

## Microfinance Regulation and Supervision in Zimbabwe: A Critical Overview

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### Abstract

*This paper critically evaluates the key provisions of the new Microfinance Act in Zimbabwe and other related pieces of legislation. The study is not an exposition of debates and theories about microfinance regulation and supervision in general but one focused on a specialized piece of law and its related institutions. The aim of the study is to evaluate the regulatory framework at place for microfinance business in Zimbabwe in order to establish the extent to which the growth of the microfinance sector is promoted from a legal point of view. The classical legal research method was employed in this study wherein a critical analysis of the law was done and leveraged through a review of related literature. The paper concludes that a new specialised microfinance law in Zimbabwe is a welcome development although certain aspects of the law still need improvement.*

**Keywords:** Microfinance; Regulation; Supervision; Legislation; Deposits

### 1. Introduction

The microfinance sector plays a vital role in enhancing financial inclusion levels through the provision of appropriate financial services and capacity building, particularly among the low income groups.<sup>1</sup> The sector continues to play a critical role in the provision of finance to small and medium enterprises in Zimbabwe as part of the broader perspective of building inclusive financial systems.<sup>2</sup> One of the most important issues in microfinance today is the regulation and supervision of microfinance institutions (Ledgerwood 1999). There is therefore the need for a robust regulatory and supervisory framework in the microfinance sector to promote not only consumer rights but also to prevent delinquent service providers from engaging in activities not promotive of public confidence in the financial sector as a whole.

It is in light of that broad counter-balanced need that this paper seeks to give a critical overview of the microfinance sector regulation and supervision in Zimbabwe in order to establish areas of improvement. The paper critically evaluates the key provisions of the new Microfinance Act in Zimbabwe and other related pieces of legislation. The study is not an exposition of debates and theories about microfinance regulation and supervision. Classical legal research methods are employed in this study wherein a critical analysis of the law is done and leveraged through a review of related literature.

### 2. Need for Microfinance Regulation

The efficiency of financial systems and policy is normally judged on the ability of the system to mobilise savings and channel them towards the most efficient application in the economy (Coetzee, 1998). In most developing countries inadequate legal structures result in decreased transactions and inefficient market operation (Coetzee 1998). Sometimes a given piece of legislation can make it difficult for lenders and borrowers to interact especially between the formal and the informal sector (Yaron et al, 1996). The challenge born out of the need for efficient regulation and supervision is how to create successful institutions that will lower costs and increase efficiency in economic exchange (Coetzee, 1998). Just because regulation remains a precondition for deposit mobilisation in many countries, more microfinance institutions seek to transform into regulated entities to access cheap and local currency deposits (Ndambu, 2011). In addition, donors and governments expect that the setting up of a special regulatory window for microfinance businesses will speed the emergence of sustainable microfinance institutions (Ndambu, 2011). Regulation of microfinance institutions also become necessary when one considers the unequal bargaining power that often arise between consumers and providers of microfinance services. Ledgerwood (1999) argues that microfinance institutions should also be regulated when they

<sup>1</sup> The Reserve Bank of Zimbabwe, Monetary Policy Statement, January 2015

<sup>2</sup> The Reserve Bank of Zimbabwe, Quarterly Microfinance Industry Report June 2014

reach the size at which their failure would have consequences that reach far beyond owners and creditors. These theoretical underpinnings have to some extent influenced the regulatory and supervisory regime in Zimbabwe.

### 3. Structure of the Microfinance Industry

As at 30 June 2014 there were 130 registered microfinance institutions in Zimbabwe under the supervision of the central bank.<sup>3</sup> The number of licensed microfinance institutions has been fluctuating as some institutions have not been able to renew their operating licenses due to viability challenges emanating from high levels of delinquent loans.<sup>4</sup> Although most microfinance institutions are still concentrated in urban areas, the number of microfinance institutions' branches increased from 334 as at 30 June 2013 to 442 as at 30 June 2014 reflecting a drive by microfinance institutions to reach out to marginalized areas where communities had no access to formal financial services.<sup>5</sup>

### 4. The Microfinance Legal Framework

Prior to 2013, the legal and regulatory framework for the microfinance sector in Zimbabwe was largely inadequate and fragmented. The legislation for the sector was a notable constraint to the deepening and broadening of microfinance services and the participation of credible private sector institutions as service providers.<sup>6</sup>

#### 4.1 The Microfinance Act (Chapter 24:29)

Besides Malawi<sup>7</sup>, Zimbabwe is one of the few countries in Southern Africa to pass a specialised law for microfinance businesses. The creation of the special law is justified on the need to develop standards better suited to the microfinance sector and lower barrier to entry (Nzaro *et al* 2013). Before August 2013, microfinance institutions in Zimbabwe were regulated by the Moneylending and Rates of Interest Act [Chapter 14:14] and the Banking Act [Chapter 24:20]. Although these pieces of legislation were not repealed, they were amended in a huge way by the new microfinance specialized law passed in August 2013. The main advantage of this approach is that it permits microfinances to pursue their goals and maintain their distinct characteristics whilst providing a reduced range of financial services without necessarily becoming banks (Nzaro *et al* 2013).

The gazetted new Microfinance Act [Chapter 24:29] amends the previous Acts and provides for a holistic regulation and supervision of both credit-only and deposit-taking microfinance institutions. The Act has strengthened the consumer protection framework for microfinance clients through, among other requirements, mandatory full disclosure by microfinance institutions of the terms and conditions of their services, adequate pre-lending assessment to avoid over-indebtedness of clients and ethical business conduct.

#### 4.1.1 Aspects of the new Microfinance Act

##### 4.1.1.1 Application of the Act

The new Microfinance Act provides for the registration, supervision and regulation of persons conducting microfinance business in Zimbabwe.<sup>8</sup> The Act applies to all credit-only and deposit-taking microfinance businesses.<sup>9</sup> A credit-only microfinance business is defined under the Act as the business of providing loans to persons who, for the most part, operate micro, small or medium enterprises or individuals whose monthly income is below the poverty datum line.<sup>10</sup> On the other hand, deposit-taking microfinance business is the business of accepting deposits from persons who, for the most part, operate micro, small or medium enterprises or individuals whose monthly income is below the poverty datum line.<sup>11</sup> It is clear from these definitions that, the thrust of the Microfinance Act is to enhance the interaction between

<sup>3</sup> The Reserve Bank of Zimbabwe, Quarterly Microfinance Industry Report June 2014

<sup>4</sup> The Reserve Bank of Zimbabwe, Quarterly Microfinance Industry Report June 2014

<sup>5</sup> The Reserve Bank of Zimbabwe, Quarterly Microfinance Industry Report June 2014

<sup>6</sup> The Zimbabwe National Microfinance Policy [www.rbz.co.zw](http://www.rbz.co.zw)

<sup>7</sup> Malawi's Microfinance Act No. 21 of 2010 was assented to be by the President on the 29th of July 2010.

<sup>8</sup> See Preamble to the Microfinance Act (Chapter 24:29).

<sup>9</sup> Section 3(1)(a) of the Microfinance Act (Chapter 24:29).

<sup>10</sup> Section 2 of the Microfinance Act (Chapter 24:29).

<sup>11</sup> Section 2 of the Microfinance Act (Chapter 24:29).

microfinance institutions and the economically active poor as well as small to medium enterprises. However the distinction between credit-only and deposit-taking microfinance institutions has not been that clear to the majority of potential microfinance clients. This has resulted in some rogue microfinance institutions in Zimbabwe taking deposits from the public even if they were registered as credit-only microfinance institutions.

The Microfinance Act is also applicable to any subsidiary or division of a banking institution, building societies or the People's Own Savings Bank, engaging exclusively or predominantly in any microfinance business.<sup>12</sup> This means the Act will apply to such subsidiaries as if there were no law regulating the operations of their parent banks, to ensure an equal playing field for all persons engaging in the microfinance business.

However, the Microfinance Act does not apply to microfinance businesses conducted by a body corporate<sup>13</sup> established directly by any enactment to the extent that the body corporate carries out functions conferred upon it by the enactment.<sup>14</sup> The import and ambit of this restriction is not clear. It is difficult to understand how such a body corporate would have been constituted to warrant its exemption from the regulatory provisions of the Microfinance Act which seems to be an all-inclusive law for all microfinance business in Zimbabwe. The ambiguity born out of this provision is heightened by a reading of section 6(1)(a) of the Act which states that no person shall conduct any microfinance business unless they are registered in terms of the Microfinance Act. The same Microfinance Act further states that for the person to be registered as a microfinance institution they have to be a company.<sup>15</sup> It is therefore difficult to reconcile the non-application of the Microfinance Act to certain corporate bodies while at the same time the Act itself outlaws the carrying out of microfinance business outside its purview.

#### 4.1.1.2 Administration of Microfinanciers

Microfinanciers in Zimbabwe are administered by the Registrar who is an appointee of the Reserve Bank of Zimbabwe.<sup>16</sup> The Registrar is responsible for registering microfinanciers and cancelling their registration in terms of the Act, among other things.<sup>17</sup> In exercising his functions the Registrar is obliged to take into consideration any general policy directives that may be given to him or her by the board of the Reserve Bank of Zimbabwe.<sup>18</sup>

Once a microfinancier is registered its registration certificate can be cancelled by the Registrar for various reasons provided for under section 12 of the Microfinance Act. Among other reasons, a microfinance institution may have its registration cancelled for misrepresenting the facilities it offers to the public and for engaging in undesirable methods of conducting business.<sup>19</sup> The various grounds for which a microfinancier can be de-registered reflect a deep-rooted consumer protection philosophy anchoring the operations of the Microfinance Act.

Although regulatory threats of cancellation of a microfinancier's licence can act as a deterrent measure or an incentive for microfinance institutions to be fully compliant with the Act and to deal fairly with consumers, it can also stifle business growth. A balance must always be struck between regulation and over-regulation where the latter can be admittedly be viewed as not promoting the growth of microfinance business particularly in Zimbabwe where it is still in its infancy. Some of the grounds under the Act for which a microfinance institution may be de-registered can be remedied through compliance upon redirection by the Registrar without necessarily resorting to cancellation of registration. Examples include failure to comply with a term of registration under section 12(1)(f) and failure to conduct any microfinance business for 180 days by a microfinance institution under section 12(1)(i). The Registrar of microfinanciers can even use the opportunity afforded by section 12(2) of the Microfinance Act, where he or she is obligated to notify a microfinancier before cancellation of its registration, to re-direct it to comply with whatever provision he or she reasonably believes has been contravened.

<sup>12</sup> Section 3(1)(b)(i)(ii)(iii) of the Microfinance Act (Chapter 24:29).

<sup>13</sup> The term "body corporate" has the meaning given to it by subsection (2) of section six of the Companies Act (Chapter 24:03) which section defines the term as a registered company. It should be noted that the use of the terms "body corporate" or "corporate body" does not in any way suggest a different meaning to those terms since the phrases mean just the same.

<sup>14</sup> Section 3(2) of the Microfinance Act (Chapter 24:29).

<sup>15</sup> Section 6(1)(b) of the Microfinance Act (Chapter 24:29).

<sup>16</sup> Section 4(1) of the Microfinance Act (Chapter 24:29).

<sup>17</sup> Section 4(2) of the Microfinance Act (Chapter 24:29).

<sup>18</sup> Section 5(1) of the Microfinance Act (Chapter 24:29).

<sup>19</sup> Section 12(g)(h) of the Microfinance Act (Chapter 24:29).

#### 4.1.1.3 Conduct of Microfinance Business regarding Lending and Loan Agreements

The Microfinance Act obliges microfinanciers in Zimbabwe to be responsible financial intermediaries in the conduct of microfinance business. For instance every microfinancier is obliged to have their loan agreements in writing and setting out clearly the material terms and conditions underpinning that agreement.<sup>20</sup> Any provision of the loan agreement which purports to allow a microfinancier to unilaterally alter the rate of interest payable by the borrower or any other obligation of the borrower is void under the Act.<sup>21</sup> This provision recognises the unequal bargaining power which often arises between clients and microfinanciers. Usually microfinance institutions manipulate clients through standard form contracts which they unilaterally draft and in which they confer upon themselves some reversionary rights to alter the contracts at will.

Predatory lending methods are also not allowed under the Microfinance Act under which microfinanciers can relentlessly chase profits without regard to the welfare and capacity of the borrower to repay. Section 26 of the Act requires microfinance institutions to take reasonable steps to ensure that the borrower will be able to fulfil his or her obligations under the agreement while still being able to meet the necessary living expenses of himself and his family. Microfinance institutions in Zimbabwe have been known to overburden borrowers financially to an extent of impoverishing the same persons whom they should be bailing out. To that end, microfinanciers are also obliged to have a credit control advisor responsible for providing the borrowers with the necessary information to enable them to manage their credit.<sup>22</sup> This requirement is a formal acknowledgement by the legislature of the lack of the necessary financial knowledge often exhibited by consumers of microfinance services and it is a commendable provision under the Act.

#### 4.2 The Microfinance Code of Conduct

One of the ethical and corporate governance underpinnings of the Microfinance Act in Zimbabwe is the provision for a Microfinanciers Code of Conduct. In terms of section 17 of the Act every microfinancier in Zimbabwe is obliged to comply with the code of conduct set out in the First Schedule of the Act. The inclusion of the Code in the Act itself is a welcome development in that ethical considerations when undertaking microfinance business are given the force of law. A microfinancier would be considered to be adopting undesirable methods of conducting business if it fails to comply with any of the ethical practices and rules of conduct under the Code.<sup>23</sup>

The Microfinanciers' Code of Conduct is at the centre of the legislature's intention to promote fair dealing between microfinanciers and the consumers of their products in Zimbabwe. The contents of the code can conveniently be discussed under various headings as stated below:

##### 4.2.1 Transparency and Disclosure Requirements

The Code advocates for fair treatment and courtesy towards clients.<sup>24</sup> Transparency is one of the Act's signature marks through the requirement that there must be full disclosure to clients and potential clients of all terms and conditions regarding financial services offered by a microfinancier. The disclosure is required in plain and simple language understood by clients.<sup>25</sup> This requirement augurs well with section 14 of the Consumer Protection Bill recently gazetted in Zimbabwe.

##### 4.2.2 Avoiding Client Over-indebtedness and Collection Practices

The Microfinance Act in Zimbabwe places an obligation on all microfinanciers to avoid over-indebtedness of the borrower through Code provisions. In terms of section 5(1) of the Microfinanciers Code of Conduct, all microfinanciers are obliged to take reasonable steps to ensure that the credit services they offer are based on the need and repayment capacity of each client. Microfinanciers are also called upon to ensure that credit services they offer will not put the borrowing client at significant risk of over-indebtedness. These requirements can be achieved through a microfinanciers' due diligence in assessing the creditworthiness of the borrower through investigations of such client's information such as debt history,

<sup>20</sup> Section 16(1)(c) of the Microfinance Act (Chapter 24:29).

<sup>21</sup> Section 16(2) of the Microfinance Act (Chapter 24:29).

<sup>22</sup> Section 26(1)(c) of the Microfinance Act (Chapter 24:29).

<sup>23</sup> See foreword to the Microfinanciers Code.

<sup>24</sup> Section 1 of the Microfinanciers Code.

<sup>25</sup> Section 4 of the Microfinanciers Code.

sources of income and the nature of collateral that may reasonably be expected from them.<sup>26</sup> Microfinanciers are also enjoined by the Code to avoid stressful recovery methods such as the detaining of ATM cards or the demanding of post-dated cheques as security for any credit facility.<sup>27</sup>

#### 4.2.3 Client Education and Financial Literacy

Responsible microfinancing is one of the driving spirits behind the Microfinanciers' Code of Conduct under the Microfinance Act. Microfinance institutions in Zimbabwe can no longer afford to ambush clients through denial of vital financial information which is necessary to enable clients to make informed borrowing decisions. Through the Code, microfinanciers are required to adequately inform clients and potential clients of any information that will enable them to make informed choices and decisions concerning the range of credit facilities or options available to them, whether or not such facilities or options are offered by the microfinancier concerned.<sup>28</sup> In that regard, microfinanciers are enjoined to have at least one credit control advisor to give credit control advice to current or potential clients. It is a requirement under the Code that the credit control advisor should not be involved in any way with the offering of credit facilities to current or potential clients.<sup>29</sup> The non-involvement of the credit control advisor in the offering of credit facilities is meant to confer the official with an aura of independence and impartiality when giving financial literacy advice.

Although the advocacy for financial literacy is a welcome development under the Microfinance Act, it is doubtful if microfinanciers will be able to fulfil its implementation due to potential financial constraints in the hiring of a credit control advisor. This is because the credit control advisor should be an official independent from the credit facility generation process which implies that the official will be there solely for external advisory purposes. The other hindrance in the implementation of the financial literacy requirement could be the will of the management at particular microfinance institutions especially where clients are to be educated about favourable products being offered elsewhere which are not at the institution where the advice is being offered. The desire to be competitive and to have a larger market share control might influence credit control advisors to offer financial credit advice skewed in favour of their employer even if it is not the best in the industry.

#### 4.2.4 Enforcement of the Microfinance Code of Conduct

The enforcement of the Microfinance Code of Conduct is provided for under Part VIII of the Microfinance Act. Section 44 of that part provides that the grievance procedure therein can only be revoked if there is an allegation that a microfinancier has carried out business through undesirable methods. The worrisome provision however is section 44(2) which is worded in a manner that favours microfinanciers whenever an allegation of conducting business through undesirable means has been levelled. That section provides as follows:

*"For the avoidance of doubt it is declared that a microfinancier shall not be guilty of an undesirable method of conducting business by virtue of an act or omission of a person employed by it if it is proved that the responsible authority of the microfinancier did not know and could not reasonably be expected to have known of the act or omission"<sup>30</sup>*

The import and presence of this provision is not readily clear given that it seems to be an exemption clause meant to exonerate microfinanciers' authorities of any possible vicarious liability. It is generally known that corporate authorities operate through employees who are bound to err or commit offences without the knowledge of their superiors for which those superiors would later be found liable through vicarious liability. The positioning of the section under enforcement of the code sends wrong and intimidatory signals to potential complainants who are likely to perceive the provision as holding the stakes high against them should they try to launch a complaint. Under the new Consumer Protection Bill this provision is likely to run counter with section 41 of that Bill when passed into law. This is because section 41 of the Consumer Protection Bill provides that if an employee or agent of a person is liable in terms of the Consumer protection law for anything done or omitted in the course of that person's employment or activities on behalf of their principal, the employer or principal is jointly and severally liable with that person. It is submitted that section 44(2) should be removed

<sup>26</sup> See section 5(2) of the Microfinanciers Code.

<sup>27</sup> See section 6(6) of the Microfinanciers Code.

<sup>28</sup> Section 8(1) of the Microfinanciers Code.

<sup>29</sup> Section 8(2) of the Microfinanciers Code.

<sup>30</sup> Section 44(2) of the Microfinance Act (Chapter 24:29).

and let the disciplinary committee or some other adjudicating forum to decide the innocence or guilty of the microfinancier rather than have predisposed provisions such as this one.

The microfinance code of conduct enforcement mechanism commences when a person aggrieved by a microfinancier's way of doing business lodges a complaint with the Registrar.<sup>31</sup> The Registrar will then inform the Secretary<sup>32</sup> of the complaint who will then instruct the disciplinary committee to meet and investigate the complaint.<sup>33</sup> The disciplinary committee is composed of the Registrar, a representative of microfinanciers appointed by the Minister of Finance and a representative of the Reserve Bank of Zimbabwe.<sup>34</sup> It is difficult to understand the reason for having two representatives both from the Reserve of Zimbabwe, the Registrar and a central bank representative when, if anything, more representatives from the complainant's side such as the Consumer Council of Zimbabwe should have been considered. In terms of section 4(1) of the Microfinance Act the Registrar shall be an appointee of the Reserve bank tasked with registration and cancellation of registration of microfinanciers among other duties assigned to the official. It therefore follows that the Registrar's presence in the disciplinary committee should be enough to represent the interests of the regulator, the central bank without the costly need of seconding another official from the Reserve bank. It is submitted that the disciplinary committee's composition should at least have representatives from consumer groups and those from the legal fraternity, for example, a retired judge, to oversee the proceedings in the interest of justice for the complainant.

Although the Microfinance Code of Conduct is a thrill to read its enforcement mechanism is a complete reversal of the hitherto fair provisions. The enforcement mechanism provides for a tedious grievance procedure which is too complicated for the average consumer of microfinance services. The procedure moves forth and backwards between the Registrar, the Secretary and the disciplinary Committee and is likely to have a lot of frustrating bottlenecks on the part of the complainant.<sup>35</sup> The outcome of the grievance procedure under section 48 of the Act is a victory to the Reserve Bank of Zimbabwe rather than the complainant who would in some cases have initiated the proceedings. For example, once a microfinancier is found guilty of undesirable method of conducting business it may be made to pay a fine to the Reserve Bank notwithstanding any prejudice which might have been caused to the complainant.<sup>36</sup> It is submitted that a pro-complainant approach would have been desirable in strengthening the microfinance sector rather than the crime-punish approach prevalent under criminal law. As already alluded in the foregoing the microfinance code of conduct enforcement mechanism is too long, a bit too formalised and likely not to be of any help to average consumers of microfinance products.

#### 4.2.5 Consumer Protection under the new Microfinance Law

The following quote from Hanning and Jansen (2010) provides an apt opening to the discussion under this heading:

*"Every year 150 million new customers enter financial markets worldwide. Information asymmetry between consumers and banks regarding financial products and services puts these new customers at a disadvantage. This imbalance is greatest when customers are less experienced and the products are more sophisticated. Progress on financial inclusion therefore carries the risk of producing more inexperienced and vulnerable customers."<sup>37</sup>*

It is in light of the foregoing quote that the new Microfinance Act's effectiveness in Zimbabwe should be tested against its letter and spirit regarding consumer protection. Despite the need to widen the scope of financial inclusion, correspondingly regulators also need to appreciate the consumer protection perspective when establishing regulatory and supervisory regimes.<sup>38</sup> Consumer protection is generally considered to be a regulatory response to a market failure.<sup>39</sup> Zimbabwe does not have a comprehensive consumer protection law particularly earmarked for consumers of financial services. There is a ray of hope for consumers however from the recent Consumer Protection Bill of 2014 which is currently in parliament even though the extent of its coverage of financial consumer rights is yet to be ascertained.

<sup>31</sup> Section 46(1) of the Microfinance Act (Chapter 24:29).

<sup>32</sup> Section 2 of the Microfinance Act defines a secretary as the Secretary of the Ministry to which this Act is assigned.

<sup>33</sup> Section 46 (2) of the Microfinance Act (Chapter 24:29).

<sup>34</sup> Section 45 (a)(b)(c) of the Microfinance Act (Chapter 24:29).

<sup>35</sup> See sections 45 to 48 of the Microfinance Act (Chapter 24:29).

<sup>36</sup> Section 48(10)(a)(ii) of the Microfinance Act (Chapter 24:29).

<sup>37</sup> Hanning and Jansen (2010).

<sup>38</sup> See Hanning and Jansen (2010).

<sup>39</sup> Eisner, Warshm, and Ringquist (2006).

According to Alliance for Financial Inclusion (2010) general consumer protection laws are not adequate for financial consumers. The financial inclusion advocacy group argues that there is need for protection unique to the financial services such as fair market practices and equitable treatment.<sup>40</sup>

The legislature under the new Microfinance Act in Zimbabwe has attempted to take consumers of financial services into consideration. The Act has a number of provisions which when given pro-consumer interpretation can yield a balance between financial inclusion and consumer protection. For instance the Act enjoins every microfinancier in Zimbabwe to have written loan agreements setting out clearly all its material terms and conditions and to specify any penalties for prepayment of amounts owed by the borrower under the contract.<sup>41</sup> The Act further proscribes any provision of a loan agreement which purports to unilaterally alter the rate of interest payable by the borrower or the repayment period.<sup>42</sup>

Clearly these provisions augur well with the consumer protection fair market principles by advocating for fair and equitable terms of loan agreements. The legislature should be commended for coming up with such consumer-oriented provisions under the Act.

Furthermore, the Act provides for requirements for lending by microfinance institutions under section 26. Of significance from a consumer protection perspective is the requirement that, before a microfinancier advances credit to a borrower it must take reasonable steps to ensure that the borrower understands the essential terms of the loan agreement and that a credit control advisor provides the borrower with the necessary information to enable the customer to manage their credit.<sup>43</sup> This provision augurs well with section 14 of the Consumer Protection Bill which provides for the right to information in plain and understandable language. It also dovetails with the right to consumer education under section 13 of the Consumer Protection Bill. Consumer education has been viewed as one of the baseline tools in consumer protection in that it helps balance information asymmetries between consumers and providers of financial services.<sup>44</sup>

However, the grievance procedure under the Code's enforcement mechanism seems to fly in the face of the recently gazetted Consumer Protection Bill due the lack of simplicity. There is need to have a simplified grievance solving procedure under the Microfinance Act which is informal and possibly decentralised to those levels where consumers of microfinance services are generally found. With the advent of the Consumer Protection Bill with its all-encompassing applicability to all sectors including the microfinance sector, it is hoped that some of its consumer rights enforcement mechanisms will be invaluable. For instance the Bill provides for the establishment of the Consumer Protection Commission under section 5 and the Consumer Court under section 43 which are specialized organs and would be vital in the discharge of consumer justice when the Bill is passed into law. The Bill also contains fundamental rights of the consumer under Part III which are likely to revolutionize the way consumers of microfinance services are treated when the Bill is passed into law.

## 5. Supervision of Microfinanciers

Supervision of microfinanciers is undertaken to ensure that these financial institutions comply with the provisions of the Microfinance Act and its regulations together with other best practices within the industry.

### 5.1 The Reserve Bank of Zimbabwe

The Reserve Bank of Zimbabwe is the authority responsible for the continuous monitoring and supervision of microfinanciers in Zimbabwe.<sup>45</sup> The Reserve Bank is the guardian of both the Microfinance Act and any regulations that it may issue from time to time. It carries out its monitoring and supervisory role through investigations and inspection of individual microfinance institutions.<sup>46</sup> Failure by a microfinancier to comply with the provisions of the Microfinance Act, enjoins the Reserve Bank to sanction the institution through various measures specified under section 37 of the Act. Such measures include, *inter alia*, the issuance of a warning to the microfinancier or the issuance of a written instruction to the microfinancier to undertake remedial action specified in the instruction.<sup>47</sup> In carrying out its supervisory mandate, the

<sup>40</sup> Alliance for Financial Inclusion (2010).

<sup>41</sup> Section 16(a)(c) of the Microfinance Act (Chapter 24:29).

<sup>42</sup> Section 16(2) of the Microfinance Act (Chapter 24:29).

<sup>43</sup> Section 26(b)(c) of the Microfinance Act (Chapter 24:29).

<sup>44</sup> Hanning and Jansen (2010).

<sup>45</sup> Section 36 of the Microfinance Act (Chapter 24:29).

<sup>46</sup> Section 36 (2) of the Microfinance Act (Chapter 24:29).

<sup>47</sup> Section 37(1)(a)(c) of the Microfinance Act (Chapter 24:29).

Reserve Bank is obliged to abide by the principles of natural justice by affording any microfinancier alleged to have contravened the Act, an adequate opportunity to make representations in the matter.<sup>48</sup>

It is submitted that the supervisory role of microfinance institutions should have been conferred upon another independent body specifically devoted to microfinance institutions instead of the Reserve Bank of Zimbabwe. It is common cause that the central bank is too inundated with numerous tasks in its mandate as banker to government<sup>49</sup> and its role as supervisor to banking institutions to down-grade its cumbersome supervisory roles to the level of microfinance institutions. It is submitted that it is such independent body tasked with the supervision of microfinance institutions, which should then be accountable to the Reserve Bank of Zimbabwe. It is submitted that total financial inclusion of those with restricted access to formal financial institutions, would entail decentralisation of some of the services previously offered by the central bank to certain lower bodies easily accessible by the financial underserved customer.

## 5.2 The Deposit Protection Corporation

The Deposit Protection Corporation was established in terms of section 4 of the Deposit Protection Act [Chapter 24:29]. Some of its functions under section 5 of the enabling Act include the administration of the Compensation Fund, the levying of contributions from contributory institutions; and the payment of compensation to depositors in the event of the insolvency of a contributory.

The Microfinance Act obliges every microfinance institution to be a contributor for the purpose of the Deposit Protection Act.<sup>50</sup> There is something anomalous about this requirement because not every microfinance institution receives deposits from customers to warrant compliance with the provision. The Microfinance Act itself recognises two types of microfinance institutions, those which are credit-only and those which take deposits from customers.<sup>51</sup> Such a distinction cannot be brushed aside for the purposes of the Deposit Protection Act while at the same time antagonising provisions under the Microfinance Act. The Deposit Protection Act is a piece of legislation promulgated to provide for the establishment of the Deposit Protection Corporation and a Deposit Protection Fund in order to compensate depositors in the event of financial institutions becoming insolvent. As already indicated section 35 of the Microfinance Act makes the Deposit Protection Act applicable to all microfinance institutions as contributory institutions to the Deposit Protection Fund. However to suggest that the Deposit Protection Act should apply even to credit-only microfinance institutions when it is clear that this type of microfinance institution does not receive deposits from customers would be stretching the law a bit too far. It is submitted that there is no basis under both the Microfinance Act and the Deposit Protection Act to levy fees on credit-only microfinance institutions to be remitted to the Deposit Protection Fund.

The Deposit Protection Corporation was created to protect depositors, particularly small depositors and to keep the public informed of the rights of depositors in the event of a contributory institution becoming insolvent.<sup>52</sup> It is clear from its major functions under section 5 of the Deposit Protection Act that the Deposit Protection Corporation is there for *depositors* implying that when section 35 of the Microfinance Act refers to all microfinance institutions being contributors, the intention could not have been to include credit-only microfinance institutions since these do not deal with depositors. Section 35 of the Microfinance Act therefore should be amended to clearly indicate that only deposit-taking institutions shall be contributors to the Deposit Protection Fund. This will not only bring clarity to the law but will also re-align both the Microfinance Act and the Deposit Protection Act to regulate similar and intended institutions with certainty.

## 6. Evaluation and Analysis

The Zimbabwean Microfinance sector is still in its infancy but is growing exponentially due to the closure of numerous banks while the majority of Zimbabweans are yearning for financial inclusion. Cognisant of the need to have a well-structured sector, the government of Zimbabwe promulgated the Microfinance Act to provide a conducive regulatory framework under which the microfinance business can be conducted in the country. The Act is a welcome development in that it is the first of its kind to have a specialised focus on microfinance institutions. This piece of legislation incorporates a Microfinanciers Code of Conduct among other progressive provisions it has.

Although the Act, in the main, is a positive recognition of the significant role played by microfinance institutions, it is

<sup>48</sup> Section 37(2) of the Microfinance Act (Chapter 24:29).

<sup>49</sup> See section 8 of the Reserve Bank of Zimbabwe Act (Chapter 22:15).

<sup>50</sup> Section 35 of the Microfinance Act (Chapter 24:29).

<sup>51</sup> See section 2 of the Microfinance Act (Chapter 24:29).

<sup>52</sup> See sections 5(1)(f) and 5(2)(a) of the Deposit Protection Act (Chapter 24:29)



lacking in certain minor areas which can be remedied, through amendments. Such areas include grounds, under which a microfinancier's licence can be cancelled, the centralised role of the Reserve Bank of Zimbabwe in the monitoring of microfinance institutions and the linkage of the Deposit Protection Corporation to credit-only microfinance institutions. The other area of concern is the strict overall regulatory control of microfinance institutions under the Act which almost mirror that of banks yet microfinance institutions in the main should have a more flexible way of operating than banks considering the nature of customers they serve and the financial inclusivity they propose to achieve. To create an environment that is conducive to financial intermediation, governments and policymakers must ensure that financial regulation does not result in financial repression.<sup>53</sup> The grievance procedure for the enforcement of the microfinance code of conduct is also too formal for the average consumer of microfinance services to use. Although regulatory framework for microfinance institutions recognises consumer protection principles, these are not adequate and are likely to be augmented when the new Consumer Protection Bill, already in parliament, is passed into law. The Bill provides for fundamental rights of consumers and a strong institutional framework likely to be of immense benefit to consumers of microfinance services in Zimbabwe.

## 7. Conclusion

The Zimbabwean microfinance regulatory and supervisory framework is positive and still developing. Being one of the few countries in Southern Africa to come up with a specialised law for the microfinance sector, Zimbabwe has gone a step further than the other countries which are still regulating the microfinance business through piece-meal provisions incorporated under various banking legislations. Nonetheless there are still a number of areas to be attended to under the regulatory framework to make it a well-developed one. The overall concern being that the new Microfinance Act strictly mirrors the Banking Act out of which it tries to extricate itself. However, the idea of a specialized law for the conducting of microfinance business away from the stringent provisions of banking laws is a welcome development towards boosting investor confidence in the sector and protection of consumer rights.

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<sup>53</sup> Ledgerwood (1999).

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