

CONSUMER CREDIT BILL: SHORT SUMMARY

Legislative limitations exist on the regulatory and supervisory framework governing agreements on consumer credit, and current legislation lacks robust provisions on the protection of consumers against unfair market practices.

The Minister of Finance and Public Enterprises (MFPE) tasked NAMFISA to spearhead the drafting of the Consumer Credit Bill (CCB) to enhance the regulatory and supervisory oversight on all consumer credit transactions. Due to the far-reaching nature of consumer credit legislation, NAMFISA has been collaborating with the following Key Project Stakeholders: the Ministry of Finance and Public Enterprises, the Bank of Namibia, the Ministry of Industrialisation and Trade, the Financial Literacy Initiative (FLI) and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).

The Project has thus far developed and formulated a CCB Policy Paper, which addresses the current shortcomings and highlights the principles to be covered in the CCB. The Policy Paper was approved by the MFPE in May 2020, whereafter the drafting of the CCB commenced in July 2020. The proposed draft CCB was approved by the MFPE for public consultations in January 2023, and a notice to inform the respective industry players (credit providers, credit bureaus, debt collectors and consumers of credit) and the public at large to provide input and comments to the proposed draft CCB will be issued soon.

Purpose of the proposed draft CCB

The purpose of the proposed draft CCB is to promote fair, transparent and responsible market conduct in the consumer credit market, where consumers of credit are protected, by ensuring that there is –

- (a) no arbitrage in the regulation and supervision of different types of consumer credit and associated intermediary services;
- (b) responsible borrowing and lending that prohibits credit granting by credit providers without conducting affordability assessments;
- (c) fair treatment of consumers, balancing the respective rights and obligations of credit providers and consumers;
- (d) transparency and full disclosure of information for consumers to make informed choices, and to prevent deceptive, unfair or fraudulent conduct;
- (e) improved reporting of consumer credit information;
- (f) a system of resolution of disputes arising from credit agreements;

- (g) a consistent and harmonised system of debt collection and enforcement of obligations under credit agreements;
- (h) regulation and supervision of services provided by credit providers, credit bureaus and debt collectors promoting the highest standards of conduct of business; and
- (i) reduction and deterrence of financial crimes.

The Usury Act, 1968, the Credit Agreements Act, 1980, and the Microlending Act, 2018, will be repealed. Amendments to other legislation will be required, such as the Electronic Transactions Act, 2019, the NAMFISA Act, 2021, and the Bank of Namibia Act, 2020.

Scope of the proposed draft CCB

The protection of the Act will extend to all natural persons who are consumers, as well as consumers who are micro-, small and medium juristic persons. Consumers who are large juristic persons or public bodies (the Government and statutory bodies performing regulatory functions or functions for the benefit of the public) will not fall within the scope of the Act.

The Act will apply to all types of credit providers (exclusive of the Bank of Namibia), and it will apply to all credit agreements between parties dealing at arm's length and made, or having an effect, within Namibia (with some exceptions).

Two Consumer Credit Regulators

The two Consumer Credit Regulators will be NAMFISA (for the non-banking credit providers, credit bureaus and debt collectors) and the Bank of Namibia (for the banking credit providers).

The Consumer Credit Regulators are responsible for regulating the conduct in the consumer credit market and enforcing the Act by, amongst other –

- (a) registering credit providers, credit bureaus and debt collectors;
- (b) receiving and resolving complaints concerning alleged contraventions; and
- (c) monitoring the consumer credit market to ensure that prohibited conduct is identified, assessed, and prevented.

Supervisory powers of Consumer Credit Regulators

The Consumer Credit Regulators may, in terms of powers their supervisory powers, amongst other –

- (a) restrict the activities of unregistered persons;

- (b) remove key responsible persons who are not in compliance with the Bill or no longer fit and proper;
- (c) declare practices as irregular or undesirable and issue directives;
- (d) issue administrative sanctions and cancel registrations;
- (e) receive specified complaints from consumers and investigate such complaints; and
- (f) do inspections and conduct searches.

Registrants may appeal against administrative or enforcement decisions of the Consumer Credit Regulators, and such appeals must be directed to either the NAMFISA appeal board or the appeal board established by the Banking Institutions Act.

Credit providers, credit bureaus and debt collectors

All persons, who conduct business in respect of credit agreements to which the Act apply, must apply to be registered with one of the Consumer Credit Regulators as credit providers. All credit bureaus and debt collectors must also apply for registration as such.

All registrants must, in terms of administrative compliance with the Act, amongst other –

- (a) have a principal office in Namibia and appoint a principal officer;
- (b) submit returns;
- (c) not amalgamate, transfer its business or open additional branched without prior approval;
- (d) comply with codes of conduct; and
- (e) ensure that their managers, employees or agents are trained.

Credit bureaus must ensure data management and quality control, and keep a register of credit agreements. Debt collectors must keep trust accounts.

Consumer rights and obligations of credit providers

Consumers have the following rights, amongst other –

- (a) right to be provided with reasons for credit being refused;
- (b) right to information in plain language, and confidential treatment;
- (c) right to access and challenge credit records and information held by credit bureaus;
- (d) right to receive pre-agreement disclosure and the right to receive statements of account;
- (e) cooling-off period (in respect of some credit transactions);
- (f) right to rescind the credit agreement;

- (g) right to settle the credit agreement at any time, with, or without, notice, and the right to make early payments;
- (h) right to receive notice before a credit provider institutes legal action; and
- (i) right to complain, either to the Consumer Credit Regulator or court.

Credit providers must comply with the provisions of the Act detailing prohibited conduct and other obligations. Affordability assessments are prescribed.

General

The withdrawal from Parliament of the Financial Services Adjudicator Bill has impacted on the CCB in that no provision could be made for disputes to be adjudicated by an objective tribunal or ombudsman. The Consumer Credit Regulators must deal with consumer disputes as far as is it is provided for in their enabling legislation.

The MFPE is empowered to issue regulations, while the Consumer Credit Regulators are empowered to issue standards on operational matters aiding the implementation of the law. At this stage, none of the subordinate legislation to the Bill has been drafted. The work on subordinate legislation will start at a later stage pending completion of material drafting work on the Bill itself.