal operations daily;
- (b) responsibility to promote such a culture starts with the board and senior management and ends with the lower-ranked staff of all microfinance institutions and intermediaries;
- (c) the board and senior management is responsible for promoting and implementing culture on fair treatment of consumers—
 - (i) through enforcing a culture based on values, and
 - (ii) a day-to-day conduct of activities that put fair treatment of consumers at the fore-front;
- (d) staff are appropriately skilled, trained and have required competence in providing fair treatment to consumers; and
- (e) incentivize staff to promote corporate culture on treating customers fairly in their daily work.

2. Outcome 2: Appropriate financial service design and distribution

(1) The aim of this outcome is to ensure that financial services marketed and sold are designed and distributed to meet well-defined needs of the targeted consumer group.

(2) A microfinance institution must ensure that the design and distribution of financial services meet the—

- (a) needs of identified consumer groups in terms of the costs and benefits; and
- (b) limitations of the financial services.

3. Outcome 3: Clear and relevant information

(1) This outcome ensures that consumers are given clear and relevant information, and that they are appropriately informed about all the terms and conditions relating to a financial service before, during and after point of sale.

(2) Microfinance institutions must maintain accurate and retrievable records of information provided to consumers at and after the point of sale, including information used during marketing and promotion, which must be clear, appropriate and relevant to the consumer.

(3) Under this Outcome, microfinance institutions must, at a minimum—

- (a) provide clear and truthful information to consumers at and after the point of sale;

- (b) maintain mechanisms for confirming that the terms and conditions associated with the financial service are understood in the target market;
 - (c) ensure that information provided in promoting a product is easily understandable, clearly outlining to consumers the cost, benefits and limitations of a specific product or service;
 - (d) ensure that disclosure around bundled products enables consumers to understand the different components of the bundle;
 - (e) provide consumers with ongoing relevant information to enable them to monitor whether the product or service continues to meet their needs and expectations;
 - (f) maintain general records of information provided to consumers as long as the service remain active in the market; and
 - (g) provide a platform, at all times, after sale, follow-up queries on financial services sold.
- (4) Other requirements that the microfinance institutions must adhere to in their conduct when providing financial services include—
- (a) the issuance of periodic statements of account, transaction receipts, and if possible, in a local language;
 - (b) the arrangement that all the disclosed documents must be provided in a form that the consumer can have easy access and keep for later reference;
 - (c) that a notice of any change to the key facts statements summarising terms and conditions pertaining to any type of premium, contribution, fee, commission, interest rate, finance charge and claim be issued to the consumer prior to the effective date of the notice; and
 - (d) that consumers be issued with clear and comparable summaries of the key facts statements with key terms and conditions used within the microfinance sector when they are shopping around and at the contractual stage in a template used for the disclosures of such key terms and conditions.
- (5) Microfinance institutions must ensure that in their communications, transparency and full disclosure principles are adopted on the terms and conditions about the financial services so that—
- (a) terms and conditions are in a clear, concise and in simple language;
 - (b) plain language descriptions, complicated legal, technical terms or abbreviations must only be used with proper explanations in short sentences and paragraphs must have clear headings;
 - (c) timely, most up-to-date, accurate and relevant information is provided to the consumer during the pre-contractual stage, at the point of entering into a contract and during the term of the contract and such information is consistent for the same target group, and comparable across financial institutions offering similar financial services; and
 - (d) all finance charges including commissions, fees, penalties, interest rate are displayed at the premises of the financial institutions, as well as on their respective websites, and are in a form that is comparable to other financial institutions within the same industry.
- (6) Terms and conditions not disclosed to the consumer, which unfairly causes prejudice to the consumer, shall be invalid and unenforceable against the consumer.
- (7) Microfinance institutions must not require consumers to waive their rights under the treatment of customers fairly principles as a condition to be met before receiving a financial service, or during the life cycle of a financial service.

(8) Microfinance institutions must provide a period to consumers during which they can rescind, cancel a contract, in a relevant industry, and still have any fees and advances returned.

(9) When a contract for a financial service is duly terminated by both parties, the microfinance institution must—

- (a) if appropriate, refund any money that the consumer has paid under the contract before the expiry of any applicable notice-period;
- (b) cancel any form of automatic payment and give notice of termination, if necessary to stop the payment; and
- (c) only require payment from the consumer to compensate the financial institution for the costs incurred, relating to the contract in question.

(10) Notice of the consumer's right of rescission must be communicated to the consumer in all contracts and disclosures regarding financial products and services.

4. Outcome 4: Proper advice

(1) The requirement under this outcome is that where advice is given, it is suitable to the consumer and takes account of the consumer's circumstances.

(2) Where appropriate, before providing advice, a microfinance institution and microfinance institution is expected to have relevant and sufficient information about the consumer's needs and financial capacity.

(3) Microfinance institutions must—

- (a) carry out consumer financial capability assessments to determine whether consumers have the capacity to honour financial obligations without facing undue financial difficulties; and
- (b) offer appropriate advice to consumers when selling a financial service.

(4) Under this Outcome, therefore, microfinance institutions must—

- (a) ensure that proper advice provided is based on the consumer's financial knowledge and capability to honour financial obligations;
- (b) consider factors such as the complexity of the financial service;
- (c) inform consumers of any material changes to the contract that could potentially have negative financial implications on them before such changes become effective; and
- (d) ensure that only competent staff are providing proper advice to the consumers either on demand by the consumer or when the microfinance institution deems it necessary based on circumstances observed about the consumer.

5. Outcome 5: Financial services perform as promised or expected and at an acceptable standard

(1) The aim under this outcome is to ensure that financial services must perform the way consumers expected and were led to expect, and that the financial services rendered must be according to an acceptable standard.

(2) Microfinance institutions must ensure that the consumer's expectations about the desired benefits to be derived from the financial service is according to the standards of the services as communicated at the point of sale.

(3) Microfinance institutions must—

- (a) keep their promises to the consumer by ensuring that they offer financial services that perform the way the consumer has been told or expect; and
- (b) provide, where relevant, clear cautionary advice concerning possible adverse effects that could arise after the consumer acquires the financial service.

6. Outcome 6: No unreasonable post sale barriers

(1) Under this outcome, the aim is to ensure that consumers do not face unreasonable post-sale barriers that will inhibit consumers to switch microfinance institutions, submit a claim or make a complaint.

(2) Microfinance institutions must not make it unnecessarily difficult for consumers to make claims or to complain; thus, the principle on the implementation of a mechanism for complaints resolution is imperative.

(3) Microfinance institutions must provide for a timely and responsive mechanism for handling complaints as a means to resolve consumer complaints or the decision to change the financial services.

(4) A designated member of senior management must be responsible for the complaints handling oversight to ensure that complaints registered by consumers against the microfinance institution are resolved effectively, promptly, and justly.

(5) At a minimum, the following principles are imperative under this outcome—

- (a) Complaints handling procedure: must be established for the purpose of receiving complaints in whatever form and must be equipped and empowered to resolve complaints decisively.
- (b) Accessibility and disclosures: all complaints handling procedures must be designed to operate in such a way that it is easily accessible to all consumers. Information explaining about how to lodge a complaint must be communicated to the consumer by the microfinance institutions. At a minimum, such information must be displayed clearly at the physical location or electronic website of the financial institutions. Contact information for purposes of the complaint handling procedure by the microfinance institutions and regulatory authority must be included in all contracts with consumers and/or on disclosures made by the microfinance institutions.
- (c) Responsiveness: a timeline for resolving complaints must be established to ensure that all complaints are addressed in a manner that is equitable, objective and on time. Complainants must receive from the microfinance institutions a clear explanation for complaints that are rejected, and the basis of the decision taken immediately upon completion of the complaint investigation. Microfinance institutions must inform the consumer about the right to appeal to the regulatory authority only after the internal complaints mechanisms of the financial institutions have been exhausted.
- (d) Records and reporting: records of consumer complaints must be maintained by the microfinance institutions for a period prescribed by law, inclusive of how each complaint has been resolved. The domestic law must prescribe periodic reporting of data on consumer complaints and monitoring of the complaint handling processes.

7. Outcome 7: Privacy and data protection

(1) Under this outcome, the aim is to ensure that consumers are informed about the use and disclosure of personal information, data ownership and information consent.

(2) Microfinance institutions should be allowed to collect—

- (a) consumer data to the extent possible, as determined by the purpose for the collection;
 - (b) the types of consumer data that can be collected within the established domestic legal limits; and
 - (c) where applicable must, except in certain circumstances exempted by the domestic law, explain to the consumer provision articulating when consumer's consent is required, and when consumer data is shared with a third party.
- (3) Other requirements that the microfinance institutions shall explain to consumer shall include the following—
- (a) minimum period for which all consumer records must be retained and the right of consumers to have easy access to such records at a reasonable cost or no cost throughout the duration of the financial service being offered to the consumer;
 - (b) preservation of confidentiality of consumer information ensuring that it is not used for purposes other than what it was specifically obtained for as permitted by law, or otherwise specifically agreed with the consumer;
 - (c) imperative that the collection, possession, storage and handling of consumer data is in accordance with internal policies and procedures—
 - (i) articulating that consumer's personal data is owned by the consumer;
 - (ii) clearly setting out the microfinance institutions' practices when collecting and processing sensitive consumer data, such as on the security measures safeguarding confidentiality of consumer data;
 - (iii) explaining the purposes for which the consumer data is collected and used for; and
 - (iv) when a consumer may voluntarily allow for the disclosure to a third party of their consumer data.