CONSUMER CREDIT BILL

A. GENERAL/PRELIMINARY COMMENTS

Micro Lenders Association of Namibia	
Comment/Description of issue:	**Response:**
1. Reservation for Future Commentary: The comments contained are not exhaustive. The Micro Lenders Association of Namibia ("MLA") specifically reserves the right to provide further, and more specific, commentary subsequent to any amendments made to the draft bill. Furthermore, it should be noted that the MLA may explore the option of challenging the constitutionality of any provision within the Act, pursuant to the advice received from its legal counsel. **2. Insufficient Grounds for the Bill's Necessity:** It is disconcerting to note the lack of meaningful engagement with stakeholders, given the absence of a comprehensively motivated rationale for the bill and its numerous provisions. Some of these appear to be inconsistent, and the overall structure is unduly complex, rendering it difficult to ascertain the bill's underlying objectives. **3. Inadequacy of Available Information for Meaningful Engagement:** The draft bill refers to forthcoming Standards, Regulations, Principles, Guidelines, and Codes, yet these have not been provided for scrutiny alongside the draft. In the absence of these essential components, it is impractical to engage meaningfully with the draft bill or to conduct a thorough stakeholder consultation process.	Noted. The Consumer Credit Policy contains the rationale for the Bill, which Policy was consulted on. Countrywide face-to-face public consultations were also conducted. The standards will be published for comment.

4. General Comments:	
4.1. Interestingly, the Bill does not provide for consolidation loans in instances where consumers are over-indebted. These loans should be specifically excluded from the application of Chapter 4 Part D. Over-indebted consumers should have access to consolidation loans, consolidating all existing loans at a cheaper rate or more favourable payment terms, and credit providers should not be concerned about possible non-compliance when granting consolidation loans to over-indebted consumers. Section 66(1)(b)(ii) falls short of protecting credit providers when granting consolidation loans.	There should not be any exceptions in respect of consolidation loans. Excluding them from Part D of Chapter 4 may provide a way to circumvent the law and label any loan offered to an overindebted person a consolidation loan.
4.2. The Bill does not provide (Costs of Credit) for the inclusion of costs associated with the monthly collection of the instalment amount payable in terms of a credit agreement or for costs associated with the disbursement of the loan. Although these costs do not necessarily impact the mainstream lenders, i.e., banks, they certainly have a more costly impact on the microlending industry. Mainstream banks utilise simple debit order instructions, whereas microlenders use Party Payment Providers. This may be more of a prominent issue in respect of the anticipated EnDo.	Provision was made for a payment facilitation fee.
General	
In consideration of the document in general, have regard to Article 22(b) of the Namibian Constitution ("the Constitution").	Due regard has been given to the Constitution.
"*Limitation upon Fundamental Rights and Freedoms: Whenever or wherever in terms of this Constitution the limitation of any fundamental rights or freedoms contemplated by*	

this Chapter is authorised, any law providing for such limitation shall: *(a) Be of general application, shall not negate the essential content thereof, and shall not be aimed at a particular individual;* *(b) Specify the ascertainable extent of such limitation and identify the Article or Articles hereof on which authority to enact such limitation is claimed to rest*." Restrictions or limitations of rights and freedoms guaranteed in Article 21(1), must be authorised by law, and that law – 1. must specify the ascertainable extent of the limitation or restriction; 2. must be of general application (including administrative action taken in terms thereof or under subsidiary legislation); 3. shall not negate the essential content of the right; 4. shall identify the articles or article of the Namibian Constitution on which such limitation or restriction is claimed to rest; 5. where a limitation is authorised by the Namibian Constitution itself, the proportionality test must be applied to determine the constitutionality of the limitation. In this regard – "The objective of the impugned provision must be of sufficient importance to warrant overriding a constitutionally protected right. It must relate to concerns pressing and substantial in a free and democratic society. The means chosen must pass a proportionately test. They must: 5.1 be rationally connected to the objective and not be arbitrary, unfair or based on irrational considerations; 5.2 impair the right as little as possible; and 5.3 be such that their effects on rights are proportional to the objective The limitation itself must not be in conflict with the Namibian Constitution and/or the	

fundamental rights and freedoms enacted by the Namibian Constitution itself. If the limitation is authorised by an Act of Parliament, it must not be obscured by its overbreadth. Upon reading the law limiting the right or authorising the limitation of the right, the scope of the limitation must be objectively ascertainable. Article 21(2) provides that the fundamental freedoms referred to in Article 21(1) shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said Sub-Article, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Article 22 provides that whenever or wherever in terms of the Namibian Constitution the limitation of fundamental rights or freedoms contemplated by this Chapter is authorised, a law providing for such limitation shall – 1. be of general application, shall not negate the essential content thereof, and shall not be aimed at a particular individual; 2. specify the ascertainable extent of such limitation and identify the Article or Articles hereof on which authority to enact such limitation is claimed to rest. Article 22 does not authorise the limitation of constitutional rights. Article 22 only provides for the extent to which the right may be limited, be it a right or freedom enshrined in Article 21(1), or any other fundamental right. Article 25(1) provides that save in so far as it may be authorised to do so by the Namibian Constitution, Parliament or subordinate legislative authority shall not make any law, and the Executive and the agencies of Government shall not take any action which abolishes	

or abridges the fundamental rights and freedoms conferred by Chapter 3, and law or action in contravention thereof shall to the extent of the contravention be invalid, subject to the provisos in Article 25(1)(a) and (b). Article 25(2) provides that aggrieved persons who claim that a fundamental right or freedom guaranteed by the Namibian Constitution has been infringed or threatened shall be entitled to approach a competent Court to protect or enforce such a right or freedom. State action (be it regulation or limitation not based on Article 23), which discriminates or permits discrimination on any ground as stated in Article 10, is unreasonable, arbitrary, and will have no legitimate object.		
BA Sandlana, Fridrick Kantana Amandus, Loise Niita Iipinge, Lineekela T. Nashoonga, Sandra Nchindo Nkuwa, Selma Awala, Tomas Mushona, Trevor Mainjongo Karuaihe, Teopolina Nosurrender Ashivudhi, Tuhafeni Hangalo		
Comment/Description of issue:	**Proposed Amendment/Solution:**	**Response:**
The Namibia-Consumer-Credit-Policy-29_05_2020, which preludes the CCB, has a section 3.9 Debt Rescheduling, that is currently not included/removed from Consumer Credit Bill (CCB). This leaves over indebted Namibian consumers without an affordable solution out of their situation, leaving them unprotected and in a vulnerable position. This thus makes the CCB in its current format not sufficient in protecting the consumer.	I(we) propose that Debt Rescheduling be added to the Consumer Credit Bill (CCB).	Note that part 3.9 of the Policy Paper specifically rules out debt rescheduling as a solution for the Namibian market. However, the comment is noted and appreciated, and it will be conveyed to the policymakers.
Creditinfo Namibia Bureau (Pty) Ltd		
Comment/Description of issue:		**Response:**

Conflict with current credit bureau regulations - How will these two align or will the CCB fully repeal the current CRB regulations? It appears that this part of the draft bill on relation with existing acts is not yet finalised.	The current Credit Bureau Regulations will be repealed.
Regulator - Why NAMFISA as primary regulator for CBs instead of Bank of Namibia? Both are named as the "consumer credit regulators" and tasks are not assigned to each other. This brings lots of uncertainty and may become burdensome to have reporting workflows with two different public bodies for the same issues potentially.	As per the Consumer Credit Policy Paper, and to be determined by the Minister in terms of section 10. Each CCR will have exclusive jurisdiction (not concurrent) over specific credit providers and other registrants (credit bureaus and debt collectors), as per the designation to be issued under section 10.
Lack of clear rules - The Bill is drafted in a way where many provisions are left to the development of standards, regulations, etc. Left to the power of the regulators. This leaves the sector with less legal certainty, less power to consult on the rules that apply before these are enforced.	Adequate opportunity will be provided for consultation on the standards.
No provision made: Telco's, hospital's etc. - Will these be outlined and fall under incidental credit under CCB?	In general, they will fall within the scope of incidental credit.
No provision made: Marketing material - Please refer to section indicating that marketing material should include pricing estimations for credit bureaus.	There are no requirements in terms of advertising material involving credit bureaus.
No Provision made: Reporting to Regulator by Credit Bureaus - Reporting structure to be provided to Credit Bureaus. Will it stay unchanged as currently done to Bank of Namibia or will new structures be implemented?	Refer to sections 53 and 54. Read with section 10 (designation of CCRs), new structures will be implemented.

DBN	
Comment/Description of issue:	**Response:**
The draft Bill seems to have been prematurely circulated for comments, as it is incomplete, in that the information relating to the schedules concerning conflicting or overarching legislation has not been populated. Furthermore, although the Banking Institutions Act is said to be amended to align same to the Bill, it is unclear which specific provisions of the Act are to be amended to enable industry participation in holistic commentary. Reconsider and re-table the draft Bill and in consideration of alignment towards the current landscape.	As part of the legislative drafting process, specific provisions in other legislation requiring amendments will be identified at a later stage, and those amendments will be made in due course. It is not considered premature to consult on a draft bill without having those specifics.
The intention of the Act is for credit providers to share information with ITC. DBN only provides credit facilities to legal entities, hence the sharing of information will be limited in respect of juristic consumers. There is no available format in which to share data on juristic consumers as a template is only designed in respect of natural consumers. Clarity is sought from BON as to the availability of a juristic consumer template.	The required forms will be provided for under the standards.
Agra	
Comment/Description of issue:	**Response:**
How do we handle inability to obtain information for existing consumers who do not wish to sign credit agreements or send updated documents?	The Bill applies to pre-existing credit agreements to the extent provided for under Schedule 3. Each case will have to be dealt with depending on the particular circumstances.

B. COMMENTS ON THE SECTIONS

Section 1				
Company/ Institution/ Person	**Definitions, subsections, letters (if indicated)**	**Comment/Description of issue:**	**Proposed Amendment/Solution:**	**Response:**
Micro Lenders Association of Namibia	Definition of "credit score"	A person should have the right to contract with whom he/she/it wishes, this cannot be forced. Constitutional infringement.	Remove "determined by the relevant Consumer Credit Regulator in consultation with credit bureaus and credit providers". The section should read as follows: ""credit score" means a numerical expression based on the consumer credit information of a consumer or prospective consumer that is used to determine credit worthiness of a consumer or prospective consumer;"	The definition was amended as proposed. A further section was included later-on for the Consumer Credit Regulator to determine the minimum requirements for the development of the credit score in a standard.
	Definition of "juristic person"	The definition of juristic person differs from the legal definition of a juristic person. Juristic persons are dealt with differently than natural persons throughout the Act – what is the rationale therefor?	Definition to be brought in line with the legal definition of a juristic person.	The definition of "juristic person" was removed and replaced with "entity". Where "juristic person" is used, it must take its ordinary meaning.

		Why are specific exceptions applicable to only juristic persons in Section 6?		The differentiation was removed.
	Definition of "licensed premises"	Why is there a differentiation between microlenders and other financiers, such as clothing stores? The Act ought to be applied to all uniformly. Constitutional infringement.	If the requirement of licensed premises is not applied to all those regulated by the Act, the proposal is that the reference thereto be deleted.	All provisions around "licensed premises" were removed.
	Definition of "public interest credit agreement"	The reference to public interest credit agreement, and the provision therefor, is Constitutionally challengeable due to vagueness and complete abdication of responsibility by lawmaker.	Delete definition and further references of same in Bill in total.	Section 9 was deleted.
	Definition of "this Act"	The current definition is too wide. What would constitute "other subordinate measures"? This term is not defined and creates an opportunity for arbitrary	Delete "or other subordinate measures".	The definition was retained as is.

		decision making, and does not comply with the rule of law in that it fails to create legal certainty. The proposal is to include regulations, the procedures for making regulations, and in what circumstances regulations may be made. The definition of "this Act" is unconstitutional in that it is impermissibly vague, wide, unguided and unfettered, and militates against the separation of powers enshrined in the Namibian Constitution, elevating the "subordinate measures" to primary legislation, and introducing administrative acts of functionaries (including the Executive) as primary legislation. The making of legislation falls within the purview of the Legislature.		

		Add new definition for: "agents". Refer to section 34 in Bill.		A definition was not included. The substantive provision simply provides that employees, agents and other representatives must be trained, and that they must disclose their identities and other information to consumers when they solicit credit on behalf of a credit provider.
		Add new definition for: "business day". Refer to section 2(4) in Bill.		The term is adequately explained in section 2(4).
		Add new definition for: "calendar day". Refer to section 2(5) in Bill.		The term is adequately explained in section 2(5).
		Add new definition for: "Consumer Credit Regulators". Refer to section 10(1) in Bill.		Section 10 provides for NAMFISA and the Bank of Namibia to be the Consumer Credit Regulators. A definition is not considered necessary.
DBN	Definition of "consumer"	The definition of a "consumer" is		The definition of "consumer" was simplified. It must be read with

		overboard, which is not ideal; as it appears to incorporate "employers" (i.e., Ministries/SOEs). The role of the Competition Commission in Consumer Protection appears to be superseded, which has the potential to render the role of the NaCC as redundant. Clarity sought on the role of the NaCC in respect to the definition of consumer and it may be prudent to incorporate the Competition Act as part of the laws affected by the Bill.		section 4. This Act will not affect the NaCC or their mandate.
First National Bank of Namibia Limited	Definition of "adverse consumer credit information"	This seems to replicate the provisions of the Credit Bureau Regulations under the Bank of Namibia Act (1997). However, in the bill it does not seem to indicate the aforesaid regulations will be repealed. In addition, who will have	It is unclear to what extent the different legislation will apply and which regulator will have oversight.	The current Credit Bureau Regulations under the Bank of Namibia Act will be repealed. As detailed in the Consumer

		oversight of credit bureaus under the new proposed legislation? Is NAMFISA taking over the function from Bank of Namibia?		Credit Policy Paper, NAMFISA will have oversight of credit bureaus, debt collectors and credit providers in the non-banking space, subject to the Minister's power to designate under section 10.
	Definition of "advertisement"	There is no reference to the goods or services being acquired on credit and it also doesn't include advertisements pertaining to money lending transactions.	It should be limited to goods and services acquired on credit or money lending transactions (i.e... Currently loans under the Usury Act).	The definition was amended to refer to "credit" specifically.
	Definition of "Banking Institutions Act"	The reference to the legislation is to the old Act.	Please refer to 2023 Act.	The 2023 Act is now referred to.
	Definition of "collection cost"	There is a distinct reference to collection commission that creditors/collectors are allowed to charge in terms of the Regulations to the Magistrate's Court Act (1944). It is unclear to what extent	Please consider harmonizing the concept in the two pieces of legislation.	The definition was amended, and now refers specifically to "collection commission". The two pieces of legislation will be aligned where necessary.

		these two terms will operate.		
	Definition of "consumer"	In line with the provisions of the Bill, its aimed to protect consumers and strike a balance between consumers and credit providers. However, the Bill seems to generalize "salaried customers" but what about high-net-worth individuals?	The Bill should rather seek to protect consumers below a certain threshold or with a certain income.	The definition of "consumer" was amended (simplified), and a definition for "small business" is now included (to be read with section 4). All natural persons, not only "salaried customers", and small businesses are included in the scope of "consumer".
	Definition of "consumer credit information"	Clause b. refers to a person's financial history, without qualifying how far back the history will go.	FNB propose that an express number of years be indicated to which the financial history will apply.	Section 54 makes provision for periods to be specified for the retention of any consumer credit information, as well as for such information to be expunged from the credit bureau's database.
	Definition of "credit life insurance"	Refers to covering instances of "unemployment" which is a very wide definition and might be open to abuse. Surely it was not the legislator's intention to cover for instances of voluntary	FNB propose that it be limited to instances of retrenchment only.	The definition was amended to refer to a "life event".

		resignation, dismissal etc.		
	Definition of "debt collector"	To what extent does the term debt collector refer to a bank who collects on its own debts prior to handover for litigation? The definition is too narrow.	FNB proposes that the clause be expanded on.	The collection of debt owed to the credit provider itself does not qualify as debt collection for purposes of this Act.
	Definition of "juristic person"	Because the Bill draws a distinction between the number of trustees in order for it to meet the definition of a juristic, it will create operational difficulties for banks when contracting. In addition it may lead to consumer abuse.	FNB proposes that a trust is classified as a juristic for all intents and purposes regardless of the number of trustees.	The definition of "juristic person" was removed and replaced with "entity". Where "juristic person" is used, it must take its ordinary meaning.
	Definition of "key responsible person"	Since a trustee is included under the definition of "juristic person", a trustee should also be included in the definition for a key responsible person. The definition is too wide especially when considering	It appears that the definition is cast too wide, and it may have unintended consequences for juristic entities especially. Please NAMFISA should reconsider to remove the shareholder as part of the definition. As listed entities, we can't vet individual shareholders for desirability purposes.	The definition for "key responsible person" was removed. The relevant sections now refer to specific persons instead, with section 1(2) providing an explanation as to what is meant with "the ability to control".

		shareholders and the impact conduct of minority shareholders will have on the registrant.		
Old Mutual Namibia	Definition of "Credit agreement"	Does the definition of credit agreements include: 1. Corporates' accounts with routine suppliers (cleaning agencies, travel agencies, grocers and consumables suppliers, etc.); 2. Zero-interest loans on endowment- type insurance policies; 3. Pension-backed housing loans and housing loan guarantees as provided by registered pension and retirement funds; 4. Overdue contributions to registered pension and retirement funds, medical aids, etc.; 5. Debts owed to State Owned Enterprises and statutory bodies (such as by	Consider specifically excluding selected classes of "credit providers".	The definition of "credit agreement" was simplified. Whether a specific agreement or transaction will qualify as credit for purposes of the Act will depend on the circumstances of each case. It is impossible to provide an exhaustive list of exclusions. Section 4, read with the definitions of "consumer", "credit provider" and "credit" cover most, if not all, of the examples given.

		way of penalties by Regulators, Namibia Revenue Agency, etc.) 6. Debt-financing by Alternative Investments/Private Equity funds; 7. Listed bonds and related derivatives.		
	Definition of "Credit insurance"	Does the definition of credit insurance include Vehicle and Asset Finance cessions under short-term insurance policies?	Clarify.	Yes.
	Definition of "Credit life insurance"	Does the definition of credit life insurance include Vehicle and Asset Finance cessions under long-term insurance policies? Stating "**or** meet the obligations under a credit agreement" creates the impression that credit life policies do not have to be tied	Clarify. It should read "ability to earn an income **and** resulting in not being able to meet the obligations under a credit agreement".	Yes. The definition was amended, removing the part referred to.

		to credit.		
	Definition of "Juristic person"	Is a partnership a juristic person considering it does not have a separate legal identity apart from the partners individually?	Remove reference to partnership. A juristic person should be one with a separate identity in law.	The definition of "juristic person" was removed and replaced with "entity". Where "juristic person" is used, it must take its ordinary meaning.
	Definition of "Key responsible person"	The 5% requirement will be onerous to comply with and will hamper the ease of doing business.	Revise.	The definition for "key responsible person" was removed. The relevant sections now refer to specific persons instead, with section 1(2) providing an explanation as to what is meant with "the ability to control".
	Definition of "Licence"	This is limited to licenses issued to entities regulated under the Financial Institutions and Markets Act, 2021 (Act 2 of 2021) according to the definition of financial institutions, thus excluding microlenders and credit providers.	Revise.	The definitions for "regulated financial institution" and "licence" were removed. Provision is now also made for existing registrations (for banking institutions, microfinance banking institutions, credit bureaus and microlenders) to be deemed registrations under this Act.

	Definition of "Licensed premises"	Are only microlenders required to have licenced premises?	Revise.	All provisions dealing with "licensed premises" were removed.
	Definition of "Mortgage agreement"	Concern ties back to the definitions of credit insurance and credit life insurance.	Revise.	The definitions were amended.
	Definition of "Payment instrument"	Payment System Management Act, 2023 (Act No. 14 of 2023) "means any device, procedure or a process authorised by the Bank by which a payment instruction is issued for the purpose of obtaining money, making payments or transferring funds". See Schedule (Section 2(2)) - Payment services, under the Payment System Management Act, 2023 (Act No. 14 of 2023).		The new Act is now being referred to.
	Definition of	This excludes credit providers	Revise.	The definition was removed.

	"Regulated financial institution"	and microlenders.		
	Definition of "Subscriber"	Reference to "receive".	Amend to "receive or provide".	The definition was amended accordingly.
Fashion Retailers (Pty) Ltd	Definition of "credit score"	It would be preferable and will foster bureaux competition, to allow the bureaux to determine the credit scores (they specialize in this anyway). Some bureau information is better than others and the bureaux can compete on price and quality of credit information held.	Delete this definition.	The definition was amended to remove the "determined by the Consumer Credit Regulator". Another provision was added later-on for the Consumer Credit Regulator to issue a standard to provide for the minimum requirements for determination of the credit score.
EPRA	Definition of "payment instrument"	The Payment System Management Act of 2003 has been repealed and replaced by the Payment System Management Act 14 of 2023 (GN 251/2023 (GG 8171)). It came into force on 8 August 2023. This definition should be amended accordingly.		Done.

TransUnion		There is no definition of the Consumer Credit Regulator.	"Consumer Credit Regulator" should be defined.	Refer to section 10, which specifies that NAMFISA and the Bank of Namibia are the Consumer Credit Regulators. A definition is not considered necessary.
	Definition of (Sec. 1(1)) "adverse consumer credit information"	Definition of adverse classification relating to enforcement action taken by the credit provider should be expanded.	Include under adverse classification relating to enforcement action by the credit provider "Revoked" or "Repossessed".	The proposed wording was included.
	Definition of (sec. 1(1)) "consumer"	Definition of "consumer" does not include "the lessee under a lease".	Include "the lessee under a lease" in the definition of "consumer".	The definition of "consumer" was simplified to no longer refer to specific types of credit agreements.
Section 2				
Micro Lenders Association of Namibia	2(6)	The normal rules of construction must apply.	Delete subsection 2(6) in total.	Subsection (6) was amended to specify that this Act will prevail over any other law to the extent of any inconsistency, provided that if the other law provides for greater protections for

				consumers, then that other law must prevail.
Bank Windhoek	2(2)	The recognition of the use of electronic signatures is welcomed. However, to date the provisions in the Electronic Transactions Act that enable the use electronic signatures have still not come it effect, 5 years since the promulgation of the Act. This delay impacts the digitization efforts particularly within the microloan sector.	A request is made for the recognition of electronic signatures for the purpose of this Act not be made contingent to the operationalization of the Electronic Transactions Act.	Subsection (2) was amended to read to specify that a credit agreement is not invalid if it is entered into electronically. The difficulties around the implementation of the provisions dealing with electronic signatures in the Electronic Transactions Act are noted. This Bill does not impose requirements regarding signatures.
First National Bank of Namibia Limited	2	The bill refers to an "electronic or advanced electronic signature" but it fails to consider the regulations relating to unfair contractual terms which requires that terms in agreements for "financial products" must be explained to the customer in a language	Please harmonise the respective pieces of legislation.	Section 51(3)(d) was amended to remove the difficulties that may arise with electronic transactions.

		he or she understands. That would not be possible if customers could electronically contract for credit products with banks specifically.		
TransUnion	2(5)	It appears that section 2(5) is an exact copy of section 2(4). Propose to remove section 2(5)(c).	2(5) When a particular number of calendar days is provided for between the happening of one event and another, the number of days must be calculated by— (a) excluding the day on which the first such event occurs; (b) including the day on or by which the second event is to occur.	Subsection (4) describes what is meant with a "business" day, while subsection (5) describes what is meant with "calendar" day. Amendments were made to both provisions.
Section 3				
Micro Lenders Association of Namibia	3(a)	There are specific obligations assigned to only microlenders in the bill, making same discriminatory and ununiformly applied. Constitutional infringement.		Paragraph (a) does not deal with microlenders specifically. The differentiation between microlenders and other credit providers has mostly been removed.
Bank Windhoek	3	The purpose of the Act should be to protect both consumers of credit as well as credit	It is important that the Act recognizes the role of consumer behavior in achieving the aims of the Act. A request	The Bill must be considered as a whole, and it deals with the rights and obligations of both credit

		providers and to maintain and ensure a sustainable and competitive credit industry as a cornerstone of the financial services industry and the Namibian economy as a whole. The effective implementation of this Act will require that both credit provider and consumers take the responsibility for compliance thereto.	is made that the Purpose of the Act reflects the obligations of the consumers.	providers and consumers. The purpose of the Bill is consumer protection and the fair treatment of consumers. The Bill stipulates numerous rights of consumers and imposes obligations on credit providers. Section 3(b) provides for responsible borrowing (on both sides) and the fulfilment of financial obligations by consumers.
First National Bank of Namibia Limited	3(e)	The Bill makes provision for two Consumer Credit Regulators, and both seem to have concurrent jurisdiction. This will lead to bottlenecks or duplication of complaints to regulators.	FNB propose the regulators demarcate certain disputes will be within the exclusive jurisdiction of either Bank of Namibia or NAMFISA and that some complaints will be subject to the jurisdiction of both regulators.	Each Consumer Credit Regulator will have exclusive jurisdiction (not concurrent) over specific credit providers and other registrants (credit bureaus and debt collectors), as per the designation to be issued under section 10.
	3(f)	The Bill proposed to reduce and deter financial crime. What constitutes financial crime as same is not a defined term in the Bill?	It is our proposal that this clause be removed from the Bill as it is already covered extensively in multiple other pieces of legislation.	The paragraph was deleted.

Section 4				
Micro Lenders Association of Namibia	4(1)	The reference to sections 5 and 6 does not make sense. These sections do not contain pre-conditions.		The provision was amended to include a reference to incidental credit agreements.
	4(1)(b)	If financial institutions (commercial banks) are excluded, the document cannot be referred to as a Consumer Credit Bill. The Bill is to apply to all commercial banks, including the Bank of Namibia.		Section 4(1)(b) does not provide for the exclusion of commercial banks from the scope of the Act. It does, however, exclude the Bank of Namibia and such exclusion was retained.
	4(1)(c)	What is the purpose of not regulating credit agreements where principal offices are located outside of Namibia, but where the credit agreement is still made inside the borders of the country with a Namibian citizen? This Bill should apply to all credit agreements made within Namibia. Namibian		The provision was removed. Credit agreements made, or having effect within Namibia (read with the other provisions dealing with the scope), fall within the scope of the Act and those credit providers must register and comply with the Act.

		citizens should also be protected against foreign companies giving credit in Namibia.		
	4(7)	What is the purpose of this section? The content is regulated by law?	The whole subsection is to be deleted.	The subsection was removed.
Bank Windhoek	Sections 4, 5 and 6	This section is drafted in a manner that opens it up to multiple and contradicting interpretations and this is further complicated when the section is read with sections 5 and 6. For the purpose of illustrating the ambiguity and contradictions: "at arm's length" is used in section 4 as a requirement for the Act to apply to a credit agreement, however this qualifier is not mentioned in section 5 and 6. Does this mean that incidental credit agreements that are not "at arm's length" will be subject	A request is made to redraft sections 4 – 6 in a consistent and unambiguous manner.	Refer to the amendments made to sections 4, 5 and 6. Section 4(1) was amended to include a reference to incidental credit agreements. Incidental credit agreements not at arm's length will not be subject to the Act. The definition of "consumer" was amended, and section 4(1)(a) was also amended. The exclusions

		to this Act by virtue of section 5 or that credit agreements where the consumer is a juristic person will be subject to the Act even if they are not "at arm's length" by virtue of section 6? Section 4(1)(a)(i) excludes the application of the Act to consumers that are juristic persons that exceed the prescribed asset value / turnover value. However, section 6 (without making reference to the qualifying criteria in section 4(1)(a)(i)), prescribes that certain provisions of the Act will apply to credit agreements where the consumer is a juristic person.		provided for in section 6 – on juristic persons – were removed. Refer to the amendments made to the definition of "consumer" and the changes made to section 4. "juristic persons" who do not also qualify as a "small business" is excluded from the scope of the Bill (as consumer).
First National Bank of Namibia Limited	4(1)	Reference to at "arm's length" – but what about agreements like an Acknowledgment of Debt which is a liquid	To avoid ambiguity – we propose that the definition section be revised to expressly exclude certain transactions from the definition of a credit	It is impossible to provide an exhaustive list of exclusions. Section 4(2) serves to amplify what is meant with "arm's

		document for purposes of obtaining summary judgment? What about a transactional account that becomes overdrawn because no limits where imposed, would this trigger the definition of a "credit agreement"? What about bursary agreements between an employer and an employee – would this be regarded as a credit agreement?	agreement.	length", but it cannot provide an exhaustive list. Whether a specific transaction / agreement qualifies as credit for purposes of this Act, will depend on the circumstances of each case.
Old Mutual Namibia	4(2)	4(2)(a) - "Controlling interest" and "independent" is not defined which does not provide greater certainty as intended by the section. 4(2)(b) - How is the "asset value or annual turnover" to be stated and which will actually be used? 4(2)(c) - The provisions would not seem to be applicable to	Confirm extent of exclusions.	"controlling interest" and "independent" will have to be determined based on the circumstances of each case. Section 4(1)(a) was amended, with the result that section 4(2)(b) and 4(2)(c) were removed. The definition of "juristic person" was removed and replaced with "entity". Where "juristic person"

		partnerships as included in the definition of juristic person. The explanation of how juristic persons are related are vague and subjective. How will credit agreements with public bodies be regulated? Further, why are these then also allowed to self-regulate under section 12? Why is this not applicable where the main place of business is outside Namibia?		is used, it must take its ordinary meaning. Credit extended by public entities will be regulated in terms of the Bill. Sections 10(5) and 12(3)(b) were removed. Section 4(1)(c) was removed, together with section 4(4).
	4(4)	General contractual provisions would apply and render the need for (a) unnecessary. Do the Regulators have jurisdiction to regulate actions and omissions outside of Namibia?	Clarify.	Section 4(4) was removed. Although credit agreements made, or having effect within Namibia (read with the other provisions limiting the scope), fall

				within the scope of the Act, and the involved credit providers must register and comply with the Act, difficulties are foreseen to hold foreign-based credit providers accountable to Namibian laws.
	4(6)(b)(ii)	Is excessively broad.	Clarify.	Section 4(6)(b) was removed, as the provisions dealing with incidental credit adequately caters for the same.
	4(7)	Is not logical as one cannot comply with two conflicting requirements.	Clarify.	The subsection was deleted.
TransUnion	4(1)(b)	The Bill applies to all credit agreements between parties dealing at arm's length and made or having an effect within Namibia, except where – - the credit provider is the Bank of Namibia. As a Credit Provider – does Bank of Namibia have credit	Clarification required.	The Bank of Namibia is excluded from the scope of the Act (as a credit provider), with the result that the Bank of Namibia is not required to submit data to credit bureaus.

		agreements with consumers in place and will they require to submit the data to the credit bureau(s)?		
	4(2)(a)(iv)	The Bill does not apply where the credit is extended between parties who are not dealing at arm's length, for example: - parties in an employee-employer relationship where the extension of the credit does not fall within the employer's ordinary course of business. A deduction from employees' salaries, which will impact their affordability. These entities providing loans to staff will also have to register as a credit provider.	Consider removing this exclusion.	All expenses, including salary deductions, will have to be taken into consideration for the purpose of Chapter 4, Part D. The provision simply explains that a loan between an employer and employee, if not within the employer's ordinary course of business, is not an "arm's length" transaction, with the result that the Act will not apply. Should the employer, as part of its ordinary business, extend loans to employees, the employer will have to register as credit provider.
EPRA	4(1)(c)	In terms of section 4(1)(c), the CCB will not be applicable to a credit agreement where the principal office of the credit provider is located		Paragraph (c) was removed. Credit agreements made, or having effect within Namibia (read with the other provisions limiting the scope), fall within the

		outside Namibia. On the face of it, this means that many consumers of credit in Namibia may find themselves without the protection this law intends to provide. One such instance will be online credit providers, i.e. a company from South Africa providing credit via a digital platform. This will become more prevalent in the future as the number of digital banks are increasing. It is however understandable that such providers are excluded, for two reasons: (a) It is difficult (if not impossible) to have jurisdiction over foreign entities, and thus hold them accountable to Namibian laws, and (b) the consumer willingly contracts with a foreign entity, and thus willing assumes the risk of not being protected by Namibian law. A second example is where a		scope of the Act and the involved credit providers must register and comply with the Act. The difficulties to hold foreign-based credit providers accountable to Namibian laws are, however, noted.

		credit provider's principal office is not in Namibia, but it provides credit through a branch in Namibia (and whether this is factually the case or not can become the subject of a very technical legal debate). In this example the consumer will probably unknowingly obtain credit with the transaction not being protected by the CCB. We believe this should not be allowed. It is noted that all credit providers must register with the respective regulators, and that, for registration, the provider must have a principal office in Namibia. However, a provider who does not comply with this commits a criminal offense (only) and the consumer still does not receive the further protection provided under the CCB, as the CCB otherwise does not		

		apply to the unregistered, foreign provider.		
Section 5				
Micro Lenders Association of Namibia	5	This section is contradictory as incidental credit agreements are excluded under 4(5).		A reference to "incidental credit" is now included under section 4(1).
Old Mutual Namibia	5	If a transaction becomes an incidental credit agreement while the supplier is not registered as a credit provider, are they prohibited from contractually recovering interest?	Clarify.	The provider of the incidental credit will still be able to recover interest (and other costs as per the contract), as long as it falls within the maximum limits prescribed, and if the interest and other costs were disclosed to the consumer in terms of section 5(3).
EPRA	5(3)	We commend the drafters for including incidental credit agreements in the CCB, as this was an area of uncertainty, and a source of great frustration in our law before. It is especially encouraging that the CCB		Noted.

		now specifically clarifies that a credit provider to an incidental credit agreement may only charge fees and interest which were specifically disclosed and also accepted by the consumer before the goods or services were supplied.		
Section 6				
Micro Lenders Association of Namibia	6	The section has the effect that a juristic person cannot be indebted. Juristic persons are dealt with differently than natural persons throughout the Act – what is the rationale therefor? Why are specific exceptions applicable to only juristic persons in Section 6.		The differentiation between natural persons and juristic persons (as consumers) was removed.
Old Mutual Namibia	6	Confirm why these sections are not applicable to juristic persons.	Clarify.	The differentiation between natural persons and juristic persons (as consumers) was removed.
Section 7				

Micro Lenders Association of Namibia	7(2)	The definition of "microlending transaction" accords a constitutionally impermissibly vague, wide, unguided and unfettered determination by the Minister (as political executive) which could materially extend or abridge the scope of application of the Act, in the place and stead of the Legislature.		It is legitimate for the Legislature to delegate legislative powers to a subordinate authority.
	7(3)	The Act cannot be applied retrospectively. Due notice should be given to interested parties and any changes should follow *the audi alteram partem* process.		The section was amended to specify that any subsequent or new threshold does not affect existing credit agreements.
	7(4)(b)	We understand "initial payment" to mean a deposit in relation to a secured credit agreement. Initial payments are not applicable to unsecured credit	Replace "as initial payment" with "deposit". Section to read as follows: "(b) the maximum portion of the cash price or other consideration which shall be paid as a deposit in terms of a secured credit agreement."	"initial payment" was replaced with "deposit" everywhere. It is not correct that a deposit is only applicable to secured credit agreements. In terms of this section, the Minister may

		agreements and as such a clear distinction must be identified in the Act. The different categories of credit agreements must be defined and set out clearly in the Act.		prescribe different minimum deposits in respect of different types or categories of credit agreements.
	7(5)	The agreement referred to should be defined or specifically referred to. It is not clear to whom the Act is speaking.		The Minister is empowered to prescribe different thresholds or limitations in respect of different credit agreements.
	7(5)(b)	Insert specific reference to "deposit" to clarify intention of the Act.	Replace "as initial payment" with "deposit". Section to read as: "(b) different maximum amounts to be paid as deposits in respect of such credit agreement."	"initial payment" was replaced with "deposit" everywhere.
Lewis Stores (Namibia) Pty Ltd	7(4)(a)	1. Note that the extension of the term of a credit agreement is a mechanism through which a credit provider may make monthly instalments under a credit agreement more affordable to a credit-worthy consumer		The provision was not amended. The Minister will take relevant factors into consideration at the relevant time.

		who is capable of maintaining monthly payments but who cannot afford increased monthly instalments which are calculated on a shorter term. This mechanism may be most appropriately used to accommodate credit purchases by lower income credit-worthy consumers. 2. It must be noted that the Namibian population is diverse, spanning over urban, extra-urban and rural locations and several economic bands within both the formal and informal employment sectors. Prescribing a maximum duration for credit agreements which prohibits credit providers from extending the term of a credit agreement to align the monthly instalments with		

		lower income credit-worthy consumers' affordability, will have the result that such consumers are incapable of accessing credit from the formal credit industry – an unintended consequence of which is that these consumers may have no alternative but to seek credit from informal (i.e., unregistered and unlawful) credit providers who do not comply with legislation. 3. We respectfully submit that credit providers should be permitted to elect for themselves the maximum durations of their credit agreements in order to accommodate the unique and individual needs of consumers while emphasising the granting of responsible credit.		

		4. The above serves not only to allow consumers to assess various credit offerings being made available by different credit providers and then to elect the credit offering which is best suited to their individual needs and financial circumstances, but also to enhance competition amongst credit providers which, ultimately, will result in more affordable credit for Namibian citizens.		
	7(4)(b)	1. This section empowers the Minister to prescribe minimum amounts to be paid as initial payments ("deposits") in respect of credit agreements. 2. We wish to point out that deposit requirements have been applicable to the credit industry for several years in that the regulations published		"initial payment" was replaced with "deposit" everywhere. The provision was not amended. The Minister will take relevant factors into consideration at the relevant time.

		in terms of section 3 of the Credit Agreement Act ("Credit Agreement Regulations") prescribe the minimum portion of the cash price which must be paid by a consumer who is purchasing specified goods on credit. 3. In our view, the deposit requirements are an unnecessary barrier to entry into the credit market for consumers which, in many instances, results in an outright denial to credit for most lower income credit-worthy consumers. As indicated above, an unintended consequence of the introduction of deposit requirements is that some consumers have no alternative but to seek credit from informal credit providers which operate outside of the purview of NAMFISA and		

		other enforcement agencies. 4. To this end, we wish to caution against the introduction of deposit requirements and recommend that credit providers be permitted to develop and adopt their own individual deposit requirements in accordance with their individual risk-appetites while emphasising the granting of responsible credit through, inter alia, conducting comprehensive affordability assessments. 5. In addition to the above, we must point out that despite the deposit requirements having been in place for several years in terms of the Credit Agreement Regulations, we continue to observe some of our competitors' non-		

		compliance therewith. This has led to situations where consumers to whom we have refused purchases on credit as a consequence of their inability to pay a deposit, then proceed to make such credit purchases at our competitors as they do not require the payment of a deposit. This is not only severally prejudicial to our business but highly confusing to consumers who observe an inconsistent compliance with the deposit requirements set out in the Credit Agreement Regulations. It is apparent to us that the deposit requirements have historically been poorly enforced, if at all, and we fear that the reintroduction of such requirement in the CC Bill will result in continued prejudice to law abiding corporate citizens such as ourselves.		

Old Mutual Namibia	7	Maximum permissible per transaction or per credit provider or per consumer? The maximum amount and period are already stated in the definition, how will a regulation amend the Act?	Clarify. Remove threshold and include in Regulations.	The maximum refers to the "principal debt" per transaction. The definition also provides for the power of the Minister to amend the thresholds.
EPRA	7	It is understandable that the Minister should be compelled to determine thresholds no later than every five years. In our experience, however, this may not always happen, as the bureaucratic system often leads to decisions, and subsequent regulations by Ministers being made very late. We propose that a safeguard be included in the event that the Minister fails to set a new threshold by the stated deadline, either by the "old" threshold remaining in place until a new threshold is		Section 4(1)(a) was removed, with effect that section 7(1) is no longer necessary.

		set, or the "old" threshold increasing by a specific percentage (every five years) until the Minister sets a new threshold.		
Section 8				
Micro Lenders Association of Namibia	8(2)(a)	The reference to "insurer solely" amount to unfair discrimination. The context and meaning hereof is ambiguous.		The provision was moved to section 4. The wording was changed to "for the sole purpose of".
	8(2)(c)	Why are friendly societies excluded?		The provision was moved to section 4. The qualification "*if profit is not the dominant purpose*" is the reason.
	8(4)(b)		Should refer to "section 5(1)".	Although the reference to section 5(2) was correct, the provision was removed because of the changes to the definitions of "credit", "credit provider' and "consumer".
Old Mutual Namibia	8(2) and (3)	8(2)(a) - Are all insurance policies excluded? Both long-	Clarify.	The provision was moved to section 4. The provision specifies

		and short-term insurance policies? Are insurers allowed to extend credit to policyholders to pay premiums? 8(3)(a)(i) - "as determined by the consumer" - why would the consumer have the right to determine the supply or payment of money?		that a policy of insurance does not qualify as a credit agreement, irrespective of whether it is a long- or short-term insurance policy. It also provides that credit extended by an insurer for the sole purpose of maintaining the payment of premiums on a policy of insurance does not qualify as a credit agreement. The term is now defined in section 1, and "*as determined by the consumer*" was removed.
RFS Fund Administrators (Pty) Ltd	8	The Bill is not clear whether direct pension fund housing loans fall outside the scope of the Bill. In our view, direct pension fund housing loans should fall outside the scope of the Bill, due to the following reasons: • A pension fund is an association of persons with	Explicitly exclude direct pension fund housing loans from credit agreements and thereby from the application of the Consumer Credit Bill – 1. by adding the following paragraph (d) to subsection 8(2): (d) a transaction between a pension fund and a member of that fund in accordance with the rules of that fund; 2. by adding the following definition in	The proposals were incorporated in sections 1 and 4.

		the common purpose of providing certain benefits to its members, former members, and their dependents. It does not have a profit motive and distributes its net income to its members. By exempting pension funds from income tax, the legislator implicitly recognized that pension funds do not have a profit motive. Housing loan agreements between the pension fund and its members are not at arm's length since the granting of housing loans is determined by the Rules of the Fund and the Pension Funds Act. The Rules of the Fund and the Pension Funds Act place restrictions on the amount of credit that may be granted, prescribe the rate of interest that must be charged, and prescribe the maximum repayment period. Further,	section 1: "pension fund" means an organisation registered under the Pension Funds Act 1956 (Act 24 of 1956).	

		the pension fund and the member are not unrelated and not independent of each other. • Profit is not the dominant purpose for entering into direct housing loan agreements. Pension funds only charge interest because it is required by the Pension Funds Act. • Pension funds grant a housing loan to a member either by – o The fund using its own funds and earning the interest (e.g., GIPF and other defined benefit funds) or o The member borrowing from his own funds and paying himself interest (in the case of most defined contribution funds).		

		In the former type of arrangement, the fund, and in the latter case the borrower earns interest as prescribed by law.		
Section 9				
Micro Lenders Association of Namibia	9	This section is constitutionally challengeable due to vagueness and complete abdication.	Propose deletion of section 9.	Section 9 was deleted.
First National Bank of Namibia Limited	9	Would this be payment moratoriums suspending payment under a business-as-usual credit agreement? Or would any addendum be an incidental credit agreement?	Please consider providing a list of what would constitute public interest credit agreements.	Section 9 was deleted.
Old Mutual Namibia	9(2)(a)	The circumstances under which credit is availed under a state of emergency should be dealt with under the state of emergency conditions per the Constitution.	Remove.	Section 9 was deleted.

	9(4)	Excluding reckless credit requirements could dispose the industry to financial stability risk in such circumstances.	Remove	Section 9 was deleted.
Section 10				
Micro Lenders Association of Namibia	10	This section is not proper and fair. One Act cannot be enforced by two regulators. The Act could be applied unequally due to different interpretations. Furthermore, to whom is unregistered credit providers reported to and who is responsible for the prosecution of unregistered credit providers?		The involvement of 2 regulators will not automatically result in improper and/or unfair regulation. Complaints regarding unregistered persons will be attended to by the relevant Consumer Credit Regulator (either NAMFISA or the Bank of Namibia).
Old Mutual Namibia	10(2)	Demarcation of categories or types of credit providers and other registrants to be availed.	Clarify.	NAMFISA will undertake the supervision for non-bank institutions, including retailers, credit bureaus and debt collectors, and the Bank of

				Namibia will undertake the supervision of banking institutions, or as otherwise determined by the Minister.
Section 11				
Micro Lenders Association of Namibia	11(2)(e)	Must include the investigation and prosecution of unregistered credit providers.	Add "and prosecution of unregistered credit providers". Section to read as follows: "(e) investigating and evaluating alleged contraventions of this Act, including the investigation and prosecution of unregistered credit providers."	The paragraph specifying "*investigating and ensuring compliance with this Act*" is considered adequate to speak to unregistered persons.
	11(3)	Who is to be notified and how? What is the notice period? The industry ought to be informed.		The comments are not clear. It is not possible to provide a response.
Creditinfo Namibia Bureau (Pty) Ltd	11(1)(a)	Based on what mandate has Bureaus been moved to NAMFISA as Regulator? Bureaus are not financial institutions, and we provide services to several industries across the credit cycle.	Remain with Bank of Namibia, as all other service providers such as payment providers etc will be supervised / regulated by BoN.	As per the Consumer Credit Policy Paper, and to be determined by the Minister in terms of section 10.

First National Bank of Namibia Limited	11(1)(a)	The Consumer Credit Regulators will be responsible for registering credit bureaus. Would this Act repeal the Credit Bureau Regulations under the Bank of Namibia Act as the regulations sets out a complete framework for the establishment and operation of credit bureaus?	Clarity required.	The current Credit Bureau Regulations will be repealed.
Section 12				
Old Mutual Namibia	12	Who will determine the terms and conditions of the agreement? What information is proposed to be shared to foreign international agencies and authorities? This appears to be very widespread and may result in a breach of a right to privacy.	Recommended for removal – catered for under both the Bank of Namibia Act, 2020 (Act No. 1 of 2020) and the Namibia Financial Institutions Supervisory Authority Act, 2021 (Act No. 3 of 2021).	The section aims to provide for cooperation, harmonisation and coordination between different regulatory and supervisory authorities, involved in the credit industry, and the Consumer Credit Regulators. The terms of any agreement must speak to the principles provided for in the section. In general, the exchange of information between regulators does not involve confidential information of any person specifically. The usual rules around the protection of

				confidential information still apply.
Section 13				
Micro Lenders Association of Namibia	13	This ought to be the CEO/Board. Or in the case of BoN, the Bank. It cannot be delegated.	Propose deletion of section 13 in total.	The section was moved to Chapter 8. "accounting officer" was replaced with "Consumer Credit Regulator".
	13(2)	If the section stands to remain, then the onus must be on the inspector to identify himself, it must be showed. The inspector ought to be the CEO/Board. Or in the case of BoN, the Bank. It cannot be delegated.		Paragraph (b) provides for the inspector to show the certificate to any person who is affected by the inspector's actions or who requests to see the certificate. The proposal that the inspector ought to be the "CEO/Board", or in case of BoN, "the Bank" is not practical. Note that "accounting officer" was replaced with "Consumer Credit Regulator".
	13(3) and (4)	The regulator must have power to appoint persons to conduct research and audits, but the balance of powers is too wide.		It is not clear why the power to appoint or contract suitably qualified persons to conduct "inquiries or other investigations" is too wide.

		Further, should these two sections not be included elsewhere in the Act, why under section 13?		The section was moved to Chapter 8.
Old Mutual Namibia	13	"Accounting officer" to be defined to clarify the authority to appoint inspectors.	"Accounting officer" to be defined.	The section was moved to Chapter 8. The term was replaced with "Consumer Credit Regulator".
Section 14				
Micro Lenders Association of Namibia	14(4)(a)	This provision, which purportedly requires that the regulator must be on "reasonable" grounds be satisfied that the registration of the microlender "would not be contrary to this Act or the public interest", the "reasonable ground", "public interest" and "satisfaction" elements are vague, uncertain and unintelligible, conferring a constitutionally		Sections 14, 15 and 16 were merged to remove unnecessary duplications / repetitions. The section was amended to remove the reference to "public interest" as well as the requirement for the Consumer Credit Regulator to be "satisfied on reasonable grounds".

		impermissibly vague, wide, unguided and unfettered discretion on the regulator. This impugned provision accords a constitutionally impermissibly vague, wide, unguided and unfettered discretion and also constitutes an infringement of the rights enshrined in Article 21(1)(j).		
	14(4)(b)	Too wide and broad. "Qualification, experience, competency and other fit and proper requirements" is subjective and undefined.		The specific details will be provided for in the standards, on which consultation will be done.
	14(4)(c)(i)	Reference to "relevant key responsible person"- who are they, and who determines who they are? What about a proper juristic person – how do they satisfy this requirement?		The section was amended to specify that the following persons must meet the requirements: • members of the governing body such as directors or persons holding similar positions, or persons who are

		"Qualification, experience, competency and other fit and proper requirements" is subjective and undefined.		responsible for the management of the applicant; • the principal officer; and • any other person who has the ability to control the applicant. It must be read with section 1(2) which explains who "has the ability to control". The definition of "key responsible person" was removed. The applicant, whether it is an entity or natural person, as well as the specified persons must comply with the requirements, which will be specified in the standards. Different requirements will be set for the different applicants (credit providers, credit bureaus and debt collectors), with the result that it is not practical to provide for those details in the Act itself.

	14(4)(c)(iii) and (iv)	The constituent elements of this impugned provision are vague, uncertain and unintelligible, conferring a constitutionally impermissibly vague, wide, unguided and unfettered discretion on the regulator. This impugned provision also constitutes an infringement of the rights enshrined in Article 21(1)(j).	Propose deletion.	Sub-paragraph (iii) was removed. Sub-paragraph (iv) was amended.
	14(4)(d)	This section is vague and arbitrary, and not determinable. It cannot be prescribed.	Propose deletion.	The reference to "human resources" was removed. The other specific details about the relevant "financial and operational resources" that will be required – different for the different types of applicants – will be provided for in the standards.
	14(4)(e)	The question is how and in what form? As the section reads currently it is vague and arbitrary (due to it being overly broad).		The provision was amended to make provision for the minimum principles of a complaints handling policy to be provided for in the standards.

	14(4)(g)	These standards, in respect whereof there are no proper (if any) guidelines provided for in the Act, are intended to govern pivotal aspects of the Act which must have been legislated upon by an Act of Parliament, and not impermissibly delegated to a statutory body (whose function it is to ensure compliance with law, and not make law. Furthermore, cross enforcement of legislation is problematic. The local authorities must enforce their own compliance.		Paragraph (g) was removed.
	14(4)(h)	The impugned provision confers a constitutionally impermissibly vague, wide, unguided and unfettered discretion on the regulator, constitutes an infringement of the rights enshrined in Article 21(1)(j), and		Paragraph (h) was removed.

		purportedly permits unfair, unreasonable and arbitrary decision-making, infringing the rights enshrined in Article 18.		
	14(4)(i)	Constitutionally challengeable due to vagueness and being of a subjective nature.	Propose deletion.	The provision was deleted.
	14(5)	Infringement of right to do business or to associate with whom one wishes. Why is debt collection specifically excluded? A microlender should be in a position to collect the debts owed to it, this is an essential component. Why is the credit bureau included? There must be a compelling argument.	Propose deletion.	The subsection was amended to remove the reference to "debt collection". Operating as a credit provider, or debt collector, and credit bureau, will be a conflict.
	14(6)	Is the intention that microlenders will be regulated by NAMFISA and the Banks by BoN? Refer to section 10.		Subject to the Minister's power to designate under section 10, the intention is that NAMFISA will regulate persons (inclusive of microlenders) in the non-banking

				space, while the Bank of Namibia will regulate persons in the banking space. Subsection (6) was removed.
	14(7)	The impugned provision infringes Article 16(1). The property rights protected under Article 16(1) include the property right to accumulate capital (and earn a return on it), generating income, and establishing and retaining goodwill, protects against the deprivation or diminishing thereof and prevents the State from acting under the guise of regulating the use of the a person's property, in a manner that such regulation has the effect of impermissibly, unreasonably and arbitrarily limiting or infringing upon the right to		The comment appears to be misdirected. The provision does not limit or infringe on any person's right to possess, protect, use and enjoy the person's property and it does not infringe their rights. Notwithstanding, the provision was removed.

		possess, protect, use and enjoyment of the person's property and infringes their rights inter alia in terms of Article 21(1)(j).		
Bank Windhoek	14	Is it an expectation that existing credit providers such as registered banking institutions and/or microlenders must apply for registration in terms of section 14 or will these participants be deemed to be registered upon commencement of the Act?	If there is no deeming provision, a request is made for a period of 12 months from the commencement of the Act to allow for existing credit providers such as registered banking institutions and/or microlenders.	Sections 14, 15 and 16 were merged to remove unnecessary duplications / repetitions. Provision is now made for existing registrations to be deemed registrations under this Act (for banking institutions, microfinance banking institutions, credit bureaus and microlenders).
First National Bank of Namibia Limited	14(1)	Retrospectivity of the application of the Bill to specifically banking institutions who have operated as credit providers/money lenders under the Usuary Act and Credit Agreements Act. It is our view that by virtue of our banking license – we are	FNB requires clarity on whether existing banks will need to be registered.	Sections 14, 15 and 16 were merged to remove unnecessary duplications / repetitions. Provision is now made for existing banking institutions, microfinance banking institutions, credit bureaus and microlenders to be deemed registered under this Act.

		licensed to operate when the Bill becomes law.		
	14(3)	The Bill cannot apply retrospectively to agreements concluded prior to the Bill coming into force.		The Bill applies to pre-existing credit agreements to the extent provided for under Schedule 3. This is necessary for, especially referring to longer-term credit agreements, the protection of consumers who will otherwise not enjoy the protections under the Act for many years.
	14(4)	The fit and proper requirements for key responsible persons are impossible to attain considering the current definition of "key responsible person".	As such, please re-consider the definition of key responsible person to avoid unintended consequences of having shareholders and branch manager disqualified for not meeting criteria under this provision.	The definition of "key responsible person" was removed, while the specific persons who must meet the requirements are now listed in subsection (4). Read with section 1(2) for an explanation as to who "has the ability to control".
Old Mutual Namibia	14	It is recommended that the Regulators ensure that the applicant and key persons are screened against UNSC lists to avoid sanctioned individuals	Clarify.	Sections 14, 15 and 16 were merged to remove unnecessary duplications / repetitions. The fit and proper requirements,

		from being in control of credit providers. Why is a municipal clearance certificate a registration concern?		still to be provided for in the standards, will make provision for the relevant criteria of legislation such as FIA, POCA and Prevention and Combating of Terrorist and Proliferation Activities Act. Paragraph (g) of subsection (4) was removed.
EPRA	14	The registration requirements are quite onerous, but this is probably justified given the purpose of protecting consumers.		Sections 14, 15 and 16 were merged to remove unnecessary duplications / repetitions. Noted.
Section 15				
Micro Lenders Association of Namibia	15(1)(a)	Definition needs attention. This relates to information / data that you will obtain from a person other than the client.	Consider using “data brokerage”.	Sections 14, 15 and 16 were merged to remove unnecessary duplications / repetitions. The term is now defined as “a company specialised in the collection and sale of consumer credit information”.

	15(4)	This restriction should be justified. If there is a compelling reason why a credit provider must not be a credit bureau, then we will concede.	Propose deletion.	Credit bureaus share consumer credit information which is provided by credit providers. Credit providers should not get involved in the business of credit bureaus to avoid conflicts of interest.
Creditinfo Namibia Bureau (Pty) Ltd	15(1)	Registration as a Credit Bureau.	Current existing licenses to be carried over from BoN and annual license fees to be paid to NAMFISA instead of BoN if NAMFISA will be Regulatory body for Credit Bureaus.	Provision is now made for existing registrations to be deemed registrations under the new Act (for banking institutions, microfinance banking institutions, credit bureaus and microlenders). The relevant fees and levies will have to be paid to the new Consumer Credit Regulator, being NAMFISA.
	15(3)(b)	How will fit and proper be determined by NAMFISA? Current responsible persons have been approved and vetted by Bank of Namibia.	Current members etc should be carried over without reapplying.	Provision is now made for existing registrations to be deemed registrations under this Act (for banking institutions, microfinance banking institutions, credit bureaus and microlenders).
	15(7)	"but personal information of	Recommendation is that contact	The provision was moved to the

		consumer or prospective consumers may not be disclosed"	information is provided based on segmentation to enhance business growth for product offerings within the prescribed purposes.	old section 32. Personal information cannot be shared without the informed consent of the person as per section 52.
Section 16				
Micro Lenders Association of Namibia	16	This provision, which purportedly requires that the regulator must be on "reasonable" grounds be satisfied that the registration of the debt collector "would not be contrary to this Act or the public interest", the "reasonable ground", "public interest" and "satisfaction" elements are vague, uncertain and unintelligible, conferring a constitutionally impermissibly vague, wide, unguided and unfettered discretion on the regulator. This impugned provision accords a constitutionally		Sections 14, 15 and 16 were merged to remove unnecessary duplications / repetitions. The section was amended to remove the reference to "public interest" as well as the requirement for the Consumer Credit Regulator to be "satisfied on reasonable grounds".

		impermissibly vague, wide, unguided and unfettered discretion and also constitutes an infringement of the rights enshrined in Article 21(1)(j).		
	16(3)	This section is vague and infringing on constitutional rights to do business.		The comment is not detailed enough, with effect that a response is not possible.
	16(3)(a)	What is public interest and how is it determined? Subjective.		The section was amended to remove the reference to “public interest”.
	16(3)(b)	This provision, which purportedly requires that the regulator must be on “reasonable” grounds be satisfied that the registration of the debt collector “would not be contrary to this Act or the public interest”, the “reasonable ground”, “public interest” and “satisfaction” elements are vague, uncertain and unintelligible,		The section was amended to remove the reference to “public interest” as well as the requirement for the Consumer Credit Regulator to be “satisfied on reasonable grounds”.

		conferring a constitutionally impermissibly vague, wide, unguided and unfettered discretion on the regulator. This impugned provision accords a constitutionally impermissibly vague, wide, unguided and unfettered discretion and also constitutes an infringement of the rights enshrined in Article 21(1)(j). Further, the "qualification, experience, competency and other fit and proper requirements" is subjective and undefined. Too wide and overbroad.		The specific fit and proper requirements will be provided for in the standards.
	16(3)(d) and (e)	The constituent elements of this impugned provision are vague, uncertain and unintelligible, conferring a constitutionally impermissibly vague, wide, unguided and unfettered discretion on the	Propose deletion.	Paragraph (d) was removed, while paragraph (e) was amended.

		regulator. This impugned provision also constitutes an infringement of the rights enshrined in Article 21(1)(j).		
	16(3)(f)	This section is vague and arbitrary. It cannot be prescribed and is not determinable.		The reference to "human resources" was removed. The other specific details about the relevant "financial and operational resources" that will be required – different for the different types of applicants – will be provided for in the standards.
	16(3)(g)	How is this to be done and in what form? This section is arbitrary and overly broad.		The provision was amended to make provision for the minimum principles of a complaints handling policy to be provided for in the standards.
	16(3)(i) and (j)	This constitutes cross-enforcement of laws. NAMRA and local authorities are to enforce their own laws. A credit provider must be able to register as a debt		Paragraphs (i) and (j) were removed. The restriction was removed.

		collector otherwise the prohibition infringes on constitutional rights.		
	16(5)	A debt collector must be able to register as a credit provider, otherwise it constitutes an infringement of rights.	Propose deletion.	The restriction was removed.
	16(6)	This infringes on rights to do business, as a credit provider may establish another business, with similar control, to conduct its debt collection business.		The restriction was removed.
	16(7)	The impugned provision infringes Article 16(1). The property rights protected under Article 16(1) include the property right to accumulate capital (and earn a return on it), generating income, and establishing and retaining goodwill, protects against the deprivation or		The comment appears to be misdirected. The provision does not limit or infringe on any person's right to possess, protect, use and enjoy the person's property and it does not infringe their rights. Notwithstanding, the subsection was removed.

		diminishing thereof and prevents the State from acting under the guise of regulating the use of the a person's property, in a manner that such regulation has the effect of impermissibly, unreasonably and arbitrarily limiting or infringing upon the right to possess, protect, use and enjoyment of the person's property and infringes their rights inter alia in terms of Article 21(1)(j).		
DBN	16(2)	The term "legal practitioner" has not been defined. It is not clear whether the provision of debt collection services now forms part of work reserved for legal practitioners in terms of the Legal Practitioners Act 15 of 1995. Also, it may be prudent for the Act or the Regulations to spell out collection commission	Clarify the intention behind section 16(2).	Sections 14, 15 and 16 were merged to remove unnecessary duplications / repetitions. The term is indeed defined. The intention is not to reserve the provision of debt collection services for legal practitioners. The definition of "collection costs" was amended.

		cappings.		
Nimble Group (Namibia) (Pty) Ltd (Norman, Bissett & Associates of Namibia A Division of Norman Bissett & Associates Group (PTY) LTD)	16(1) to (7)	The registration process for debt collectors and requirements are extremely extensive and burdensome, despite being a critical and pivotal part of the economy. 3(c) How can this be enforced	Revisit the entire section. At this stage it is an overburdensome registration process and quite disruptive proposal. There should not be restrictions on corporate financial institutions as to the extent of the services they provide. Limiting this would be unfair.	Sections 14, 15 and 16 were merged to remove unnecessary duplications / repetitions. The comment is not specific enough to explain why the process and requirements for registration is thought to be "extremely extensive or burdensome". It is acknowledged that the requirement to register will indeed affect existing and new debt collectors (although it is not unique to debt collectors), but it is unavoidable, and it is a necessary step for the regulation of debt collectors and protection of consumers. Placing restrictions on "corporate financial institutions as to the extent of the services they provide" is not automatically unfair. Paragraph (c) was amended to

		on companies created before the enactment of this legislation. 3(f) This will place additional strain on the companies – Having overburdensome micro-regulation on a scale that is not feasible. 5(b) & 6 This goes against several business plans – The implementation of this will result in catastrophic fails in the financial sector.		specify that the incorporation or other foundation documents must specify the main objectives of the applicant, which objectives may not be inconsistent with the Act. It is possible for pre-existing companies to amend their incorporation documents. In line with national localisation-drives, any entity doing business in Namibia is required to register the entity in Namibia. The reference to "human resources" was removed from paragraph (f). The other specific details about the relevant "financial and operational resources" that will be provided for in the standards. The restrictions were retained. Operating as a credit provider, or debt collector, and credit bureau, will be a conflict.

Old Mutual Namibia	16(5)	Part of the business of a credit provider is debt collection. Does this prohibit its employees from doing so? Is there an expectation that the function of a credit provider to collect on debt provided would need to be outsourced to a registered debt collector?	Clarify.	Sections 14, 15 and 16 were merged to remove unnecessary duplications / repetitions. The credit provider may collect debt owed to itself; there is no restriction. A debt collector collects debt, for reward, on behalf of someone else.
Section 17				
Micro Lenders Association of Namibia	17(1)	The contents hereof are vague. In 14.1 of the Act, the requirements are clearly set out, there is therefore no reason why the form cannot be prescribed by regulation.		Section 17 was amended to cross-reference section 14. The different application forms – different forms for different types of applicants (credit providers, credit bureaus and debt collectors) – will be provided for in the standards.
	17(2)(b)	Is a repetition of 14.4.	Propose deletion.	The provisions that appeared to be duplications/repetitions were removed. (There is now only 1 section dealing with the registration requirements for all persons required to be

				registered.)
	17(2)(d) and (e)	The criteria and application form to be prescribed and already contained in the Act or the regulations. If it is contained in a standard, it is vague and uncertain.		It is legitimate for the Legislature to delegate legislative powers to a subordinate authority. Providing for the application forms in the standards, is not considered to be "vague and uncertain".
	17(3)(a)	The reference to "different applicants" is arbitrary and creates room for indifferent treatment. The reference to "different standards" must be categorised. It cannot be overbroad and vague. Further, to what do these standards relate?		There is a need to differentiate between different applicants (credit providers, credit bureaus and debt collectors) for practical reasons. The provision was amended to refer to subsection (1) instead. The standards will deal with the form and content of applications for registration by credit providers, credit bureaus and debt collectors.
	17(3)(b)	The requirements/content of the application should be properly set out in the Act. Possibly put a time cap on it as a possible solution.		The content of the application form will be provided for in the standards. It may be necessary to source further or additional information from a particular

				applicant pertaining to the application that was made.
	17(3)(c)	This goes hand in hand with (b) above, and the consequences thereof applies here. It becomes impossible to control, and where is the reasonableness test?		It may also be to the benefit of the applicant if the Regulator is empowered to request additional information (such as a copy of an ID that was mistakenly not attached to the application). Rather than rejecting the application outright based on missing information, the applicant is given an opportunity to supplement the application. It is not considered unfair or unreasonable.
	17(4)	The reference to the "relevant key persons" was identified as an issue already. The "must" can be a fiction in light of the previous comments. If the document is so bizarre, the "must" becomes "never". This impugned provision purportedly permits constitutionally impermissible		Subsection (4) is no longer necessary as a result of the changes made to section 14.

		vague, wide, unguided and unfettered discretion to the regulator to impose conditions on the microlender.		
First National Bank of Namibia Limited	17	Does this apply to bank licensed already by Bank of Namibia?		Provision is now made for existing registrations to be deemed registrations under this Act (for banking institutions, microfinance banking institutions, credit bureaus and microlenders).
Old Mutual Namibia	17	Is reregistration required for currently registered microlenders?	Clarify.	Provision is now made for existing registrations to be deemed registrations under this Act (for banking institutions, microfinance banking institutions, credit bureaus and microlenders).
Section 18				
Micro Lenders Association of Namibia	18(1)	This constitutes an intrinsic part of their business. This is constitutionally challengeable as it limits rights to do business and trade. If a natural person may be a		Sections 18 and 19 were merged. The provision was amended to remove the restriction.

		microlender, why not a debt collector, what is the rationale?		
	18(2)(e)	The standards referenced therein, in respect whereof there are no proper (if any) guidelines provided for in the Act), are intended to govern pivotal aspects of the Act which must have been legislated upon by Act of Parliament, and not impermissibly delegated to a statutory body (whose function it is to ensure compliance with law, and not make law). The constituent elements of the impugned provisions confer a constitutionally impermissibly vague, wide, unguided and unfettered discretion on the regulator, constitutes an infringement of the rights enshrined in Article 21(1)(j) and purportedly permits		Paragraph (e) was removed.

		unfair, unreasonable and arbitrary decision-making, infringing the rights enshrined in Article 18. This section is vague. The MLS gave substance to the fit and proper requirement. Who determines whether one is competent?		Subsection (2)(e) was removed, as section 14 adequately deals with the fit and proper requirements.
	18(3)	Prollius matter: domicile v permanent residence. If domiciled? What then? If domiciled, should be able to trade. This is unfair. Domicile should be included (lawfully resident in Namibia?) Section 22 of Immigration Act deals with all potential scenarios.	Delete: "(a) is not a Namibian citizen; or (b) Is not lawfully admitted to Namibia for permanent residence, and is not resident in Namibia." And replace with "is not domiciled in Namibia as provided for in Section 22 of the Immigration Control Act 7 of 1993." Section should read: "(3) A natural person may not be registered as a credit provider if such person is not domiciled in Namibia as provided for in Section 22 of the Immigration Control Act 7 of 1993."	The provision was amended to refer to the Immigration Control Act, 1993 (Act No. 7 of 1993).
Nimble Group	18 and 19	The entire clause is extremely	Revisit the entire clause as most of the	Sections 18 and 19 were merged.

(Namibia) (Pty) Ltd (Norman, Bissett & Associates of Namibia A Division of Norman Bissett & Associates Group (PTY) LTD)		troublesome as it clearly discriminates against foreign companies, foreign investors, foreign employees, and the ability to conduct business within Namibia.	current debt collections agencies are foreign owned, managed or in some way connected to another international group of companies. Where there are foreign- owned companies in business which have existed at least three years prior to enactment of the bill and are in Good Standing, this clause should be relaxed. This would discourage international companies to conduct business within the country.	The localisation-requirement for natural persons doing business in Namibia was kept. For entities, the localisation-requirement was removed, with exception that the entity itself must be incorporated in Namibia in terms of applicable laws.
Section 19				
Micro Lenders Association of Namibia	19(1)	Only once the definition of "key responsible person" is revised will we be able to comment hereon. The definition must be reconsidered, i.e. same as principal officer. What would the disqualification requirements of each be? E.g. shareholder, directors? The current definition of "key responsible person" is too broad. See comments to section 18(2) and (3).		Sections 18 and 19 were merged. The definition of "key responsible person" was removed. Subsection (1) was removed. The remaining requirement is that members of the governing body may not be unrehabilitated insolvents. The localisation-requirements for entities and members serving on the governing body were removed, apart from the requirement that the entity must be incorporated

				in Namibia.
	19(2)	This section is too wide and vague. The definition of key responsible person is too wide. Interest is too wide, must be defined. Consider comments to 18(2) and (3). If considering 19(4), 19(2) is a punitive provision. Even if you comply with 19(2), you MUST still be deregistered.		The localisation-requirements for entities and members serving on the governing body were removed, apart from the requirement that the entity must be incorporated in Namibia. Provision is now made for a discretion.
	19(2)(b)	What does “interest” refer to? Vague. What about foreign nationals with interest, that do not live/are domiciled in Namibia? Then such a person will be required to resign as manager/other post and must dispose of his/her shares/interest? One must consider existing rights as it		The localisation-requirements for entities and members serving on the governing body were removed, apart from the requirement that the entity must be incorporated in Namibia.

		may constitute some sort of expropriation. The impugned provision infringes on contractual rights and the freedom of contract in respect of prospective contracts by or with persons who fall within the "disqualified persons" category), and Article 16(1). The property rights protected under Article 16(1) include the property right to accumulate capital (and earn a return on it), generating income, and establishing and retaining goodwill, protects against the deprivation or diminishing thereof and prevents the State from acting under the guise of regulating the use of the a person's property, in a manner that such regulation has the effect of impermissibly, unreasonably and arbitrarily limiting or		

		infringing upon the right to possess, protect, use and enjoyment of the person's property and infringes their rights inter alia in terms of Article 21(1)(j). The impugned provision further operates to infringe the aforementioned property rights by precluding persons who fall within the arbitrarily determined "disqualified persons" category from conducting business as a credit provider, and limit the person's business options (with resultant increase in accumulation of capital and earning a return thereon, generating an income and establishing and retaining goodwill), which may include registering a natural person as a credit provider or securing a certificate of registration as credit provider in respect of a natural person, and who falls		

		within the "disqualified persons" category, or contracting with such natural person) and 21(1)(j). Banks are also credit providers, will they be deregistered if manager becomes disqualified? Does this mean that one has three years to sort out who the key responsible person is? Presumably not – so must be removed. However, this cannot be pulled through to the juristic person.		
	19(4)	This section is unconstitutional, irrational, arbitrary and the consequences are too ghastly to contemplate. This is fatally flawed. If remedied, must still be deregistered.	Propose deletion.	Provision is now made for a discretion. If the registrant does not comply with the disqualification criteria, the registration may be cancelled.
	19(5)(a)		Remove "has been provisionally or finally been" and replace with "is under provisional liquidation or has been	The proposed wording was incorporated.

			finally". Section should read: "(a) that person is under provisional liquidation or has been finally liquidated or wound-up;"	
	19(5)(b)	See concerns raised regarding the identification and definition of a key responsible person as well as the criteria and determination of competency.		Refer to previous responses regarding the amendments made to section 14, the definition of "key responsible person", as well as the localisation-requirements for entities.
	19(5)(c)	This provision is arbitrary. The Minister could essentially make legislation. Where is the criteria? What about existing rights and infringement thereof? (Expropriation / disowning). It further constitutes an intervention with the right of freedom to contract. There must be an audi process and can only apply prospectively, not retrospectively.		Refer to previous responses regarding the amendments made to section 14, the definition of "key responsible person", as well as the localisation-requirements for entities.
Agra	19(5)(b)	Who would set these		Sections 18 and 19 were merged.

		standards, and on what basis?		The localisation-requirements for entities and members serving on the governing body were removed, apart from the requirement that the entity must be incorporated in Namibia.
	19(5)(c)	How does a publicly traded company show that it is Namibian owned?		The localisation-requirements for entities and members serving on the governing body were removed, apart from the requirement that the entity must be incorporated in Namibia.
Creditinfo Namibia Bureau (Pty) Ltd	19(1) and 5(c)	Local Shareholding Disqualification of juristic persons - Concern is that it may be obligatory for CBs which are owned by foreign legal entities (such as is the case of Creditinfo) to dispose of a quantity of their shares, as will be decided via developing regulation to a local natural person. This creates a risk for	The proposal is for this provision to be removed or ultimately, for the law to provide the ownership percentage and avoid it being left to developing regulations which could be difficult for the bureaus to consult and feedback on.	Sections 18 and 19 were merged. The localisation-requirements for entities and members serving on the governing body were removed, apart from the requirement that the entity must be incorporated in Namibia.

		shareholders of a CB to (1) lose an unexpected or unknown interest in their business, (2) have an obligation to search for a local investor to comply with regulations, (3) offer an unknown percentage of its interest to a local co-shareholder which, if significant proportion will influence decision making ultimately affecting the performance of the bureau. How can a CB ensure it will find an investor in such a case that has the adequate sector and business expertise?		
First National Bank of Namibia Limited	19(2)(b)(ii)	There is a distinction between a key responsible person being removed from control of the juristic due to becoming unfit and the Bill forcing that person to subsequently dispose of their interest in the juristic. This		Sections 18 and 19 were merged. The definition of "key responsible person" were removed, and the relevant sections now are specific as to the persons who must meet the requirements. The localisation-requirements for

		amounts to an infringement of their constitutional right. If a key responsible person is unfit to manage the juristic it should not preclude him/her from holding an interest in the juristic.		entities and members serving on the governing body were removed, apart from the requirement that the entity must be incorporated in Namibia.
Lewis Stores (Namibia) Pty Ltd	19 (read with section 18)	1. Reading section 19(1) together with section 18(3), we understand that a juristic entity may not be registered as a credit provider if any shareholder, director, member, owner or person with at least five percent ownership or decision-making role in such juristic entity is not a Namibian citizen and is not resident in Namibia. In addition, we understand from sub-section 19(5)(c) that the Minister may, by regulation, prescribe a minimum percentage of Namibian citizen shareholding in a juristic entity in Namibia.		Sections 18 and 19 were merged. The localisation-requirements for entities and members serving on the governing body were removed, apart from the requirement that the entity must be incorporated in Namibia. A new definition of "principal officer" was included, and the requirement that the principal officer must be Namibian, or lawfully admitted to Namibia, and be resident in Namibia, remains.

		2. We wish to advise that Lewis Namibia's directors have always been South African citizens resident in South Africa and that such directors have the necessary experience in order to effectively manage the affairs of our business. Being a low margin business, costs are closely managed and as a consequence we have kept the board of directors small, with our board presently consisting of only two directors. We believe that requiring existing, well-established and effectively managed business's such as ourselves to extend directorship in order to have Namibian citizens on their board introduces an onerous additional cost which, we respectfully submit, provides no real benefit to such		

		businesses. 3. In addition to the above, we submit that prohibiting majority foreign shareholding in local Namibian companies and/or requiring a minimum percentage of Namibian citizen shareholding will result in a significant foreign disinvestment in Namibian juristic entities. In this regard we wish to point out that Lewis Namibia has always been a wholly-owned subsidiary of Lewis Stores (Pty) Ltd, which is a private company registered in South Africa and a controlling company of several entities operating in southern Africa. Imposing a prohibition on foreign shareholding, or even imposing a minimum percentage of Namibian shareholding, will therefore require a significant		

		departure from our group's existing structure which may ultimately lead to Lewis Namibia's inability to continue its business operations in Namibia. We therefore do not support the prohibition of majority foreign shareholding in Namibian juristic entities or the introduction of a minimum percentage of Namibian citizen shareholding.		
Old Mutual Namibia	19	Any key responsible person must be resident in Namibia and either have permanent residence or citizenship for a juristic person to be registered. Interest they own must be disposed of within 3 years. 19(4) - Deregistration requirements for non-compliance may lead to	Relief sought in terms of deregistration conditions (such as replacing a disqualified key responsible person within a specified period rather than deregistering the registrant). Remainder to be clarified.	Sections 18 and 19 were merged. The localisation-requirements for entities and members serving on the governing body were removed, apart from the requirement that the entity must be incorporated in Namibia. A new definition of "principal officer" was included, and the requirement that the principal officer must be Namibian, or

		instability and prevent the entity from being able to collect its debt. 19(5) - Registration requirements with which entities have to comply for continued registration is not in the Act but will be determined in the Fit and Proper standards - Cannot effectively consult. Local registration and ownership requirements for Namibian citizens or persons lawfully admitted to Namibia for permanent residence. What about listed companies and conglomerate groups?		lawfully admitted to Namibia, and be resident in Namibia, remains.
Fashion Retailers (Pty) Ltd	19(5)(c) and 145(2)(h)	Relating to "the minimum percentages of the member's interest or shareholding in a juristic person that must be owned by Namibia citizens or persons lawfully admitted to	These provisions should be removed entirely.	Sections 18 and 19 were merged. The localisation-requirements for entities and members serving on the governing body were removed, apart from the

		Namibia for permanent residence for purposes of section 19(5)(c) …" These provisions appear to require Namibian shareholders for a credit license to be obtained. In addition, the powers granted to the Minister would be far-reaching. Existing credit businesses would not be able to comply with this provision. Ownership restructuring is a complicated matter involving the setting-up of funding mechanisms and negotiating agreements. It is something that cannot be undertaken lightly, nor forced by way of the backdoor so-to-speak. These provisions would open this Bill/Act to legal challenge should they not be removed.		requirement that the entity must be incorporated in Namibia. A new definition of "principal officer" was included, and the requirement that the principal officer must be Namibian, or lawfully admitted to Namibia, and be resident in Namibia, remains.
Section 20				

Micro Lenders Association of Namibia	20	This impugned provision purportedly permits constitutionally impermissible vague, wide, unguided and unfettered discretion to the regulator to impose conditions on the microlender.		It is legitimate for the Legislature to delegate legislative powers to a subordinate authority.
	20(1)	The reference to "any conditions" is too vague. The conditions are also unlimited. As it is a proposal, can it be rejected? Include audi process. The afore-pleaded impugned provisions confer a constitutionally impermissibly vague, wide, unguided and unfettered discretion on the regulator, constitutes an infringement of the rights		The conditions must be reasonable and justifiable, and be consistent with other applicable laws. It will also be dependent on the circumstances of the case; hence it is not possible to specify the details in the Act. A process for *audi* is now specifically provided for. It is legitimate for the Legislature to delegate legislative powers to a subordinate authority.

		enshrined in Article 21(1)(j) and purportedly permits unfair, unreasonable and arbitrary decision-making, infringing the rights enshrined in Article 18. The constituent elements of this impugned provision are vague, uncertain and unintelligible, conferring a constitutionally impermissibly vague, wide, unguided and unfettered discretion on the regulator.		
	20(3) to (6)	This section only applies to microlenders and amounts to unlawful discrimination. If the intention is to apply conditions to microlenders, it must be applied uniformly to all credit providers.		Subsection (3) was removed. Subsections (4) to (6) apply to all applicants for registration.
Old Mutual Namibia	20(3)(c)	Registration may be restricted in terms of which other business may be conducted.	Extent of restrictions to be clarified. Business incidental to license, such as the provision of insurance in the capacity of an insurance agent, to be exempted. The sale of goods or services	Subsection (3) was removed.

			for cash may also need to be exempted for certain credit providers who offer the same goods on credit terms. Exclusions may be required when the credit provider offers other licensed, regulated financial services.	
Section 21				
Micro Lenders Association of Namibia	21(1)	If the insistence remains to be able to impose conditions (which should be detailed in scope and criteria), then the variation may only be within that scope and that criteria. There is further no scope for discretion. The standpoint is that there should be no conditions, therefore no variation is required. But if conditions are included in the Act, it should be defined in the Act.		The conditions may be varied, or new conditions may be imposed, only to the extent that the conditions are consistent with the Act, and reasonable and justifiable in the circumstances.
	21(1)(c)		Remove "has contravened" and replace with "has been found guilty of an offence in terms of". Section should read: "(c) if the registrant has been	The proposal that criminal proceedings must first be concluded, ending in a conviction, is not practical.

			found guilty of an offence in terms of this Act…"	
	21(2)	Same comments as with Section 21(1) applies. The two sections cannot be separated.		The conditions may be varied, or new conditions may be imposed, only to the extent that the conditions are consistent with the Act, and reasonable and justifiable in the circumstances.
	21(3)	Microlenders will loose their regulating Act. Financial institutions and public bodies are still within the bounds of their Acts. This is a credit Act, to regulate ALL. Therefore this section is arbitrary. The section is a "carve-out". Why do other institutions have carved-out provisions and the microlenders are thrown into the mix. Why the transitional period for microlenders to part with previous Act, but other institutions retain their regulatory Acts?		This Act will replace the Microlending Act, 2018. The enabling legislation applicable to public entities cannot be repealed.

	21(3)(b)		Remove "laws applicable to it" and replace with "the provisions of this Act". Section to read: "(b) in the case of a public body, only to the extent that the conditions are consistent with the provisions of this Act; and"	The conditions must also be consistent with any law applicable to the public entity. Paragraph (b) was amended accordingly.
	21(3)(c)	Subject to what has been stated in commentary to Section 21(1)(c) and (d).		The conditions may be varied, or new conditions may be imposed, only to the extent that the conditions are consistent with the Act, and reasonable and justifiable in the circumstances.
Bank Windhoek	21	The term used in section 21(1) is "propose" whereas section 21(2) and 21(3) use the term "impose". This creates an inconsistency in interpretation. Further, the variation of the conditions of registration of a credit provider, in the absence of the credit provider requesting for this variation, amounts to the Consumer Credit Regulator amending an	A request is made to reconsider the grounds for variation of license conditions, unless such variation is requested by the credit provider.	Sections 20 and 21 were amended to substitute "propose" for "impose" where relevant. It is not agreed that an exercise of the power contemplated in this section will amount to "*amending an earlier administrative decision in the absence of a court order*". The circumstances for variation or review of the conditions are specified, and the Consumer Credit Regulator will be within its

		earlier administrative decision in the absence of a court order. This is not permitted.		rights to exercise the power to make a new administrative decision (which is subject to appeal or review).
Section 22				
Micro Lenders Association of Namibia	22(2)	Provisions are formulated overly broad and it provides the regulator and/or inspector with unfitted powers. Have regard to 13/8/12/21(j) of the Constitution. Contains grounds for unconstitutionality. Sub (2) cannot be a condition of registration. Is the process aimed at verifying information given or if there is a reasonable belief that the information is false or a contravention of the Act? Then there must be an inspection or investigation and only then can Section 128	Propose deletion.	The section was removed.

		be invoked. If it relates to compliance, then 128 does not find applicability, mere desktop compliance. Commentary on section 128: It has far-reaching consequences. This gives the regulator the ability to raid offices for compliance issues.		
Old Mutual Namibia	22(2)(a)	What are "reasonable inquiries for compliance purposes"?	Clarify.	The section was removed.
	22(2)(b)(ii)	Given the wide scope of credit agreements and credit providers, not all registrants under this Act are required to comply with the Financial Intelligence Act, 2012 (Act No. 13 of 2012). This may result in unintended consequences.	Remove and place reliance on defined Accountable Institutions and Reporting Institutions in the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as these are required to comply.	The section was removed.
Section 23				
Micro Lenders Association of	23(2)(f)	Amounts to discrimination. Why the separation between		The provision was removed.

Namibia		microlenders and other credit providers. Other credit providers can trade from where they please. The premises from where the microlender trades should be communicated to the regulator, no need to obtain approval. See commentary on "licensed premises" and "additional branches" above.		
	23(4) to (6)	Once registered the credit provider is indefinitely registered, unless deregistered for a lawful reason.	Propose deletion.	The provisions were retained unchanged.
	23(7)(a)	Only applicable to microlenders – discriminatory.		The reference to "licensed premises" was removed, but otherwise the obligation remains in place.
Bank Windhoek	23(4) to (6)	Is it necessary for the requirement to register annually to apply to registered banking	A request is made to remove the application of the duty to register annual for banking institutions in view of the fact that the issuing of consumer	The provisions for renewal of registration were retained. However, it will not apply to banking institutions and

		institutions?	credit is an integral part of the business of a banking institution and therefore cannot be separated.	microfinance banking institutions.
Creditinfo Namibia Bureau (Pty) Ltd	23(2)(g)	In the case of a credit bureau the location at or from which that person may conduct the registered activities.	Recommendation is that credit bureau is required to have a registered office, however business may be conducted in a hybrid form as well to assist with working from home aspects as well.	The provision was removed.
	23(4)	CB License Validity Term: 12 months. This approach appears to put an unnecessary risk to operations while there are other ways the regulators may ensure that regulated entities will pay the appropriate fees.	CRB Laws in similar jurisdictions provide for indefinite license, valid unless revoked.	The provision was retained unchanged.
First National Bank of Namibia Limited	23(4)	This is an unreasonable provision. Once a bank is licensed by its regulator, we do not apply each year for a banking license to be renewed. As such, the approval to extend credit and	FNB agree to annual review, but we request that it be reconsidered for banks, especially to apply every year.	The provisions for renewal of registration were retained. However, it will not apply to banking institutions and microfinance banking institutions.

		loans should directly be linked to the term for the bank has a valid banking license.		
Nimble Group (Namibia) (Pty) Ltd (Norman, Bissett & Associates of Namibia A Division of Norman Bissett & Associates Group (PTY) LTD)	23(6)	The consequence of non-registration is completely out of proportion, especially considering the various lists of things a company must comply with.	Failure to Comply: • N$ 50 000 Fine • Banned from operating within the sector for 5 years.	Subsection (6) was retained. Note that the amount and the term of imprisonment are maximum thresholds within which the court must exercise its judicial discretion (it is not minimums or compulsory penalties).
Old Mutual Namibia	23(4)	Annual renewal is an administrative burden to the Regulators. Rather reserve the right to revoke the registration if conditions are not met or levies not paid. What are the immediate consequences to the consumer and credit providers and the industry if the registration is not	Reconsider. Clarify. Consider impact on financial stability of abruptly deregistering a major institution.	The provisions for renewal of registration were retained.

		renewed?		
Fashion Retailers (Pty) Ltd	23 (in addition, section 30(2) refers to a fee payable on application)	Clarity is required regarding how the annual fee will be calculated. And it's not clear whether it is one fee per legal entity, or a fee per location where credit will be offered. Please provide clarity.		The fees will be determined in terms of a new Fees-section that was added.
Section 24				
Micro Lenders Association of Namibia	24(1)	Once registered, indefinitely registered, unless deregistered for a lawful reason.	Delete "not renewed".	Subsection (1) was amended to only refer to the persons who are registered.
	24(3)(b)		Remove "the" and replace with "a current or up to date". Section to read: "(b) publish and maintain a current or up to date register on a website; and"	The section was amended to provide for publication of the register on the Consumer Credit Regulators' websites. Subsection (3) was removed.
First National Bank of Namibia Limited	24(1)	The Bill does not clearly specify what exactly will be contained in the register.	To avoid sensitive competitor information and data being recorded in the register we request that the Bill be revisited to specify exactly what will be in the register (i.e. entity name,	A provision was added to provide for the minimum information to be contained in the register, which is the information that is reflected on the certificate of

			registration date, status etc).	registration.
Section 25				
Micro Lenders Association of Namibia	25	No definition for principal officer included. Definition to be included or referenced in section 25.	To insert a proposed definition.	A definition for "principal officer" is now included.
	25(2)(a)	This section is too broad and left in the hands of the standards. Anything can be included in the standards, therefore the ambit thereof is to be included.		It is legitimate for the Legislature to delegate legislative powers to a subordinate authority.
	25(2)(b)	See comment in re Immigration Act above.		The paragraph was amended to refer to the Immigration Act.
	25(2)(c)	There should be no such obligation. It may be a different person. This does not correspond with the principles of good governance. This will surely constitute an issue for banks.	Remove "is" and replace with "may be" "(c) may be subject…"	Paragraphs (c) and (d) have been removed.
	25(6)	30 days is too short of a	Amend 30 to 60 days.	The days were increased to 90,

		period.		and provision was made for the appointment of an acting principal officer.
	25(8)	The regulations have not been provided. As a general comment to all sections prescribing regulations, we reserve the right to comment thereon once the regulations are provided.		Noted.
	25(10)	The standards have not been provided. As a general comment to all sections prescribing standards, we reserve the right to comment thereon once the regulations are provided.		Noted.
Agra	25(1)	Is the Principal Officer the CEO or another individual?		A definition for the term is now included in section 1.
Bank Windhoek	25 to 30	For banking institutions, since the Consumer Credit Regulator will be BON, the requirements prescribed in	Alignment between this Act and Banking Institutions Act is requested for banking institutions to avoid contradictions and/or over-regulation.	Provision is now made for existing registrations to be deemed registrations under this Act (for banking institutions, microfinance

		sections 25 to 30 of this Act must align to those in the Banking Institutions Act. In addition, approval sought, or notifications made in terms of the one Act in relation to the subject matter of these sections must be deemed to be made for both Acts.		banking institutions, credit bureaus and microlenders). Banking Institutions are already adequately regulated in terms of registration requirements and matters such as principal office, appointment of a principal officer, purchase, amalgamation or transfer of business, etc.
Creditinfo Namibia Bureau (Pty) Ltd	25(2)	The Bill provides regulators free range to impose any sort of qualification, experience, competency or other requirements for principal officer.	CRB laws in similar jurisdictions treat this matter in a way where the law provides the specific criteria that should be met or the conditions that would rule out a person to qualify for such a role.	The specific requirements will be provided for in the standards.
Old Mutual Namibia	25(2)(d)	Where the registrant is a company, the Board of directors should be responsible for ensuring compliance with laws and regulations.	Revise.	Paragraphs (c) and (d) were removed, with subsection (4) added: “The principal officer of a registrant is authorised to act on behalf of a registrant to ensure compliance with this Act, and where a person communicates with the registrant, the person may do so by addressing the communication to the principal

				officer."
	25(6)	Is the current Principal Officer of a registered microlender required to reregister on commencement?	Clarify.	Provision is now made for existing registrations to be deemed registrations under this Act (for banking institutions, microfinance banking institutions, credit bureaus and microlenders).
	25(5) and (6)	No requirement to notify the Regulator if the Principal Officer vacates the office, only appointment? (5) and (6) – propose extending 30 days' notice to be given. The 30 days between vacating office and appointment has practical implications if a suitable candidate is not received. Also, if the Regulator does not approve the Fit and Proper application the registrant will not be able to appoint.	Consider including a requirement for disclosing reasons of vacating office, and notification of vacating office of previous PO, in the notification of the new appointment. Revise notice period.	A provision was inserted to inform the Consumer Credit Regulator in the event of a vacation of office. The number of days was increased to 90, and provision is now made for the appointment of an acting principal officer.

Section 26				
Micro Lenders Association of Namibia	26(6)	Section 43(2) requires justification. Grossly disproportionate penalties apply in the event of contravention or failure to comply which infringes the rights enshrined in Articles 8(1), 10(1) (equality – there is no reason why microlenders should be singled out for such harsh and disproportionate punishment and treatment for mere non-compliance with an administrative provision, and discriminates against microlenders) and 11(1). Results in disproportionate penalties.		Section 43 was amended to provide for the Regulators to follow the normal court process for the recovery of any debt due to it.
Agra	26(1) to (6)	Can these not be combined with other annual returns e.g. the ones made to BIPA?		No. The returns to be submitted to the Consumer Credit Regulator are completely different than those required by BIPA; it contains different information and it is used for different purposes.

Creditinfo Namibia Bureau (Pty) Ltd	26(3)	Annual compliance report submissions.	Templates which are currently used by BoN should be transferred to NAMFISA to prevent duplications.	Noted, and will be considered.
Section 27				
Micro Lenders Association of Namibia	27(2)	This provision, in respect whereof there are no proper (if any) guidelines provided for in the Act), is intended to govern pivotal aspects of the Act which must have been legislated upon by Act of Parliament, and not impermissibly delegated to a statutory body (whose function it is to ensure compliance with law, and not make law).		The comment may be misdirected. The provision deals with the name of the registrant and that the registrant must use the registered name.
Agra	27(1) to (4)	Name registration and change is authorised by BIPA, if they only need notice and approval based on existing requirements, why do we need permission from the		Not all persons registered under this Act are also registered with BIPA. The Consumer Credit Regulator must consider the factors specified under subsection (4), and must issue a

		regulator to change our name?		new registration certificate. The Regulator must also maintain a register, reflecting the correct names of all registrants.
Section 28				
Micro Lenders Association of Namibia	28	What happens upon the death of a person? Where the person has a one-man business and he was also the principal officer? Transition provisions are required. This section is further unfair towards spouses, children and other heirs.		It is impossible to cater for every eventuality in the Act. For purposes of the example used, the executor of the estate will have to obtain the required approvals.
	28(1)	What will be the standards and criteria?	Proposal of turnaround time, if no answer within 30 days, then approved.	The proposal to include a turnaround time is not accepted. Similar requirements as those at registration must be assessed, which may take time. Subsection (2) was amended to refer to the registration section.
	28(2)	Subject to comments made at section 20. As a general comment, relating to all		The reference to “public interest” was removed.

		references to "public interest", how is this determined? Public interest is subjective.		
Creditinfo Namibia Bureau (Pty) Ltd	28(1)	Written approval prior to conducting share transactions - This provision would affect any change to the ownership of the Creditinfo Group - not just of the local entity.	A reasonable response deadline should be provided for in order to not hold back M&A activity which would be BAU and does not contravene this law.	BAU can continue until such time as the application is approved by Consumer Credit Regulator.
Old Mutual Namibia	28	Does this include selling non-performing loans / bad debt to the debt collectors? Would registrants whose primary function is retail, for instance, and provide goods on credit terms, be required to obtain regulatory approval for the unregulated (cash sale) portions of their business?	Clarify.	The reference to "transfer any part of the business" was qualified to refer to the "registered business", which would include the selling of non-performing loans or bad debt. No, unless the transfer includes the regulated business or part of it.

Section 29				
Micro Lenders Association of Namibia	29(1)	This impugned provision constitutes an infringement of the rights enshrined in Article 21(1)(j) and purportedly permits unfair, unreasonable or arbitrary decision-making, infringing the rights enshrined in Article 18. Why is this section only made applicable to microlenders and not applied across the board? Why is the constitutional right to trade limited? The provision is further proscriptive and discriminatory.	Rather prescribe the nature of business for which consent is required, in the alternative a list of businesses that cannot be operated from a credit provider's premises.	Section 29 was removed.
	29(3)	Subject to the comments made to Section 20.		Section 29 was removed.
	29(4)	This applies only to microlenders, discriminatory.		Section 29 was removed.
Old Mutual Namibia	29	See comment under 20 – Conditions of registration.	Clarify.	Section 29 was removed.

		Is approval (beyond registration as an insurance agent under the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021)) required for conducting selling of insurance incidental to credit provision?		
Section 30				
Micro Lenders Association of Namibia	30	This impugned provision infringes the rights enshrined in Articles 8(1) (human dignity, infringing on the freedom of contract), 21(1)(e), 21(1)(j) and infringes the right of freedom of contract. This provision further infringes on Article 16(1). The property rights protected under Article 16(1) include the property right to accumulate capital (and earn a return on it), generating income, and establishing and	Proposal is to only inform of additional branches and provide information that is prescribed.	The section was amended to provide for notification only in the case of an opening of a physical branch, and to provide such other information as may be provided for in the standards. The term “branch” is now defined.

		retaining goodwill, protects against the deprivation or diminishing thereof and prevents the State from acting under the guise of regulating the use of the a person's property, in a manner that such regulation has the effect of impermissibly, unreasonably and arbitrarily limiting or infringing upon the right to possess, protect, use and enjoyment of the person's property and infringes their rights inter alia in terms of Article 21(1)(j).		
	30(3)(c)	See commentary to section 20.		The reference to "public interest" was removed.
	30(4)	The branch manager cannot be the key responsible person. What is the need then for a branch manager? If insist on branch manager being appointed:	Change 30 to 60 days.	The requirement to appoint a branch manager has been removed.

		- Do not take issue with it, but how does section 30(11) affect this. - Why are the criteria of section 18 enforceable - By implication, one can only appoint a branch manager who is a Namibian citizen or permanently resident in Namibia (Section 22 of Immigration Act will resolve this issue). Credit provider must be able to register a pool of branches and only notify regulator. This impugned provision infringes the rights enshrined in Articles 8(1) (human dignity, infringing on the freedom of contract), 21(1)(e), 21(1)(j) and infringes the right of freedom of contract. The provision		

		further purportedly permits for unfair, unreasonable or arbitrary decision-making, infringing the rights enshrined in Article 18, also conferring a constitutionally impermissible vague, wide, unguided and unfettered discretion. This provision further infringes on Article 16(1). The property rights protected under Article 16(1) include the property right to accumulate capital (and earn a return on it), generating income, and establishing and retaining goodwill, protects against the deprivation or diminishing thereof and prevents the State from acting under the guise of regulating the use of the a person's property, in a manner that such regulation has the effect of impermissibly, unreasonably and arbitrarily limiting or		

		infringing upon the right to possess, protect, use and enjoyment of the person's property and infringes their rights inter alia in terms of Article 21(1)(j), which guarantees autonomy to a person to carry on their trade and business. It is our right to manage our businesses as we deem fit. Cannot force the appointment of a branch manager.		
	30(4)	As a general note to the Act, refer to only days.	Amend calendar days to days, in the alternative reference to be altered throughout the Act to either "calendar days" or normal "days".	The days are always either qualified as "business" or "calendar", with the two terms explained in section 2. Otherwise, note that the subsection was removed.
	30(5)		Change 30 to 60 days.	The provision was removed.
Agra	30(1) to (3)	This is not practical for us, opening Branches is part of		Section 30 was amended to provide for the Consumer Credit

		our business model. How can a retail store operate, without opening new branches?		Regulator to be notified of the opening of a physical branch, and to provide such other information as may be provided for in the standards.
	30(4)	Section (30)(4) does not make sense as the branch might not be completed by the time permission to open a new branch is given. We will thus be incurring salary expenses for a branch that is not yet operating and generating revenue. For this entire section, the process for credit application and approval is managed centrally at head office, and does not rely on branch managers. It is not clear how they are relevant to this Act. Additionally, the regulator has to make suggestions to assist in finding a branch manager/or provide administrative support, else the punitive		Section 30 was amended to provide for the Consumer Credit Regulator to be notified of the opening of a physical branch, and to provide such other information as may be provided for in the standards.

		action is unwarranted. Overall, this entire section is interference with our operation activities and we already have oversight bodies in our board of directors.		
	30(7) to (11)	How is the qualification of the branch manager determined for a retail branch manager in the agricultural sector?		The requirement to appoint a branch manager has been removed.
DBN	30(5)	The term "Consumer Credit Regulator" is not defined.	Define "Consumer Credit Regulator".	It is not considered necessary to define the term. Refer to section 10.
First National Bank of Namibia Limited	30	It is our understanding that for FNB to be able to open any additional bank branches (which branch will extend credit and loans) we need BON approval?	Please revise the Bill in order for entities like established banking institutions to be absolved from this requirement.	The provision will not apply to banking Institutions.
	30(5)	Would an acting branch manager from internal to the company satisfy the requirement for the	Please revisit the Bill and consider making this not applicable to banks.	The requirement to appoint a branch manager has been removed.

		appointment? Based on the fact that some instances require employees to provide more than 30 days' notice to their respective employers, the 30-day deadline is not achievable and may lead to impossibilities and other unintended consequences.		
Lewis Stores (Namibia) Pty Ltd	30(1)	1. Our business has for years developed and implemented processes and procedures to strategically identify, secure and open additional business premises throughout Namibia with speed and efficiency. We believe that this business practice, which has been well developed over decades of successfully running our business, provides us with an advantage over our competitors and provides us with an opportunity to offer goods and services required by consumers as and when,		Section 30 was amended to provide for the Consumer Credit Regulator to be notified of the opening of a physical branch, and to provide such other information as may be provided for in the standards.

		and where, they arise. 2. We therefore do not support the introduction of an approval process in order to open additional branches as, we respectfully submit, such process will result in significant delays in the opening of additional branches and negatively impact the processes and procedures which our business has developed over a number of years in order to successfully compete with our competitors. 3. To this end, we submit that businesses should be permitted to decide for themselves when and where they wish to open additional branches following their own independent internal process of accessing the viability of the proposed locations of additional branches.		

	30(9)	1. We wish to caution against the imposition of qualification, experience and other fit and proper requirements for branch managers. We are concerned that, given Namibia's small population size, requiring onerous fit and proper requirements for branch managers may result in credit providers being constrained from opening additional branches due to an unavailability of individuals meeting such requirements. 2. We strongly recommend that credit providers be permitted to employ branch managers according to their own internal employment criteria. As noted above, our office's branches are located throughout urban, extra-urban and rural Namibia and our branch staff, including branch managers, are		The requirement to appoint a branch manager has been removed.

		employed from the communities in which our branches are located. As a consequence of the aforesaid, the qualifications and competence between staff at different locations throughout Namibia may differ significantly. Despite this disparity, we ensure that our branch managers are capable of, inter alia, explaining the terms, costs and obligations associated with our credit agreements to prospective credit consumers by means of rigorous onboarding practices, continued training programmes and senior operational management oversight. 3. Finally, we must point out that, in our view, the substantial disclosures required to be made on pre-agreement statements and quotations already ensure		

		that prospective credit consumers are well-informed of the costs occasioned by a credit agreement and that up-skilling branch managers to an extent that they are capable of explaining these costs in plain and understandable language to a consumer, does not require a branch manager to have any significant experience or qualifications.		
Nictus (Pty) Ltd	30(1)	Permission to be requested before opening a new branch - Expansion of the company footprint is beneficial to our country and all Namibian People. Obtaining permission first from CCR is illogical. Nictus is a Namibian owned company, employing Namibians.	Point to be removed.	Section 30 was amended to provide for the Consumer Credit Regulator to be notified of the opening of a physical branch, and to provide such other information as may be provided for in the standards.
Old Mutual Namibia	30(5)	(5) - Branch manager to be appointed within 30 days	Revise timelines.	The requirement to appoint a branch manager has been

		after previous appointment came to an end. This will run into practical implications if a sufficient candidate is not received. Also, if the Regulator does not approve the Fit and Proper application the registrant will not be able to appoint.		removed.
Fashion Retailers (Pty) Ltd	30	Section 30 - opening of additional branches requires permission and operational approvals for branch managers.	Clarity is required regarding a "branch" as these requirements would be severely limiting for entities which are not banks/microlenders, such as clothing retailers. The proposal is that these provisions be limited to banks and microlenders, where the "branch structure" applies.	"branch" is now defined in section 1. Section 30 was amended to provide for the Consumer Credit Regulator to be notified of the opening of a physical branch, and to provide such other information as may be provided for in the standards.
Section 31				
Micro Lenders Association of	31(3)	When will the debt be discharged?	Consider including a provision re • When money is paid into trust,	Section 94(2) now provides that a credit to a consumer's account

Namibia			on behalf of the credit provider; • When the debt is discharged in such instance.	takes effect on the date when the payment is received by the credit provider or debt collector.
	31(7)		Include sequestration.	The provision was amended to only refer to cancellation of registration.
Nimble Group (Namibia) (Pty) Ltd (Norman, Bissett & Associates of Namibia A Division of Norman Bissett & Associates Group (PTY) LTD)	31	The cost associated with this together with compliance officers to comply with all the provisions of the act will start making debt collections non-profitable.	Remove Trust Accounts for Debt Collectors, if money is lost, open criminal proceedings against the company. Also, no funds to be paid to the Consumer Credit Regulator.	The section is necessary for the safekeeping of money held on someone else's behalf. Subsection (3) was removed.
Old Mutual Namibia	31(1)	Debt collected must be paid to the person as soon as possible, and a statement must be provided monthly.	Fix firm timelines, e.g., 7 days after the end of the month payment must be made.	The money must be paid within a reasonable or agreed time in terms of subsection (2). It allows for freedom of contract between the credit provider and debt collector.

				The provision of the statement must be agreed between the parties.
	31(3)	Why is interest on collected amounts by debt collectors payable to the Regulator? It should be payable to the credit provider on whose behalf the funds are collected.	Revise.	The provision was removed.
	31(7)(a)	The Regulators should not be involved in administering trust accounts and in operational matters.	Remove (7)(a).	The provision was amended to refer to circumstances of cancellation of registration only.
EPRA	31	Registrants are subject to stringent data management regulations, which, again, is justified given the nature of the public protection required.		Noted.
Section 32				
Creditinfo Namibia Bureau	32	This article would require more clarity that the		Refer to section 58.

(Pty) Ltd		obligation is for credit bureaus to have procedures in place so that consumers' CI can be disputed, corrected, etc.		
	32(6) (moved from 15)	But personal information of consumer or prospective consumers may not be disclosed.	Recommendation is that contact information is provided based on segmentation to enhance business growth for product offerings within the prescribed purposes.	The provision is aligned to the current regulations.
EPRA	32	Registrants are subject to stringent data management regulations, which, again, is justified given the nature of the public protection required.		Noted.
Old Mutual Holdings	32(3)	Agreements must be entered into enforcing this Act. How would non-performance of the agreement be enforced? Should the requirements not merely be stipulated in the Act or a standard?	Clarify.	The provision was retained as is. The parties must deal with non-performance between themselves, and where necessary, the Consumer Credit Regulator may impose administrative sanctions.

		How will registrants ensure that information received is authentic and truthful? What standard of security is expected to be applied?		Obligations in terms of ensuring accuracy are placed on both the credit provider as well as the credit bureau. Refer to subsection (1).
Section 33				
Micro Lenders Association of Namibia	33	Impermissible delegation of source of power from parliament to regulator. It is furthermore difficult to comment on this section without having regard to the proposed code of conduct.	To be deleted in its entirety.	The section was removed.
Old Mutual Namibia	33	Bill unclear on who will issue Codes of Conduct.	Clarify that registrants must have and adopt Codes of Conduct, the minimum requirements of which may be guided by a Standard.	The section was removed.
	33	How will the effectiveness of a code of conduct be tested and based on what information?	Clarify.	The section was removed.
Section 34				

Micro Lenders Association of Namibia	34(1)	Must refer to only "relevant" employees.	Insert "relevant" between "managers" and "employees". To read as follows: … "that their managers, relevant employees or agents"…	"relevant" was included, and the subsection was further amended to refer to "relevant employees, agents and other representatives".
	34(2)	It is difficult to comment on the proposed standard if we were not in a position to consider the proposed standard. Plenary legislative powers are being delegated. This is impermissible.		It is acceptable to provide these details in subordinate legislation. The specifics will be provided in the standards, and consultation will take place in accordance with that section.
	34(3)	This is arbitrary and creates room for indifferent treatment. This creates an Article 10 issue.		Subsection (3) was removed and will be catered for under the Standards-section.
	34(4)	Explanation / reason to be provided.	To be removed.	The provision was moved to the new Training-section.
	34(6)	Should similarly refer to "relevant employees"	Insert "relevant" between "manager" and "employee". To read: "(6) If a person, who is not a manager, relevant employee…"	It is not considered necessary to specify "relevant". Subsections (5) and (6) are now dealt with under a separate section.
Agra	34	Disagree with the entire		The section obliges registrants to

		section. It does not make any sense at all.		train their employees, agents and other representatives in matters to which the Act applies. Also that an agent or other representative of a credit provider must disclose their identities and other information to consumers when they solicit credit on behalf of a credit provider.
First National Bank of Namibia Limited	34(4)	There seems to be a disconnect between the guidelines on agent banking and the provisions of the Bill.	Please consider harmonizing the current subordinate legislation on agency banking with the Bill.	The section simply provides that employees, agents and other representatives must be trained, and that they must disclose their identities and other information to consumers when they solicit credit on behalf of a credit provider.
Nimble Group (Namibia) (Pty) Ltd (Norman, Bissett & Associates of Namibia A Division of	34	Who will provide and pay for the training of the legislation as proposed?	Create a committee of all existing Debt Collectors and provide training on all relevant topics. Formalize a Basic Debt Collectors Training guide.	The cost of compliance must be carried by the registrant.

Norman Bissett & Associates Group (PTY) LTD)				
Old Mutual Namibia	34	It is recommended that the Regulator and the Namibia Training Authority produce training material to the relevant standard that the Regulators require which can be utilised to provide training inhouse to employees.	Consider.	The proposal will be taken into consideration at the relevant time.
Section 35				
Micro Lenders Association of Namibia	35(1)	The provisions contained in this section is wholly lacking with regards to regulating unregistered persons acting unlawfully.	Insert after "may": ", on its own volition, and must, upon receiving a written complaint from a registrant,". To read: "35. … Consumer Credit Regulator may, on its own volition, and must, upon receiving a written complaint from a registrant, issue a notice to any person who…" As a minimum, the following principles must be incorporated: 1. The regulators must act against	The proposals in respect of subsection (1) were incorporated. Elsewhere the section was amended to provide for the following powers: (a) requiring the person to stop engaging in the activity that requires registration; (b) requiring the person to undertake a specified act, or to refrain from undertaking a specified

			unlawful activities, no discretion must lie with the regulators to act; 2. Persons must be deprived of the proceeds made from unlawful activities, viz: 2.1 Borrowers must be refunded, capital with interest, fees and charges; 2.2 All levies which would should have been paid to NAMFISA during the period of unlawful activities, becomes due and payable immediately, together with interest; 3. The equivalent provisions in the Microlending Act should be incorporated as amended in commented to by the MLA; 4. Furthermore, there must be an empowering provision authorising the regulators to take steps necessary to enforce the provisions of the notice; 5. At least similar powers afforded to the regulators with regards to inspections and investigations of registrants must be afforded to the regulators with regards to unregistered persons acting unlawfully but, arguably, the regulators must be afforded more	act, in order to remedy the contravention of the Act; and (c) requiring the person to rectify or repay, to the satisfaction of the Consumer Credit Regulator, any damage or other undesirable consequence which was caused by, or arose out of, the contravention of the Act.

			powers to act where necessary, swiftly and without notice, to clamp down on unregistered persons engaging in activities which require registration in terms of this Act.	
	35(1)(a)	Regulators must also act against unregistered persons who has previously engaged in unlawful conduct. Regulators must be compelled to act against unregistered persons engaging in activities which requires registration. There must be a procedure for registrants to make a complaint to the regulators about unregistered persons acting unlawfully - separate procedure from complaints by public. Regulators must investigate.	"May" to be replaced with "must". Remove “is engaging in an” and replace with “is undertaking, or has undertaken an act or course of action, or is about to undertake”. To read as: “(a)is undertaking, or has undertaken an act or course of action, or is about to undertake , in terms of this Act, requires registration, or offering to engage in such an activity, or holding themselves out as authorised to engage in such an activity; and"	Paragraph (a) was merged with subsection (1), and the section was amended as indicated above.
	35(3)(e)	Penalty must be enforced irrespective of whether the	Delete: “if the person fails to discontinue that activity”.	The words were removed.

		activities discontinue.	To read: "(e) any penalty that may be imposed in terms of this Act."	
	35(4)	Issues concerning the appeal and the effects thereof should be dealt with in a central provision. Need not expressly state that the notice falls away upon registration, it will automatically follow. The provision is superfluous.		The provision was removed.
First National Bank of Namibia Limited	35	Because of the far-reaching implications of this section in the Bill – it is imperative that clarity be provided to existing credit providers/lenders like banks whether or not registration is required.		Provision is now made for existing registrations to be deemed registrations under the Act (for banking institutions, microfinance banking institutions, credit bureaus and microlenders).
Section 36				
Micro Lenders Association of Namibia	36(1)	The standards referred to therein, in respect whereof there are no proper (if any) guidelines provided for in the Act), are intended to govern		It is legitimate for the Legislature to delegate legislative powers to a subordinate authority.

		pivotal aspects of the Act which must have been legislated upon by Act of Parliament, and not impermissibly delegated to a statutory body (whose function it is to ensure compliance with law, and not make law). This accords a constitutionally impermissibly vague, wide, unguided and unfettered discretion and also constitutes an infringement of the rights enshrined in Article 21(1)(j). Furthermore, the constituent elements of this impugned provision are vague, uncertain and unintelligible, conferring a constitutionally impermissibly vague, wide, unguided and unfettered discretion on the regulator. This impugned provision purportedly permits unfair, unreasonable or arbitrary decision-making, infringing		

		the rights enshrined in Articles 12(1)(a) and 18, and also infringes upon the rights enshrined in Article 21(1)(j). The provision for the purported power of the regulator to "remove key responsible persons" also infringes upon the freedom of contract, is inconsistent with the applicable labour legislation governing in Namibia, and infringes upon the freedom of association. These impugned provisions infringe upon the rights enshrined in Articles 8(1) (human dignity, infringing on the freedom of contract and interference with any existing contractual rights which may have come into existence with the "key responsible persons"), 16(1), 21(1)(e) and 21(1)(j). The impugned provisions purport to accord a constitutionally impermissibly		

		vague, wide, unguided and unfettered discretion and, infringing the rights enshrined in Article 18, and purportedly permit unfair, unreasonable or arbitrary decision-making.		
Agra	36	Does this mean that the regulator has a say in removing our executives, directors and branch managers? That seems like interfering with operations. How would the regulator know that the person no longer meets the qualification, experience, competency criteria, especially in a retail business (non-financial institution)?		The fit and proper criteria will be specified in the standards for all to know. Should the persons specified in the new subsection (1) fail to meet the criteria, they must be removed from office.
First National Bank of Namibia Limited	36	The power to remove and replace a key responsible person by the Consumer Credit Regulator is too far reaching. It infringes on the shareholder's rights to	Clause to be reconsidered.	The fit and proper criteria will be specified in the standards for all to know. The registrant must thus take care to appoint persons who meet the qualification criteria. The section provides for

		appoint their own board. In principle the authority can notify a juristic that a key responsible person is no longer fit and the juristic should be offered ample and reasonable opportunity to find a suitable alternative and for same individual to be approved by the regulator.		the Consumer Credit Regulator to direct the removal of the person by a date specified or an extension of such period. The appointment of a new principal officer, for example, must take place within the periods specified under section 25.
Nictus (Pty) Ltd	36(1)	CCR power/right to remove key personnel of the company from their position of management. Point to be removed, no person in management is appointed if not fully suited for the position and the responsibilities that is required from them. Appointment or replacement of staff is to be handled internally within the company, not influenced by outside parties.		The fit and proper criteria will be specified in the standards for all to know. Should the persons specified in the new subsection (1) fail to meet the criteria, they must be removed. The registrant must thus take care to appoint persons who meet the qualification criteria.

Old Mutual Namibia	36	The Regulator may remove key responsible persons and direct that an appointment take place to replace the disqualified Key Responsible Person. Does the Regulator intend to have the authority to direct who specifically should be appointed to replace the Key Responsible Person?	Clarify.	No, the Regulator cannot direct that a specific person be appointed. The person who is appointed as a key person (specified in the new subsection (1)) must simply meet the relevant fit and proper requirements.
Section 37				
Micro Lenders Association of Namibia	37	The principle of declaring certain practices as undesirable and prohibiting the practice is an impermissible delegation of legislative power and is thus unconstitutional. This impugned provision infringes the rights enshrined in Articles 16(1) and 21(1)(j). The constituent elements of this impugned provision are vague, uncertain and unintelligible, conferring a	To be deleted in its entirety.	The proposal is not accepted. It does not involve the delegation of legislative power. The provisions are necessary to address any market conduct issues that may negatively impact consumer protection.

		constitutionally impermissibly vague, wide, unguided and unfettered discretion on the regulator. In infringement of the rights enshrined in Article 18, this impugned provision also purportedly permits unfair, unreasonable or arbitrary decision-making.		
First National Bank of Namibia Limited	37(5)	This is too subjective. The regulator cannot dictate damages claims. They are over-reaching on their administrative power. Any claim for damages should be determined by a court with competent jurisdiction.	Reconsider the clause to limit it to an administrative fine/penalty being imposed.	The power is necessary to provide redress to the consumer.
Old Mutual Namibia	37	Regulator can issue notice on any matter it deems undesirable and then direct that repayment be done to the person. This amounts to declaring something invalid after the fact and then retrospectively enforcing it.	Clarify.	Subsection (5) deals with a situation where the practice is continued after it was declared irregular or undesirable. It does not provide for retrospective enforcement.

		No limitation in terms of to whom or on what this can be issued.		
Section 38				
Micro Lenders Association of Namibia	38	What does verification entail? What information? Sec 38 READ WITH Sec 133 - reference. Unconstitutional. Overbroad. Unspecified. Unguided. Offends fundamental principles of rule of law and certainty in establishing what the governing law is, and what may or may not constitute an offence under 133. Reminiscent of authoritarian powers. If refuse to give information, will then be subject to sec 133.	To be deleted in its entirety.	The section was amended slightly to provide that "for purposes of determining the accuracy of information required in terms of this Act", the Consumer Credit Regulator may verify information at their disposal by making enquiries.
Creditinfo Namibia Bureau	38	Verify any information. Reporting covers the accuracy		The comment is not clear, and a response cannot be provided.

(Pty) Ltd		of data received from credit providers.		
Section 39				
Micro Lenders Association of Namibia	39, 40 and 41	GENERAL COMMENTS TO SECTION 39, 40, and 41 AND RELATED SECTIONS: 1. Manifestly overbroad. 2. No hierarchy of compliance and regulatory and measures. 3. Generally unclear, appears inconsistent, and not sequential. 4. Sec 39 (1) and Sec 40 (5)(b) are ambiguous. 5. The provisions in these sections, in general, are vague, ambiguous, and does not provide for legal certainty. 6. Section 39 has no audi process and no appeal/review procedure, no independent adjudicator, and does not comply with the basic principles of the rule of law and violates Art 12 constitutional rights to fair		Noted. The responses are provided below in respect of the specific comments. Specific provision was included in section 39(3) for an *audi* process. The appeal process provided for in section 44 will indeed find application.

		trial. 7. Section 40 does not have an audi process. 8. The phrases administrative penalty, administrative sanction, and financial penalty are used interchangeably. A change in terminology denotes a change in intention / meaning - what is the reason for the use of the different phrases? Would an administrative sanction as provided for in terms of section 39(5) by subject to the appeal process provided for in terms of section 40.		Section 40 indeed provides for an *audi* process. The 3 terms are used deliberately and not interchangeably. It is meant to denote a change in meaning. Yes, an administrative sanction is subject to the appeal process provided for in section 44.
	39(1)(c)	The vague, wide, unguided and unfettered discretion purportedly granted to the regulator to issue “directives”, are vague, uncertain and unintelligible, conferring a		Paragraphs (c) and (d) were removed.

		constitutionally impermissibly vague, wide, unguided and unfettered discretion on the regulator. This impugned provision also infringes the rights enshrined in Articles 12(1)(a), 16(1), 18 and 21(1)(j).		
	39(3)	As the provision stands, it is overly broad. The audi process must be followed and provided for on the issuance of the notice and then before the Order given in terms of the directive takes effect.	Delete whole subsection (3) and replace with: "(3) The Consumer Credit Regulators may issue a directive with regards to such measures as may be reasonably necessary to remedy any identified alleged contravention of this Act."	Subsection (3) now provides for *audi*.
	39(5)	The phrase administrative penalty, administrative sanction, and financial penalty are used interchangeably. A change in terminology denotes a change in intention / meaning – what is the reason for the use of the different phrases?		The 3 terms are used deliberately and not interchangeably. It is meant to denote a change in meaning.

		Would an administrative sanction as provided for in section 39(5) be subject to the appeal process provided for in section 40? Administrative penalty must be calculated from the issuance of the directive.		Any administrative sanction will be subject to the appeal process provided for in section 44. Agreed. The penalty will be calculated for failure to implement the directive from the effective date.
EPRA	39, read with 40 and 43	The CCRs may issue "directives" limited to certain circumstances. The directives may include the removal of a "key responsible person". Non-compliance may result in an administrative penalty. Generally, the CCRs may impose administrative sanctions up to a maximum amount of N$10 million. Such sanctions relate to non-compliance with the CCB (and all directives, regulations and codes of conduct made in terms of it), but also when, in		Provision is made for different administrative sanctions to be imposed, ranging from a written warning, the issuing of a directive, requiring the registrant to establish compliance programs, varying the conditions of registration, imposing a financial penalty (to the maximum of N$10 mil), or to cancel the registration of the registrant, all of which are subject to an appeal or review by a court of competent jurisdiction. Sections 39(1) and 40(1) were

		the sole discretion of the CCRs a registrant "is undertaking, or has undertaken, an act or cause of action, or is about to undertake an act or cause of action, that may prejudice consumers or prospective consumers". The latter instance is undesirable, as such wide, arbitrary powers, are open for abuse. A registrant can be punished for an act which is not even mentioned in the CCB, regulations, codes of conduct, or directives. This is a form of regulating outside of the statutory regulatory process and should be removed from the CCB. The risk is amplified because penalties are payable to the CCRs, and thus the CCRs have a direct financial incentive to raise administrative penalties.		amended to remove paragraphs (b) and (c). Any action taken by a Consumer Credit Regulator, or administrative sanction / penalty imposed, is subject to appeal or review by a court.

		It is arguably a perverse incentive which is, unfortunately, already the system in place with several other regulators such as NAMFISA and the NaCC. To appeal these penalties is an extremely time-consuming and costly exercise, both at the appeal stage, and then again often in court, where, if a review process is not the only remedy, the whole appeal process starts afresh. This in itself creates fertile grounds for abuse of public power by the CCRs. They know what an appellant will have to go through. They know the legal costs for the applicant will probably run into many millions. They know the applicant cannot obtain a cost order at the appeal board level. We state this not out of speculation, but out of experience with		

		NAMFISA and its appeal board process. To add insult to injury, a penalty imposed by the CCRs is given the status of "civil judgment" (section 43(3) of the CCB) without any court proceedings (and the right to a fair trial) having preceded this "judgment". The registrant can make representations to the CCB within 30 days after having received notice that this "judgment" will be filed, but as stated, the CCB acts in its own cause, and is not an independent judicial platform. This cannot qualify as a "fair trial before an independent court or tribunal". As the penalty is already imposed, without a fair hearing before and independent judicial platform, the only remedies		Section 43 was amended to provide for the Regulators to follow the normal court process for the recovery of any debt due to it.

		available to the registrant is to overturn the already decided upon “verdict of guilty”, before the appeal board, and if necessary, before a court. This is neither fair nor reasonable, nor does the process of finding the registrant guilty without a hearing comply with the constitutional right to a fair hearing. To sum up the above undesirable provisions: If the CCBs are of the opinion, in their sole discretion, that a registrant acted to the “prejudice of a consumer” (without such action ever being expressly prohibited in any way before), they effectively already have a civil judgment of up to N$10 million in their favour, which they can immediately execute, unless the registrant has very, very deep pockets to fight the decision, first		

		through the appeal boards (which cost money to approach to begin with, with no possibility of a cost order to recover costs), and then through the High Court (the latter not being possible before the appeal board process is finalised). This process is likely to be unconstitutional (offensive of the right to a fair trial and the right to fair and reasonable administrative action) and should be removed from the CCB. It should be replaced with a system whereby the registrant raises a defence before an independent judicial platform to assess guilt or innocence, and before a penalty is imposed.		
Section 40				
Micro Lenders Association of Namibia	40	General comment: - Consider section 38 of the Competition Act and whether		Sections 40 and 41 were merged. It will be very onerous and costly

		similar provisions involving a court should not be considered in relation to the imposition of administrative sanctions. - Note that no audi process is provided for in section 40(1) "reasonable grounds" process. - In any event the "reasonable grounds" test is inadequate also inconsistent with Article 12 of the Constitution. On the current formulation it appears that audi is only in relation to a sanction and not in relation to the finding of guilt and it is unclear on any other right of appeal.		(for both parties) to involve a court for the imposition of administrative sanctions. It is an administrative decision, subject to appeal. The *audi*-provision already provided for under subsection (3) provides the opportunity to make representations about the nature of the non-compliance.
	40(1)	Must be afforded an opportunity to make representations to the regulator prior to the regulator being satisfied on reasonable grounds and the remaining provisions finding	40(1)(c) to be deleted.	The *audi*-provision already provided for under subsection (3) provides the opportunity to make representations about the nature of the non-compliance.

		applicability. There must be audi and a process to follow when a dispute arises.		
	40(3)	Must include the section allegedly contravened, facts related thereto and the particulars thereof. To further provide complete and full reasons as to the decision to impose sanctions. What is the representation about: 1) Guilt v innocence 2) Guilt, but not agreeing to sanctions? From a reading of the section – guilty until proven innocent? Must you assume guilt and proceed with an appeal?	Change subsection to read as follows: "40(3) Before imposing an administrative sanction referred to in subsection (5), the Consumer Credit Regulator must give the registrant reasonable prior notice in writing – (a) Of the nature of the alleged non-compliance, including details of facts which gave rise to the alleged non-compliance and the particular section of the Act or Regulations contravened; (b) Of the intention to impose an administrative sanction; (c) Of the amount or particulars of the intended administrative sanction and the reason for such intended administrative sanction; and advise that the registrant may, in writing, within a reasonable period specified in the notice, make representations as to why the administrative sanction should not be	Paragraphs (a) and (b) were amended accordingly. Section 40 does not involve criminal proceedings which involve the elements of "guilt or innocence". It involves an administrative decision, which is subject to appeal, as to whether there is non-compliance with the Act, and if so, what administrative sanction is appropriate. As part of the *audi*-process provided for in this subsection, the person will surely, as part of the "representations as to why the administrative sanction should not be imposed", present arguments, facts or other information relating to the "alleged non-compliance", as well as the other aspects.

			imposed.”	
	40(5)(e)	Does this section allow the imposition of a penalty by the Minister as the regulations determine and to impose an administrative sanction?		The comment is not clear. The maximum amount of the financial penalty is specified in the Act, and an amendment was made to provide for the future amendment of the amount through a regulation.
Old Mutual Namibia	40(1)	Sanctions can be imposed for engaging in an activity in a manner inconsistent with the Act, or performing and act which may prejudice consumers. This is vague and too broad.	Revise.	Sections 40 and 41 were merged. Paragraphs (b) and (c) were removed from subsection (1).
	40(6)(a)	Individuals may be instructed to pay a penalty - this removes the vicarious liability of the employer-employee relationship.	Revise.	The subsection was amended to remove paragraph (a).
	40(10)	What is the rationale to publish sanctions?	Clarify.	The provision was amended to provide for a discretion.

Section 41				
Micro Lenders Association of Namibia	41	GENERAL COMMENTS: 1. There must be an audi process provided for prior to a finding; 2. There must be a finding after a fair process; 3. Not every contravention would merit cancellation, so the specific provisions which triggers possible cancellation must be expressly identified.	The following provisions, as proposed by us in our comments to the Microlending Act, can be adopted mutatis mutandis here: Cancellation or variation of registration by NAMFISA 11. (1) If a microlender: (a) has made a material misrepresentation in the application for registration; (b) no longer meets the requirements for registration; (c) ceased to operate or has failed to commence operating within 1 year after being registered; (d) stipulates for, demands or receives finance charges in excess of the maximum rate determined by the Registrar in terms of the Usury Act (Act No. xx x); (e) stipulates for, demands or receives penalty interest, in the event of default by a borrower, in excess of the maximum as prescribed by the Minister; (f) retains as security or for collection	The section dealing with cancellation of registration was merged with section 40, as it is one of the administrative sanctions which can be imposed. It is not possible to provide for an exhaustive list of all the circumstances that could possibly give rise to any of the specific administrative sanctions being imposed. The Consumer Credit Regulator must therefore consider the factors provided for under subsection (6) to decide which specific administrative sanction will be the most appropriate.

			arrangement purposes any bank card or personal information such as pin codes or original identification documents of the borrower; (g) uses a payment instrument that is not registered with the Bank of Namibia in terms of the Payments System Management Act (Act No. xx) to transact with a borrower or any other person; (h) is convicted in respect of a financial crime; or (i) is convicted of an offence under this Act, NAMFISA must by written notice inform the microlender concerned of the contravention, and also of the fact that the action concerned may lead to sanctions imposed on the microlender, including the cancellation of its registration, where applicable and further inform the microlender of any remedial steps which the microlender may take. (1A) The NAMFISA Board may cancel the registration of a microlender in the following circumstances,: provided that	

			the microlender has been afforded an opportunity to be heard: (a) where the microlender has made a material misrepresentation in the application for registration; (b) where a microlender no longer meets the requirement for registration; (c) where a microlender ceased to operate for a period of 1 year, or has failed to commence operating withing 1 year after being registered; or (d) where the microlender is convicted in respect of any financial crime. (1B) (1) The NAMFISA Board may impose sanctions on a microlender in the following circumstances,: provided that the microlender has been afforded an opportunity to be heard: (a) where the microlender fails to comply with the provisions of this Act; or (b) where a microlender is convicted of a contravention of this Act. (1B) (2) In determining the appropriate administrative sanction referred to in subsection 1 of section 1B, the NAMFISA Board must consider the	

			following factors: (i) the nature, duration, seriousness and extent of the relevant non-compliance; (ii) whether the microlender has previously failed to comply with this Act; (iii) any remedial steps taken by the microlender to prevent a recurrence of the non-compliance (iv) any steps taken or to be taken against the microlender by – (a) another supervisory body; or (b) a voluntary association of which the microlender is a member; and (v) any other relevant factor, including mitigating factors. (1B) (3) For purposes of subsection 2 of section 1B, the NAMFISA Board may impose one or more of the following administrative sanctions: (i) a caution not to repeat the conduct which led to the non-compliance referred to in section 1; (ii) a reprimand; (iii) a directive to take remedial action or to make specific arrangements;	

			(iv) the restriction or suspension of certain identified business activities; (v) the suspension of the license to carry on business activities; (vi) a penalty not exceeding the amount prescribed in the regulations. , such penalty may provide for interest at rates not exceeding the rates specified under the Prescribed Rate of Interest Act payable from a date determined by the NAMFISA Board, and the penalty payable together with the interest, is a debt due to NAMFISA by the microlender; (vii) in the event that the NAMFISA Board finds that the microlender has contravened sections 11(1)(d) or (e) then the NAMFISA Board may direct that the microlender repay to the borrower – where possible – the amount charged in excess of the allowable maximum; or ; or (viii) cancellation of registration. (2) NAMFISA must give notice to the microlender of its intention to take any action referred to in subsection (1A)	

			and (1B), together with the reasons, and must give the microlender a reasonable opportunity to be heard by specifying a period of not less than 30 days during which the microlender may make written representations to NAMFISA about the matter or to remedy the matter complained of. (3) The notice referred to in subsection 2 must be delivered – (a) between the hours of 08h00 and 17h00 on any day; (b) to the principal officer of the microlender or to any other person of the age of 16 years or older employed by the microlender at the principal office, if its principal officer is not available . (4) If, after having considered the representations of the microlender, the matter complained of is not remedied, then NAMFISA may make application to the NAMFISA Board to convict the microlender of a contravention of this Act, setting out the charge against the microlender, the facts underpinning the charge, and the sanction which it	

			applies for to be imposed against the microlender. (4) (5)NAMFISA must make public any cancellation of registration and the reasons for such cancellation by notice in the Gazette or by means of any other appropriate public statement. (6)The cancellation of the registration of the microlender in terms of subsection (2)(a) will not affect the legality of any lawful terms of any existing loan agreement entered into between the microlender and borrowers.	
	41(1)	The constituent elements of this impugned provision are vague, uncertain and unintelligible, conferring a constitutionally impermissibly vague, wide, unguided and unfettered discretion on the regulator. This impugned provision purportedly permits unfair, unreasonable or arbitrary decision-making, infringing the rights enshrined	Remove "(a) fails to comply with any condition of its registration; or (b) contravenes this Act" and replace with "is found guilty of a contravention of this Act, if the contravention warrants cancellation of the registration." To read: "41(1) A registration in terms of this Act may be cancelled by the relevant Consumer Credit Regulator, if the registrant is found guilty of a contravention of this Act, if the	Note that the Cancellation-section was merged with the Administrative Sanction-section, which provides for a variety of factors to be considered before deciding on an appropriate sanction.

		in Articles 12(1)(a) and 18, and also infringes upon the rights enshrined in Article 21(1)(j).	contravention warrants cancellation of the registration."	
Old Mutual Namibia	41(1)(a)	Registration can be cancelled for contravening the Act. It is broad and vague and does not specify which provisions may lead to deregistration. It must be adequately significant to lead to such serious result.	Clarify.	The Cancellation-section was merged with the Administrative Sanction-section, which provides for a variety of factors to be considered before deciding on an appropriate sanction.
	41(7)	No consequences provided for where consumers fail to continue to honor the obligations at deregistration. How will this be enforced? How will deregistration practically be managed by the Regulator?	Clarify.	The subsection was amended to specify "rights and obligations". Deregistration should not change the existing contractual relationship between the credit provider and the consumer, and credit providers must continue to enforce their rights under the contract. The parties must deal with their contractual relationship, and must approach the court where

				necessary.
Section 42				
Creditinfo Namibia Bureau (Pty) Ltd	42(2)	Surrender data collected and stored by Credit Bureau - @Elba to confirm if that is within CI policies, including 42(2)(3).		A response to this comment is not possible.
Section 43				
Micro Lenders Association of Namibia	43	General comments: 1.This provides for arbitrary enforcement of a civil debt. 2. No judicial oversight. 3. No audi provided for. The method employed by the Legislature to reach the objective of the Act, constitutes a further impermissible restriction to rights guaranteed under Articles 1(1), 1(3), 5, 8(1), 10(1), 11(1), 13(1), 16(1), 18, 21(1)(e) and (j), read with Articles 22 and 25, in that the impugned provision militates against the principle of		Section 43 was amended for the Consumer Credit Regulator to follow normal court processes for the recovery of debt.

		separation of powers and the rule of law, by permitting the Minister and the regulator to act in a manner envisaged in the Act while the ascertainable extent of the Minister's and the regulator's limitation powers as required by Article 22(b) are not specified in the impugned sections of the Act. This provision does not constitute the delegation of subordinate regulatory authority to other bodies, but rather the assignment of plenary legislative powers. This is constitutionally impermissible for the reasons stated above.		
	43(2)	The method employed by the Legislature to reach the objective of the Act, constitutes a further impermissible restriction to rights guaranteed under Articles 1(1), 1(3), 5, 8(1),		Section 43 was amended for the Consumer Credit Regulator to follow normal court processes for the recovery of debt.

		10(1), 11(1), 13(1), 16(1), 18, 21(1)(e) and (j), read with Articles 22 and 25, in that the impugned provision militates against the principle of separation of powers and the rule of law, by permitting the Minister and the regulator to act in a manner envisaged in the Act while the ascertainable extent of the Minister's and the regulator's limitation powers as required by Article 22(b) are not specified in the impugned sections of the Act. This provision does not constitute the delegation of subordinate regulatory authority to other bodies, but rather the assignment of plenary legislative powers. This is constitutionally impermissible for the reasons stated above.		
EPRA	43	This process is likely to be		Section 43 was amended for the

		unconstitutional (offensive of the right to a fair trial and the right to fair and reasonable administrative action) and should be removed from the CCB. It should be replaced with a system whereby the registrant raises a defence before an independent judicial platform to assess guilt or innocence, and before a penalty is imposed.		Consumer Credit Regulator to follow normal court processes for the recovery of debt.
Section 44				
Micro Lenders Association of Namibia	44	1. Section as it currently reads provides for a narrow appeal. Must be amended to provide for a wide appeal where the scope of the remedial powers of the Appeal Board are expanded to include to the power to confirm, vary, revoke, set aside or substitute the decision of the regulator. 2. What is deemed to be a decision? What is a "decision"?	INSERT A PROVISION: “Where an appeal to the Appeal Board or the High Court has been noted in terms of this Act, the operation and execution of the decision in question is suspended pending the decision of such appeal.”	The proposal was not incorporated. The powers of the respective appeal boards are provided for in the enabling legislation. The enabling legislation also deals with the aspect of whether the decision in question is suspended pending the determination of the appeal. What will qualify as a “decision” which can be appealed against, will have to be

		3. This section must include provisions similar to s51 of the Environmental Management Act 2007, to provide for a wide appeal procedure to the High Court.		determined in every case.
EPRA	44	The NAMFISA appeal board is administered by the Ministry of Finance and Public Enterprises. This is undesirable. The administration of an appeal board is crucial to its efficiency. From our experience the administration of the NAMFISA appeal board is suboptimal, and a major obstacle to finalization of cases brought to that appeal board. The NAMFISA appeal board also consists of members serving part-time. We envisage that, given the volume of credit transactions entered in Namibia, the		The current administration of the NAMFISA Appeal Board is not ideal, but it cannot be administered by NAMFISA itself, as therein lies a perceived bias. The appeals under this Act must also be administered independent of the Consumer Credit Regulator.

		workload of an appeal board dealing with the matters in the CCB will require dedicated administrative staff, preferably permanently employed by a Consumer Credit Regulator. Alternatively, the laws governing the NAMFISA appeal board must be amended to place the administration of the NAMFISA appeal board under NAMFISA.		
Section 45				
Micro Lenders Association of Namibia	45	Must include a right to refuse acceptance of the application for credit. Imposes unreasonable restrictions of the following Constitutional Rights: - 21(1)(e) - 21(1)(f) - 21(1)(j) A consumer may have the right to access to credit, NOT		The section was retained as is.

		a right to apply, or a right to receive credit barred from being declined on commercial grounds.		
	45(1)	Rather than a blind right to apply for credit, we support a goal-right system taking into account the important elements necessary to achieve both the positive impact of credit as well as minimizing its potential harmful consequences. In such a system, a combination of actors would be responsible for working towards the goal of universal access to credit. Clearly, the real purpose of a right to credit (and ancillary thereto, the right to apply for credit) would be to empower the poor through the development of productive activities for borrowers. With a goal-right, rather than		The subsection was retained as is.

		a traditional right afforded to the individual that is practically impossible, the duties would fall upon all those who participate in the socio-economic framework. It is their collective responsibility to structure the financial system so that all have secure access to credit. This offers a flexible approach to implementation, to accommodate the different cultural and economic context. To adopt the goal-right, reformulation of sections 45, 46, and 47 may be necessary. If the goal-right proposal is rejected, then we propose s45(1) be adopted with the proposed amendments.		
	45(2)		Insert “business model” after “its” and replace “and” with “and/or”. To read: “… consistent with its business model, risk management and/or underwriting	The changes were made to subsection (2).

			practices."	
	45(3)	In considering the above comments.	Proposed deletion.	Subsection (3) was retained.
Bank Windhoek	45(1)	Does an assisted minor not have this right? Is the inclusion of section 45(1) necessary?	Draft the section to capture all consumers with this right or remove the section.	The subsection was amended to refer to persons with the required legal capacity to contract.
Section 46				
Creditinfo Namibia Bureau (Pty) Ltd	46(2)	Notification of reason why credit is being refused - Bureaus are unable to update credit information unless the mentioned credit provider in question provides instruction / evidence that the loan / account has been settled.		Noted. Section 46 requires that the credit provider must inform the consumer of the reasons for credit being refused. There is no obligation to report to the credit bureau also.
Old Mutual Namibia	46	References to "in writing" across the Act may be ambiguous.	Define "in writing" to include communication by electronic means, such as "SMS" which is defined.	A definition for "written" was included.
Section 47				

Micro Lenders Association of Namibia	47	Rename.	Rename heading for section 47 to "Right to information in official and plain language".	The heading was changed to "Right to information".

	47(2)	We do not have the intended prescribed form. The prescription of the form and content of documents (which includes the loan application form, loan agreement, and other documents) has far reaching practical and financial implications to the credit provider. The regulator may prescribe the minimum specific issues or aspects to be addressed but neither the form, nor the content.	Propose deletion.	Sections 47 and 48 were merged. The section was amended to specify that information must be provided in the required form where so specified (i.e. in writing if the Act specifies that it must be in writing).
	47(3)(d)		To be deleted.	No explanation is provided for the proposal to delete. The provision was retained.
	47(4)		To be deleted.	Although no explanation is provided for the proposal to delete, the subsection was deleted.
Section 48				
Micro Lenders Association of	48(2)	Cannot meaningfully comment as the standard was		Sections 47 and 48 were merged.

Namibia		not provided.		The section was amended to specify that information may be provided electronically on condition that the consumer's prior written consent was obtained.
	48(3)		Remove: "If no method has been prescribed for the delivery of a particular document to a consumer, the person required to deliver that document must make the document available to the consumer" and replace with: "Every document that is required to be delivered to a consumer may be delivered". And add new: "(e) mobile application; (f) any other mechanism allowed for by law; or (g) any other mechanism as may be agreed between the parties." Subsection to read as follows: "(3) Every document that is required to be delivered to a consumer may be	The section was amended to specify that information may be provided electronically on condition that the consumer's prior written consent was obtained.

			delivered through one or more of the following mechanisms— (a) in person at the business premises of the registrant, or at any other location designated by the consumer but at the consumer's expense, or by ordinary mail; (b) by fax; (c) by email; (d) by printable webpage or web-link; (e) mobile application; (f) any other mechanism allowed for by law; or (g) any other mechanism as may be agreed between the parties."	
	48(4)		Remove "original" and replace with "first".	Subsection (4) was amended to now refer to "original document or first copy of any document".
Agra	48(4) and (5)	The cost of reproducing copies for consumers is extremely high given the volume of reprint requests we receive from clients. It would not be sustainable for us to provide ANY reprints at no		Sections 47 and 48 were merged. The original document or first copy of a document must be provided to the consumer at no cost.

		charge, only the original prints.		
First National Bank of Namibia Limited	48(3)(d)	Please define what would constitute a "printable web page or web link".	We propose all methods of delivery removed and replaced with technology neutral terms like either physical delivery (i.e., by registered mail) or any other form of electronic communication (i.e., WhatsApp, email, data message etc.)	Sections 47 and 48 were merged. The section was amended to specify that information may be provided electronically on condition that the consumer's prior written consent was obtained.
Old Mutual Namibia	48(3)	See above. Not all customers have access to fax and e-mail, and physical delivery is not a viable option.	Include SMS as a viable option. Would self-service portals be considered?	Sections 47 and 48 were merged. The section was amended to specify that information may be provided electronically on condition that the consumer's prior written consent was obtained.
Section 49				
Micro Lenders Association of Namibia	49(1)	There are many reasons as to why a person may lawfully discriminate.	Delete subsection 49(1) in total. If not removed in its entirety, then include reference to "unfairly" discriminate.	Paragraph (a) was amended to include "unlawfully and unfairly" before discriminate.

	49(2)		Insert “by a Court” after “agreement” Section to read as: “(2) If a credit agreement, or any provision of such an agreement is, in terms of this Act, declared to be unlawful or is severed from the agreement by a Court, the credit provider who is a party to that agreement must not, in response to that decision—“	Subsection (2) was amended accordingly.
	49(3)	Legislative abdication. Delegation of legislative powers. No proposed standards to consider.	Propose deletion.	It is legitimate for the Legislature to delegate legislative powers to a subordinate authority.
Old Mutual Namibia	49(1)(a)	What does the discrimination entail and how is this tested?	Clarify.	The particular circumstances of every case will be determinate.
Section 50				
Micro Lenders Association of Namibia	50(1)(a)		Insert “in terms of this Act” after “legal rights”. Section to read as: “(1) A credit provider must not—	Paragraph (a) was amended to remove the reference to any rights being waived as section 71 adequately deals with it.

			(a) require a consumer or prospective consumer to sign any blank or incomplete documents, inclusive of an acknowledgment of debt or a consent to judgment or any document in terms of which the consumer or prospective consumer waives any legal rights in terms of this Act during the application process or at the time of entering into the credit agreement;"	
	50(1)(c)		Insert "physical" after "consumer's" and "as security or collateral, physical" after "document". Also remove "or any similar identifying document or device" and replace with "as payment method". Section to read: "(c) retain or keep in his, her or its possession, or request or demand to retain or keep in his, her or its possession, the consumer or prospective consumer's physical identity document as security or collateral, physical credit or debit card, bank account or automatic teller machine access card as payment	The proposals were incorporated as far as possible.

			method."	
	50(1)(d) and (e)		Delete the two subsections in total.	No reason or explanation is provided for the proposal to delete. It is not accepted.
	50(2)		Delete "as initial" and replace with "a deposit". Section to read as: "…serves as a deposit in respect of the goods or service to which that later credit agreement relates. "	Subsections (2) to (6) were moved to section 70. "initial payment" was replaced everywhere with "deposit".
	50(3)	Does this refer to the deposit? If not, problematic. Then it must be defined. Rather use the term "deposit".	Delete "as initial" and replace with "a deposit". Section to read: "(3) A credit agreement shall not be binding until the consumer has paid at least the prescribed deposit, if any."	Subsections (2) to (6) were moved to section 70. "initial payment" was replaced with "deposit" everywhere.
	50(4)(c)	Does this refer to the deposit? If not, problematic. Then it must be defined. Rather use the term "deposit".	Remove all references to "initial payment" and replace with "deposit" Section to read: "(c) no credit provider shall make any money available or cause any money to be made available by any other person to a consumer for the purpose of paying the deposit out of such money in respect of a credit	Subsections (2) to (6) were moved to section 70. "initial payment" was replaced with "deposit" everywhere.

			agreement, and no consumer shall receive or make any deposit obtained directly or indirectly from or through the credit provider or any other person whose business or part of whose business it is, by arrangement with a credit provider, to make money available for the initial payment in terms of a deposit: Provided that the provisions of this paragraph shall not be so construed as to prohibit any initial payment in terms of a deposit out of money paid or owing to the consumer by the credit provider as emoluments."	
DBN	50(2)(a)	The definition of "credit" in section 1 refers to "a deferral of payment of money" which contradicts the provisions of section 50(2)(a) which prohibits substitution of credit agreements. DBN objects to this prohibition in that in its current operational structure, it implements turnaround plans in the form of restructuring,		Subsections (2) to (6) were moved to section 70. The provision does not prohibit substituting an earlier agreement with a later one. It specifies that what was paid as deposit for the earlier agreement cannot also serve as deposit for the later agreement.

		rescheduling, and variations which in effect, substitutes the initial agreement entered into with the consumer. Reconsider the prohibition contained in section 50(2)(a).		
Old Mutual Namibia	50(3)	(3) Credit agreement is not valid unless the initial payment has been received from the consumer. How will the credit provider then have received refund of the credit provided? Is the agreement invalidated if a borrower defaults on first instalment? How would recovery then be managed? What is an initial payment? Does this perhaps apply to a required deposit and if so, how does this affect microlenders who disburse funds without an initial payment.	Revise.	Subsections (2) to (6) were moved to section 70. If a deposit is required for a particular type of credit agreement, it must be paid for that agreement to take effect. initial payment" was replaced with "deposit" everywhere.

	50(4)	Microlenders and service providers cannot be obligated to accept payment in goods.	Revise.	Subsections (2) to (6) were moved to section 70. Although the provision simply provided for the possibility to pay a deposit in the form of goods, it was amended to provide for agreement between the parties.
Fashion Retailers (Pty) Ltd	50(3)	The credit agreement does not become binding until the consumer pays the initial prescribed fee. The proposal is that the credit agreement becomes binding on signature.	This requires clarification.	Subsections (2) to (6) were moved to section 70. The provision deals with the payment of the minimum prescribed deposit, not a fee. Should a deposit be prescribed for a particular type of credit agreement, it must be paid for the agreement to take effect.
Section 51				
Micro Lenders Association of Namibia	51(3)(a)		Delete “if available”.	The comment must be misdirected, as there is no “if available” in paragraph (a).
	51(4)		Delete “in the manner and form and”.	Subsections (4) and (5) were moved to section 26 –

				Submission of Returns. The proposal was not incorporated.
	51(5)		Delete “in the manner and form and”.	The proposal was not incorporated.
First National Bank of Namibia Limited	51(3)(d)	The requirement for an explanation by an interpreter does not keep in mind that some customers want to contract digitally and will never come into a branch to see these A3 posters. Bill should keep up with digital era and high net worth clients wanting to contract over email. Fails to consider the possibility to have all these terms displayed on a channel or made available on request or on a website?		The section was amended to make provision for consumers who conduct business in person, as well as for consumers who conduct business digitally.
Fashion Retailers (Pty) Ltd	51(1)	Obligation to keep at every location a copy of the Act,		The section was amended to make provision for electronic

		regulations, complaint procedures, complaint forms, complaint procedures, interest rates, etc. It is impractical and costly – we would suggest a reference to the Company's website where this information can be found or other electronic means of distributing this information. Plus circulating a change in interest rate and printing it out every time the rate changes is not feasible. Kindly consider allowing for electronic methods of distribution.		means of distribution, or display, of the information.
Section 52				
Micro Lenders Association of Namibia	52(1)	What about the use of documents in legal proceedings?	Add 52(1)(b)(iii): "As may be required for or in respect of any court, tribunal and related body proceedings."	The proposal was incorporated.
	52(2)(c)	The credit provider must store the documents for a period as prescribed by the	Delete subsection in total.	Subsection (2)(c) was amended to provide additionally for the secure storage of the

		Minister. Rather agree to safe and secure storage with no unauthorised access.		information.
	52(3)	Reference to “written” is not practical. It is also restrictive to advances in technology and electronic signatures.	Delete reference to “written”.	“written” was replaced with “informed consent”. Informed consent is now defined, but it still specifies that it must be written.
Creditinfo Namibia Bureau (Pty) Ltd	52(2)(a)	Purposes for access to consumer credit information – some of the current prescribed reasons are not covered in CCB that is currently used under Bureau Regulation 20(2)(b) and (1) Credit Performance Information.	Recommended to use and add to the current prescribed reasons used to ensure multiple industries are able to access credit information, thus decreasing bad debt within the country as a whole.	Provision is indeed made for all these reasons.

	In terms of Regulation 20(2)(b) and (1) Credit Performance Information may only be reported for Prescribed Purposes or with Consumer consent. Please identify the purpose/s for which your business accesses the data: **Prescribed Purpose:** / **Yes / No** / **Do you have Consumer consent** Reg 20(2)(a)(i) — An investigation into fraud, corruption, theft or forgery, provided that the Namibian Police Force or any other law enforcement agency conducts such an investigation; — Consent not required Reg 20(2)(a)(ii) — Fraud detection and fraud prevention services — Consent not required Reg 20(2)(a)(iii) — Screening a candidate for employment in a position that requires trust and honesty and entails the handling of cash or finances; — Consent Required Reg 20(2)(a)(iv) — An assessment of the debtors book of a business for the purposes of: • the sale of the business or debtors book of that business; or • any other transaction that is dependent upon determining the value of the business or debtors book of that business — Consent not required Reg 20(2)(a)(v) — Assessing the appropriateness of an application for credit; — Consent required Reg 20(2)(a)(vi) — Setting a limit in respect of the supply of goods, services or utilities to a data subject; — Consent Required Reg 20(2)(a)(vii) — Assessing the appropriateness of an application for insurance services; — Consent Required Reg 20(2)(a)(viii) — Obtaining data subject information to distribute unclaimed funds, including pension funds and insurance claims; — Consent not required Reg 20(2)(a)(ix) — Tracing of a data subject by a credit provider in respect of a credit agreement entered into between the data subject and the credit provider; — Consent not required Reg 20(2)(a)(x) — Developing a credit score on request; — Consent not required Reg 20(1)(a) — On the Consumer's explicit written instruction / request — Consent Required			
	52(6)	Release credit information to a third party other than the appointed agent for the purpose of assisting the subscriber in recovery of its debts.	It is recommended that the collection agent / company subscribes to the Bureau for access to the information for tracing purposes to ensure data is used for the specific purpose only. If data is shared with 3rd parties this can create a concern of data leaks etc. BoN previously declined this as well, and stipulated that only subscribers are allowed access to data to have record of prescribed purpose of the access to data.	A subscriber must be able to release the information to a third party, for example, when the credit provider hands debt over to a legal representative for collection. The legal representative is not necessarily a subscriber, but must use the information.

First National Bank of Namibia Limited	52(2)(a)(i)	The Bill limits the release of data only to the specified individuals in the list. This is very limiting and too narrow and data on a consumer / data subject should be possible to be disclosed to any other person/entity for purposes of detecting and preventing fraud (i.e. a bank's forensic department). Refers to "contemplated" purpose – this is according to our interpretation wide enough to request reports for purposes of marketing. If it is not the intention of the regulator it should be expressly excluded from the purpose.	Consider extending the provision wider than just law enforcement agencies.	Subparagraph (i) was amended to remove the reference to law enforcement agencies.
Old Mutual Namibia	52	There may be opportunity to utilise credit bureau data for Anti-Money Laundering purposes, trust and honesty, pension and insurance unpaid benefits, and tracing. There	Consider.	Subsection (2) makes provision for the stated purposes.

		may also be opportunity to flag Prominent Influential Persons via the credit bureau. Consumer written consent is required.		Subsection (3) deals with the requirement to obtain informed consent.
	52(6)	52(6) – A subscriber may not provide information to a third party.	Clarify – what if the consumer has consented to their information being shared with the credit provider's fellow subsidiary(ies)?	Subsection (6) was retained as is.
Section 53				
Micro Lenders Association of Namibia	53(2)	Puts an unnecessary burden on the credit provider. Why not force Credit Bureau's to share data, where will this stop? If there are 20 different credit bureaus, do we have to submit the same data 20 times? Prescribed time should be real-time or at minimum near Realtime, with the latter meaning before the end of	Remove "all registered" and replace with "the" and also remove "prescribe" and replace with "to which it subscribes". Section to read: "(2) Upon entering into or amending a credit agreement, other than an incidental credit agreement, the credit provider must report to the credit bureau to which it subscribes, in the prescribed manner and form, and within the prescribed time the following information:"	The obligation to report to all credit bureaus was retained. However, such obligation is without charge. Credit bureaus cannot be forced to share data, as it will remove their competitive advantage. Regarding the "real-time" proposal, it will be considered for the subordinate legislation to be

		each day. In practice anything outside of this timeframe could lead to inaccurate reflections of the consumer's commitments, resulting in un-intended over-extension by the credit provider.		issued.
	53(3)	Puts an unnecessary burden on the credit provider. Why not force Credit Bureau's to share data, where will this stop? If there are 20 different credit bureaus, do we have to submit the same data 20 times?	Remove "all registered credit bureaus" and replace with "the credit bureau to which it subscribes". Section to read: "(3) A credit provider must report the particulars of the termination or satisfaction of any credit agreement reported in terms of subsection (2), in the prescribed manner and form, to the credit bureau to which it subscribes."	The obligation to report to all credit bureaus was retained. However, such obligation is without charge. Credit bureaus cannot be forced to share data, as it will remove their competitive advantage.
Creditinfo Namibia Bureau (Pty) Ltd	53(1)	Establish and maintain credit agreements based on the information provided to it in terms of this section. Credit Bureaus have agreements in place with all subscribers using the Bureau. Credit Bureaus cannot hold agreements in place /		Subsections (1) and (5) were removed.

		available that is done between the credit provider and borrower, this remains the responsibility of the Credit Provider.		
Fashion Retailers (Pty) Ltd	53	This provision is difficult to implement and countries such as South Africa, which have a similar provision have not been able to implement this requirement.	This provision should be deleted.	Subsections (1) and (5) were removed.
TransUnion	53(1)	Credit bureaus must, in addition – Keep a register of credit agreements (section 53). This requirement places a heavy burden on credit bureaus, which will include significant development, as much of this information is not at present provided to the bureaus. The cost of such development and continuous maintenance will be significant.		Subsections (1) and (5) were removed.

Section 54				
Micro Lenders Association of Namibia	54(1)(a)	The filing fee is undefined, undetermined, not dealt with in detail and leave carte blanche to credit bureau. The subscriber must pay to draw the information and not to submit information. The filing fee reference is to be removed. Filing fees to be prohibited.	Remove "any credit provider and other" and replace with "all" and also remove "on payment of the credit bureau's filing fee, if any". Section to read: "(a) accept the filing of consumer credit information from all sources of consumer credit information;"	The filing fee was removed.
	54(1)	Insert provisions after (1)	Insert the following provisions after subsection 54(1): "(1)(A) A credit bureau may not charge a fee for receiving consumer credit information. - (1)(B) A credit bureau must share all consumer credit information with all other credit bureaus, in line with the principle of data reciprocity."	Subsection (1)(a) was amended to stipulate that credit bureaus must accept the filing of consumer credit information "without charge". Credit bureaus cannot be forced to share data, as it will remove their competitive advantage.
Creditinfo Namibia Bureau (Pty) Ltd	54(1)(a)	Accept filing on payment of the credit bureau's filing fee.	A central database is recommended for all credit providers to have a central point for data sharing. This will not only ease the process of data sharing	Subsection (1)(a) was amended to stipulate that credit bureaus must accept the filing of consumer credit information

			between bureaus, but also for the credit provider / other services submitting data to credit bureaus by not having to ensure data is shared on multiple platforms. This will also ensure that both bureaus have the same data to prevent hierarchy and offer the credit providers etc the opportunity to select a bureau based on price and service to ensure their business is reaching their potential without financial constraints.	"without charge". Credit bureaus cannot be forced to share data, as it will remove their competitive advantage.
	54(1)(d)	Retain credit information reported whether positive / negative - Will this be applicable even when a client settles a judgement etc – is the need to continue reflecting the information within the prescribed period even if negative information has been settled?		Yes, all information, whether positive or negative, must be retained, and included in the credit report, for the minimum prescribed period. An accurate, full, credit report is necessary.
	54(1)(g)	Except where the Act explicitly provides that no fee be charged.	List to be provided to ensure its implemented accordingly, one free annual credit report is currently	Section 58(2) provides for one free copy per annum.

			provided to consumers – this however may not be used for any credit application purpose, rental agreements etc.	
	54(1)(h)	Merely on the basis that a credit bureau has no consumer credit information concerning that person. This refers to a "thin file" – credit providers decide based on business rules.	The recommendation is not to force a credit provider to provide credit in this case but based on a business decision to possibly prevent bad debt in future.	No credit provider can be forced to extend credit. The provision simply prohibits a credit bureau from negatively assessing a person's creditworthiness merely on the basis that the credit bureau has no consumer credit information about the person.
	54(2)	Prescribe filing, retention and reporting of consumer credit information.	Recommendation is to proceed with current template for data submissions as the development and implementation is very costly not just for data providers but for credit bureaus as well to receive and display the information.	The current templates will be considered for the purpose of issuing the subordinate legislation under this Act.
	54(3)	Minister may prescribe by regulation, maximum fees that may be charged by a credit bureau for access to consumer credit information.	Recommendation is for Minister to review both bureaus current pricing structure and reach an in-between pricing structure as the maximum fee.	The proposal will be considered at the time of issuing the subordinate legislation under this Act.

	54(4)(a)	Require any bureau to provide periodic synoptic reports on aggregate consumer information to the Regulators.	Recommendation is that this report is provided bi-annually.	Subsection (4) was moved to the Submission of Returns-section. The recommendation will be taken into consideration at the relevant time.
	54(4)(b)	Make further requests for information from a credit bureau related to information in paragraph (a).	Recommendation is to provide a detailed breakdown of what additional information will be required to plan accordingly and ensure that no privacy is broken.	Subsection (4) was moved to the Submission of Returns-section. It is not possible to provide the detailed breakdown in the Act. A request made in terms of paragraph (b) will depend on the particular circumstances at the time. Paragraph (a) specifies that no consumer may be identified or that the report/information may not relate to a particular consumer.
Old Mutual Namibia	54(1)(a)	Is it reasonable to expect credit bureaus to accept information from any sources, and verify the accuracy of such information?	Clarify. Refine “other sources”.	Credit bureaus should take reasonable steps to maintain accurate and authentic information. Credit bureaus conclude agreements with credit providers and other sources of consumer credit information, and

				the obligation of providing accurate information starts with credit providers and other sources of consumer credit information. "other sources of consumer credit information" is now defined in section 1.
TransUnion	54(1)(d)	A credit bureau must– retain any consumer credit information reported to it for the prescribed period, irrespective of whether that information reflects positively or negatively on the consumer. Regulations will be required as these retention periods are not stipulated in the draft law.		The standards to be issued will provide for the specific retention periods.
	54(1)	The draft law does not contain a list of prescribed or allowed sources of consumer credit information.	Include the following: "54(5) In addition to the sources of consumer credit information contemplated in section 54(1) of the Act, a registered credit bureau may	"other sources of consumer credit information" is now defined in section 1.

			receive consumer credit information in respect of a consumer form any person, provided the originating source of the information in one of the following persons: (a) an organ of state, a court or judicial officer; (b) any person who supplies goods, services or utilities to consumers, whether for cash or on credit; (c) a person providing long term and short term insurance; (d) entities involved in fraud investigation; (e) educational institutions; (f) debt collectors to whom book debt was ceded or sold by a credit provider; (g) other registered credit bureaus.”	
Section 55				
Micro Lenders Association of Namibia	55(3)		Insert “immediately” after “must”. Also remove “within five business days of the date of request” and replace with “by a credit provider”. Section to read: “(3) A credit bureau must immediately furnish a credit report requested by a credit provider.”	The proposal was incorporated.

Creditinfo Namibia Bureau (Pty) Ltd	55(3)	Furnish a credit report requested within 5 business days of date of request.	Clarity is required if this is to the current subscriber or the consumer for their personal credit report.	Subsection (3) was amended to provide for an immediate furnishing of the report to a subscriber, but 5 days to remain for the provision of the report to another person (which includes the consumer).
First National Bank of Namibia Limited	55	The forms prescribed in the Bill for providing reports is limiting. We need it to be supported in a data string format as we automate scorecards and we would need the information in data string format.	Please consider extending the sources of the report.	The comment is not clearly understood as to how it relates to section 55. But, credit reports must be in writing.
Section 56				
Creditinfo Namibia Bureau (Pty) Ltd	56(1)	Credit bureau must maintain a record of all search enquiries made.	Current retention period is 5yrs, recommendation is to proceed with the existing structure.	The period for retention of the information will be provided for in a standard.
Old Mutual Namibia	56(4)	Is subsection 4 - A record of both favorable and adverse consumer credit information is made available to credit	Clarify.	The subsection was amended to oblige a credit bureau to provide the information.

		providers for affordability assessment purposes. - mandatory?		
Section 57				
Micro Lenders Association of Namibia	57(1)	Prescribed time should be real-time or as near as possible to real-time as may be practicable. The credit bureaus must be forced to share all data between themselves, rather than forcing all credit providers to all credit bureaus. This must be seen against the possibility that the number of credit bureaus in Namibia may expand drastically over time. Credit providers tend to deal with one credit bureau at a time, and there systems would be integrated only to that credit bureau. Forcing them to submit to all credit bureaus simultaneously, has the	Remove "all the registered" and replace with "the" and add "to which it subscribes". Also remove "seven business days" and replace with "the prescribed time". Section to read: "57. (1) The credit provider must submit to the credit bureau to which it subscribes within the prescribed time after settlement by a consumer of any obligation under any credit agreement, information regarding such settlement where an obligation under such credit agreement was classified as adverse consumer credit information."	The obligation to report to all credit bureaus was retained. However, such obligation is without charge. Provision was made for the time period to be specified in the standards.

		unintended consequence that they also have to integrate with all credit bureaus. All of the above adds to unnecessary added cost of compliance.		
	57(2)	Prescribed time should be real-time or as near as possible to real-time as may be practicable.	Remove “seven business days” and replace with “the prescribed time”. Section to read: “(2) The credit bureau must incorporate the information of the settlement reported to it in terms of subsection (1) in the consumer credit information kept regarding the person within the prescribed time after receipt of such information from the credit provider.”	The subsection was amended to provide for the time period to be specified in the standards.
Creditinfo Namibia Bureau (Pty) Ltd	57(1)	Credit provider must submit to all registered credit bureaus within 7 business days after settlement - Currently under the CPL, payments are only shared on the monthly submissions, which occurs within 7days after month-end. Only new	Recommendation is that current structure is continued as per comments set out under 54(2).	The subsection was amended to provide for the time period to be specified in the standards. At the time of issuing the subordinate legislation, the recommendation will be considered.

		accounts created during the month is submitted during the month with daily submissions.		
EPRA	57(3)	In the event of a credit provider failing to do so within 7 days, the only remedy available to the consumer, unfortunately, is a complaint to the CCRs. This process can take several months, even years, to finalise. We state this from personal experience, with past complaints to NAMFISA taking around 18 months to finalise. Some have never been finalised and probably do not receive any further attention from NAMFISA. It appears that when NAMFISA deals with a fairly technical matter which involves some legal / regulatory uncertainty, it tends to ignore the matter and do not take steps to bring		The comment is appreciated, and the Consumer Credit Regulators will endevour to improve their complaints handling processes.

		it to finality. This leaves consumers frustrated, and also unable to approach a court because the consumer must first excuss all internal remedies.		
Section 58				
Micro Lenders Association of Namibia	58(1)(a)	This provision undermines the contemporaneous nature of the information sharing within the bureau and is impractical. It is unclear of how credit providers should then deal with the data - positive and negative – that are shared every day with the credit bureaus when the latest client transactions is updated with same. In practice, both negative and positive information, is submitted on a daily basis via integrated systems. This makes this requirement very onerous and even dangerous to credit providers.	Delete this subsection in total.	The provision was retained, but with a change in the number of days (reduced from 20 to 5).

	58(4)		Insert “, on reasonable grounds” after “a person has” and remove “seek evidence in support of the challenged information” and replace with “investigate the challenge”. And at (a): remove “a copy of any such credible evidence” and replace with “written response”. Also change at (b): remove “, if it is unable to find credible evidence in support of the information”. The section should read: “(4) If a person has, on reasonable grounds, challenged the accuracy of information reported to a credit bureau, or held by a credit bureau, the credit provider or credit bureau as the case may be, must take reasonable steps to investigate the challenge , and within 20 business days after the filing of the challenge must— (a) provide a written response to the person who filed the challenge; or (b) remove the information, and all	Subsection (4) was amended to include the words “to investigate the challenged information”, and in paragraph (a) was amended to provide for a written response.

			record of it, from its files. “	
	58(5)		Remove “evidence” and replace with “the written response”. Section to read: “(5) Within 20 business days after receiving a copy of the written response in terms of subsection…”	Incorporated.
	58(6)		Remove “credit provider” and remove “may not include in a” and replace with “must flag the” and also add “, to indicate on the information that it is challenged”. Section to read: “(6) A credit bureau must flag the credit report information that is challenged until the challenge has been resolved in terms of subsection (4)(a) or (b), to indicate on the information that it is challenged.”	The reference to “credit provider” was removed. Otherwise, the provision was retained as is.
	58(8)(a)	Over regulation and can have unintended consequences for credit provider.	Remove “suspend access by the credit provider to consumer credit information until the failure to respond or the conclusion of necessary investigations is rectified” and replace with “accept the consumer’s version as correct and amend the credit record	Paragraph (a) was removed.

			accordingly;". Section to read: "(a) accept the consumer's version as correct and amend the credit record accordingly; and"	
Creditinfo Namibia Bureau (Pty) Ltd	58(6)	Credit provider / credit bureau may not include disputed information on the credit report until the challenge has been resolved.	Recommendation is to continue displaying the information, however providing an alert on the profile that information is under dispute.	The provision was retained as is.
	58(8)(a) & (b)	Credit bureau must: - Suspend access by credit provider to consumer information until failure to respond is rectified and Report such incidence to relevant regulator.	Recommendation is that instead of suspending access and increasing chance of non-compliance by the credit provider and possible increase of bad debt that can evolve in closure of business, that information is just removed from the bureau if the credit provider does not respond within 20 working days. This covers the credit provider as well as the consumer.	Paragraph (a) was removed.
EPRA	58(6)	This is commended, as credit providers and credit bureaus sometimes abused the secretive system that were applicable in the past, with		Noted.

		the only remedy available to the injured consumer being an expensive application to the High Court.		
First National Bank of Namibia Limited	58(8)	The requirement that access to bureau data being suspended within the prescribed 20 days, is detrimental to our business and the process of updating scorecards. It would directly impact on the bank's ability to extend credit and thereby adversely affecting our customers.		Paragraph (a) was removed.
Old Mutual Namibia	58(1)(a)	Does "every person has a right to be advised by a credit provider…" imply an obligation that the credit provider must advise every consumer in regard to whom adverse information is being submitted, or is the onus on the consumer concerned to exercise their right and	Clarify.	The subsection was amended to oblige the credit provider to inform the consumer.

		request the information to be reported?		
	58(4)	What does the investigation of challenged information constitute?	Clarify.	The credit provider, or credit bureau, as the case may be, must investigate to obtain justification for, or proof of, the adverse information. Otherwise, the information must be removed.
		It is not clear when the credit provider will be required to investigate and when the obligation vests with the credit bureau which will cause issues considering the provision for suspension of access to information provided in subsection 8.	Clarify.	Which person must investigate will depend on whether the challenge is against a report under subsection (2) or information kept and referred to under subsection (3). Subsection (6) was amended slightly to provide more clarity.
	58(6)	The timelines are concerning (by when information may be included). 20 days prior notice, 20 days to investigate, 20 days for the consumer to complain, then how long will	Revise.	The timelines were shortened where possible.

		it take to resolve by the Regulator before the information can be included in the report? This exposes the industry to abuse by consumers who may obtain additional credit elsewhere while the challenge is being resolved?		
	58(7)	58(7) - How long are record keeping responsibilities expected to be adhered to?	Clarify.	The period will be provided for in the standards.
TransUnion	58(8)(a)	"Where a credit provider fails to respond or conclude the necessary investigations within 20 business days in terms of subsection (4), the credit bureaus must- (a) Suspend access by the credit provider to consumer credit information until the failure to respond or the conclusion of necessary investigations is rectified," - This section has far-reaching	58(8)(a) should rather be reverted to the action taken under subsection 58(4)(b). We propose amending this section to only include the reporting obligation, but remove the suspension: "Where a credit provider fails to respond or conclude the necessary investigations within 20 business days in terms of subsection (4), the credit bureaus must report such incidence to the relevant Consumer Credit Regulator."	Paragraph (a) was removed.

		consequences, as many credit providers may not always be responsive. Not only does this section have an impact on the subscriber, but inadvertently also on the consumer, as the credit provider will not be able to perform an affordability assessment to potentially provide the consumer with access to credit.		
Section 59				
Micro Lenders Association of Namibia	59	This impairs the accuracy of data available to credit providers to make informed decisions. The basis of consumer credit information is to have as much accurate information as may be available.	Remove “or removed”. Section to read: “(a) the nature of, timeframe, form and manner in which consumer credit information held by credit bureaus must be reviewed, verified, and corrected; and”	The provision was retained as is.
Section 60				
Micro Lenders Association of Namibia	60(6)	Does this mean these options should be offered to the consumer with every credit	Remove “When” and replace with “Prior to”. Section to read: “(6) Prior to entering into a credit	The subsection was amended to remove the words “When entering into a credit agreement”.

		agreement, or will such opportunity to accept decline that was offered at establishment of the relationship suffice? If it has to be done with every credit agreement, it adds to the length of the physical agreement.	agreement, the credit provider must present to the consumer a statement of the following options and afford the consumer an opportunity to select any of those options—“	
	60(7)(a)	The standard may prescribe the content but not the format of these registers.	Delete “, in the form and manner as may be provided for in a standard,”. Section to read: “(a) must maintain a register of all options selected by consumers in terms of subsection (6); and”	Paragraph (a) was removed.
Bank Windhoek	60(1)	The section is unclear on the treatment of automated renewals of existing credit agreements on same terms as the previous period e.g. annual renewal of overdraft limit. Section only refers to conclusion of new credit agreements or effecting increases to existing limit.	A request is made to clarify the position on the treatment of automated renewals of existing credit agreements on same terms as the previous period e.g. annual renewal of overdraft limit.	Renewals should not be excluded from the application of subsection (1).

Old Mutual Namiba	60(3)	Confirm what amendments are allowed - the agreements should provide for certain changes that may be affected by the credit provider. It will not be practical to get approval from all customers.	Clarify.	Refer to the changes made to Part E of Chapter 5.
EPRA	60(2)	This is especially prevalent in the retail credit environment and is a major driver of overindebted retail credit consumers in Namibia.		Noted.
Section 61				
Micro Lenders Association of Namibia	61(4)	Impact on the rights in terms of Article 21(1)(j), 8 and the freedom to contract.	Delete the subsection in total.	Subsection (4) was retained as is.
Old Mutual Namibia	61	This will hamper payroll deduction agreements with employers which is a method of mitigating the risk of onboarding customers with bad credit history based on the due diligence performed	Recommended to amend to allow for engagements with employers.	Subsection (3) allows for engagements with employers. The section does not deal with payroll deduction arrangements.

		on the employer of the applicants. This also protects the consumers as the employer satisfies themselves that they are dealing with a reputable institution.		
Section 62				
Micro Lenders Association of Namibia	62(4)(b) and (c)	Cannot comment without information as to what will be prescribed.		Noted. Draft standards will be published for comment.
Old Mutual Namibia	62(4)(d)	Allowance to utilise statements of comparative cost for advertising practices and (5) requirements for advertisement concerning the granting of credit: - Interest rates, taxes, levies and credit insurance costs are variable, subject to change, and may be dependent on borrower and transactional circumstances (e.g. insurance relative to the amount of credit to be granted and the	These variables are dealt with under the pro-forma agreement and quotation referred to under section 74. Credit providers should be able to rely on a “Ts&Cs apply” disclosure in advertising.	The provision was retained as is. The cautions or warnings provided for in sub-paragraph (iv) will deal with possible variables depending on the consumer.

		insurer being at the customer's discretion, term, etc.). - Publishing rates of insurance in a saturated insurance industry is also a concern.		
Section 64				
Micro Lenders Association of Namibia	64(3)(b)	We propose that this part is inserted in this sentence to restrict the obligation on the credit provider to whoever is party to the credit agreement.	Insert after "household": "when such a person/s is co-responsible for payment of such a credit agreement". Section to read: "(b) the financial means, prospects and obligations of any other adult person within the consumer's immediate family or household, when such a person/s is co responsible for payment of such a credit agreement, to the extent that the consumer, or prospective consumer, and that other person customarily—"	Paragraph (b) was removed.
First National Bank of Namibia Limited	64(3)(b)	The Bill needs to include a definition for "immediate family" to avoid abuse of the legislation by consumers.		Paragraph (b) was removed.
The National	64 to 69	Consumers are left	1. We propose the inclusion of Section	Note that reference to section 3.9

Consumer Finance Association of Namibia (NCFA), on behalf of 147 members.		unprotected from such practices. This section's provision does not adequately address individuals who experience over- indebtedness due to unforeseen events like the loss of a spouse or unemployment. The provision of section 69 is impractical to be exercised by an over-indebted consumer whose over-indebtedness results from reckless lending. The consumer may not have the financial means to cover high legal costs required to initiate such an application in court. The issue of prevention of reckless lending and over-indebtedness is not adequately dealt with in the current proposed Draft Consumer Credit Bill (CCB). The Namibia Consumer Credit Policy, 29-05-2020, which	3.9 from the Namibian Consumer Policy of 2019, released in May 2020 (Debt Restructure), into the Consumer Credit Bill (CCB). This addition aims to safeguard consumers from potential exploitation by creditors abusing their power. The incorporation of debt restructuring would ensure that registered credit providers adhere to compliance standards, granting consumers the opportunity to seek practical support in a cost-effective and amicable manner. 2. Consider the EU Directive 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency). 3. Establish accessible credit counseling services that provide guidance and support to individuals	of the Consumer Credit Policy does not serve to support the commentators' case. The comment is noted and appreciated. Consideration thereof will be conveyed to the policymakers.

		preludes the draft bill that with section 3.9 which addresses Debt Restructure that is currently not included in the draft bill. The current format of the consumer credit bill fails to adequately protect overindebted Namibian consumers, leaving them without an affordable solution and vulnerable in their financial situation. Consequently, the bill proves insufficient in safeguarding the interests of consumers.	struggling with debt. Encourage debt management programs that help individuals negotiate repayment plans and avoid bankruptcy. 4. Develop and maintain robust credit reporting systems to monitor individuals credit histories. Encourage responsible lending by sharing credit information among financial institutions, which can help identify borrowers who may be at risk of over- indebtedness. 5. Foster collaboration between the government and financial institutions to develop responsible lending practices. Encourage lenders to assess borrowers creditworthiness thoroughly and provide appropriate credit limits based on their financial capabilities. 7. The bill should include provisions for mandatory disclosure of terms and conditions, ensuring consumers have access to clear and transparent information.	
Old Mutual Namibia	64(1)	Credit agreements can be taken/routed via	Revise. Proposal that asset / turnover thresholds be applied rather than a	Subsection (1) was removed.

		companies/cc's and then the provisions do not apply? This exposes the industry to abuse by consumers.	blanket exclusion of juristic persons.	
Section 65				
Micro Lenders Association of Namibia	65(1)(b)	This indicates creditworthiness, or lack thereof, not anything to do with his level of indebtedness. How does this impact on the assessment of over-indebtedness?	Delete subsection in total.	Paragraph (b) was removed.
	65(2)	By whom? Who has to determine?		The court. The subsection was amended to clarify. However, read with section 66, the credit provider is also obliged to assess affordability so as to not enter into a credit agreement with a consumer if it would result in over-indebtedness.
Bank Windhoek	Section 65 - 69	The Bill imposes onerous requirements on all credit providers to assess the affordability of credit before	These provisions, together with the increase in the time period to recover outstanding debt, introduces a significant new risk to credit providers.	The requirement for affordability assessments is necessary to protect consumers and credit providers (from a risk

		granting such credit. The need to promote responsible credit granting and to extend access to lower cost finance to low-income consumers is supported. However, there is a concern that this intervention may have exactly the opposite effect. Credit providers, especially the large, formal and regulated organisations, may be forced to err on the side of caution (from a lending policy and operational perspective) in order to mitigate the additional credit risk due to potentially large numbers of challenges being brought against credit providers in terms of the reckless lending provisions. The penalty in terms of a transaction being deemed reckless is severe for credit providers, as the entire agreement or part of the	It must be considered that this may lead to a reduction in credit approvals or increasing the price of credit. The penalty in terms of a transaction being deemed reckless is severe for credit providers, as the entire agreement or part of the agreement, instead there should be a balance between the interests of consumers and credit providers. In addition, a credit providers' liability arising from reckless credit agreements should be limited to a defined period, calculated from the commencement date of the agreement itself.	management perspective).

		agreement, instead there should be a balance between the interests of consumers and credit providers. It has to be acknowledged that the collective impact of these provisions, together with the increase in the time period to recover outstanding debt, introduces a significant new risk to credit providers. In mitigation of this risk, this may lead to a reduction in credit approvals or increasing the price of credit. In addition, the requirements of section 67 may be interpreted as creating an onus on credit providers to not only assess affordability, but to also verify all details provided by customers in order to avoid a credit transaction being deemed reckless. This will erode all the progress made towards improving operational		

		efficiencies through the use of technology and the deployment of internationally acceptable credit scoring practices and processes. The resultant return to manual assessment of credit could result in a further increase in the cost of credit to the consumer and thus limit access for lower income consumers. In addition, a credit providers' liability arising from reckless credit agreements should be limited to a defined period, calculated from the commencement date of the agreement itself. This will also ensure that credit providers are not under an obligation to keep records for an unreasonable period of time, thereby adding unnecessarily to the credit providers' costs. (In the instance of mortgages, reports would have to be kept		

		for 20 - 30 years if a limitation is not imposed).		
Old Mutual Namibia	65	Should credit reports issued by the credit bureau not specifically be included here to consider indebtedness?	Revise.	The credit report must be obtained for purposes of doing the affordability assessment. Refer to section 51. The credit report should be used to determine creditworthiness when considering an application for credit. But, the credit report will not have all the information related to the consumer's financial capacity. When it comes to determining over-indebtedness, all financial obligations should be considered, encompassing more than just what will show on a credit report.
First National Bank of Namibia	65	It appears to suggest that only salaried individuals would be able to qualify for credit. It fails to take account of customers with periodical income or high net worth individuals.	Look at extending test for affordability to asset portfolio which is not subject to any encumbrances.	Section 64(3) was amended to provide for "assets" as part of a consumer's "financial means and prospects".

Section 66				
Micro Lenders Association of Namibia	66	These provisions are to be limited to circumstances where a credit agreement is entered into where the consumer is over-indebted or where the agreement will result in over-indebtedness.	Check test for over-indebtedness.	Section 66(1) was amended to only specify the failure to conduct an affordability assessment, and, having conducted the affordability assessment, the credit agreement is entered into despite the consumer being over-indebted.
DBN	66(1)	From a DBN perspective, a clear distinction should be made between a juristic consumer and a natural consumer in respect of the relevant data which classifies an individual (juristic or natural) as ineligible for credit.		No distinction is made between the assessment of over-indebtedness or affordability for a juristic person versus a natural person.
First National Bank of Namibia Limited	66	The Bill seems to presuppose that credit assessments can be evidenced when there is a challenge on whether or not any credit is reckless. The Bill does not stipulate any		Section 68 was amended to provide for records to be kept.

		pertinent record keeping requirements. Will this be addressed in the Bill itself or in the subsequent standards and/or regulations.		
Old Mutual Namibia	66(1)(b)(i)	How will it be proven that a person understood an agreement apart from the credit provider having met plain language requirements and the consumer having signed the agreement? To what level should this understanding of cost extend?	Clarify.	The subparagraph was removed.
EPRA	66	The description of and prohibition against reckless credit is commended. Although the credit provider can escape liability by relying on an untruthful consumer, the credit provider still has a duty to “take reasonable steps” to assess the consumer’s financial position.		Noted.

		If the credit provider did not take such reasonable steps, the fact that the consumer was untruthful will not be a valid excuse.		
Section 67				
Micro Lenders Association of Namibia	67(2)(a)(i)	How is this determined? What are the risks referred to? A bank loan has more risk than a microloan. Does this refer to the credit record or over-indebtedness?		Subparagraph (i) was removed.
Old Mutual Namibia	67(4)(b)	Obtaining a court order for every defense to an allegation of reckless credit will inundate the court proceedings and is onerous.	Remove.	The provision may be incorrectly understood. There is no obligation to obtain a court order. But, should the court consider a matter, the credit provider may use, as a defense, the fact that a consumer was not truthful and that it materially affected the ability of the credit provider to properly assess affordability.
Section 68				
Micro Lenders	68	The standards referenced	Delete the last part of section: “and	It is legitimate for the Legislature

Association of Namibia		therein, in respect whereof there are no proper (if any) guidelines provided for in the Act), are intended to govern pivotal aspects of the Act which must have been legislated upon by Act of Parliament, and not impermissibly delegated to a statutory body (whose function it is to ensure compliance with law, and not make law), and include those aspects sought to be determined and prescribed in this provision. This impugned provision infringes the rights enshrined in Articles 8(1) (human dignity, infringing on the freedom of contract) and 21(1)(j). This impugned provision accords a constitutionally impermissibly vague, wide, unguided and unfettered discretion and, infringing the rights enshrined in Article 18, purportedly	must not be inconsistent with any affordability assessment requirements as may be prescribed by the Consumer Credit Regulators in a standard." Section to read: "68. A credit provider may determine for itself the evaluative mechanisms or models and procedures to be used in meeting its affordability assessment obligations under section 67, provided that any such mechanism, model or procedure results in a fair, transparent and objective assessment."	to delegate legislative powers to a subordinate authority.

		permits unfair, unreasonable or arbitrary decision-making.		
Section 69				
Micro Lenders Association of Namibia	69(2)	Court could restore the status *quo*. Forfeiture of capital amount is constitutionally challengeable. At least build in a discretionary provision for court to make an order that is just and fit in the circumstances.	Consider adding: "… and may make such further orders as the court considers necessary or appropriate including but not limited to in regard to the repayment by the consumer of any capital advanced."	The provision was amended, allowing the court to make an order that is just and reasonable in the circumstances, inclusive of setting aside the consumer's obligations (or partly).
Section 70				
Micro Lenders Association of Namibia	70(4)	This subsection should be expanded to grant the court further powers. See proposed amendment.	Add at the end of the section: "and may make such further orders as the court considers necessary or appropriate including but not limited to in regard to the repayment by the consumer of any capital advanced."	Subsection (4) was amended to specify that the court may make any order that is just and reasonable in the circumstances.
Agra	70(1)	Does part D apply to contracts which existed prior to the Act coming into force?		The Bill applies to pre-existing credit agreements to the extent provided for under Schedule 3. This is necessary for, especially referring to longer-term credit agreements, the protection of

				consumers who will otherwise not enjoy the protections under the Act for many years.
First National Bank of Namibia Limited	70(1)(a)(ii)	The Bill regards it to be an unlawful credit agreement if a bank enters into a credit agreement knowing or reasonably ought to have known that an administration order is in force against the consumer. This places an unreasonable burden on the bank to foresee the possibility. There are instances where this may due to human error not be recorded in the bureau information. The Bill should provide an exception that it is a defense if the bank can provide proof or evidence that it exhausted an assessment and bureau information and this information was not forthcoming.		Subsection (2) is relevant. Each case will have to be determined based on the specific circumstances.

Old Mutual Namibia	70	These are principles of contractual capacity and unnecessary to list when a person does not have capacity to contract. How will it be proven that the credit provider was induced? Incidental credit agreements will require registration after the fact - are those agreements unlawful under this provision since they were not registered? If a court deems a contract unlawful, the contract is void and the court will declare such - the law does not need to dictate what the court should do, or that the decision must be fair and just. Is a database (e.g. via credit	Remove – implied in law of contract and common law. Clarify the extent of "could reasonably have determined".	Subsection (1)(a) was amended to refer to the required legal capacity to contract. The reference in paragraph (b) to administration orders was retained. Each case will have to be determined on its own merits. There is no requirement for registration in the case of incidental credit. Subsection (4) was retained in that it specifies that the court may make any order that is just and reasonable in the circumstances. The circumstances of each case

		bureau) going to be availed for credit providers to determine whether a prospective borrower is deemed mentally unfit by a competent court, or is under an administration order?		will be different. The credit provider is expected to do reasonable checks, inclusive of obtaining a credit report and information from the consumer.
Section 71				
Micro Lenders Association of Namibia	71(2)(l)	It is proposed that this section be changed to refer to the Payment Systems Management Act 14 of 2023.	Remove subsection in total and replace with: "it requires a consumer to do anything prohibited by the Payment Systems Management Act No. 18 of 2003 or subsequent legislation."	The provision was moved to both sections 50 and 120. The proposal is not accepted. The provisions are explicit to address a practice that is prevalent, especially in the microlending space.
	71(2)(m)		Delete "purports to direct or authorize any person engaged in" and replace with "enables the" and also add "off" after "processing. Sentence to read as follows: "it enables the processing of payments to give priority of payments for the credit provider over any other credit provider".	The provision was retained, with the small change to add "of" as proposed.

	71(2)(n)	Sec 107 and 71(2)(n), what does the content of these provisions mean, how are they to be read together? It appears as if the intent is to deal with debit order payments. This is regulated by the Payment Systems Management Act 14 of 2023 and should be done in accordance therewith.		The credit provider (referring more to banking institutions) may not, if it is not a standing debt arrangement or does not comply with section 107, recover any instalment or premium from another account that the consumer may have with the same bank in the event that a debit order, for example, failed to go off from one account. Simply because they may have access to a consumer's assets does not entitle them to collect from the assets under their care in the case of a default.
	71(2)(q)		Insert between "warrants" and "that": ", in circumstances which that is not the case". Sentence to read as follows: "the consumer guarantees and warrants, in circumstances which that is not the case, that the credit agreement was signed on the business premises of the credit provider;"	The provision was removed due to changes made elsewhere.

	71(6)	See Article 66(2) of the Constitution: "Subject to the terms of this Constitution, any part of such common law or customary law may be repealed or modified by Act of Parliament, and the application thereof may be confined to particular parts of Namibia or to particular periods." This provision may be constitutionally impermissible.		The subsection was removed due to changes made elsewhere.
Old Mutual Namibia	71	Is the intention to prohibit payroll deduction agreements with employers? The prohibition of payroll deductions is not aligned to the intention to avoid over-indebtedness. It also assists in the purpose to fulfil financial obligations by consumers. Payroll deductions also support transparent collection methods, deterring fraud and money laundering	Debt counselling should be included. If implemented, a prohibition should commence at an agreed future date prospectively, allowing existing credit agreements to continue being settled at the consumer's choice of payment method.	The comment regarding debt counselling will be conveyed to the policymakers. There is a policy movement away from payroll deductions, as credit providers and consumers become more risky, as well as the fact that it gives preference to some over others. Adequate transitional arrangements are provided for pre-existing agreements, where necessary.

		related crimes and promoting responsible lending and borrowing. The prohibition of payroll deductions may impact the borrower's financial discipline and existing behavior and potentially negatively affect the borrower's credit information listed on a credit bureau and future purchasing power.		
	71(2)(c)	It is not clear what the common law rights referred to are? This seems to limit the freedom to contract?	Clarify.	The prohibition was amended to apply to “standard type contracts” only.
	71(2)(g)	It is not clear how a provision limiting liability is invalid where expressly included, because it could be implied if removed?	Clarify.	The provision was retained as is.
	71(2)(j)	It is not clear how this section is read with section 84. This section states that a credit	Clarify.	The reference to section 84 was removed from this provision.

		provider may not appoint itself as the consumer's agent for any purpose other than the ones listed in section 84. Section 84 states that a credit provider must not require the consumer to appoint the credit provider as the consumer's agent for the purpose of arranging any service mentioned in subsection (1). It does not make sense to state "any purpose other than those contemplated in section 84"?		
	71(2)(k)(vi)	We may not contract to consent to the jurisdiction of Windhoek?	Clarify.	Parties may consent to the jurisdiction of a specific court if that court has jurisdiction in any event. But, the consumer may not be requested to consent to the jurisdiction of the court in a different area if that court will not have jurisdiction otherwise.
	71(2)(m)	What does providing priority to a credit provider mean? If	Clarify.	The provision was retained as is.

		an employer has a payroll agreement, the Labor Act allows the deduction from the remuneration and prohibits deductions of more than one third. If the second credit provider enters into an agreement at a later stage and the employer is already deducting the instalment of the first credit provider, is this considered providing priority?		
	71(2)(q) and (r)	Why should these provisions make a credit agreement unlawful?	Remove.	Paragraph (q) was removed as a result of changes made elsewhere. Paragraph (r) was amended to provide for circumstances where the consumer did in fact not inspect the goods.
	71(5)	It would not be beneficial to have courts decide on each agreement. The law does not need to dictate what the court should do, or that the	Remove.	The courts will not have to consider each agreement.

		decision must be fair and just.		
EPRA	71	Any credit provider who makes a consumer sign an agreement that contains an unlawful provision commits an offense. This constitutes very strong protection for the consumer, for the consumer could otherwise only have to rely on the outcome of (costly) civil court proceedings.		The criminal offences in respect of this section were removed. The power to impose administrative sanctions are considered to be adequate.
	71(2)(r)	The latter is indeed a prevalent clause in retail credit agreements and has caused substantial headache for consumers who later found goods to be defective. This prohibition now allows consumers in such a position to more freely exercise their common law rights.		Noted.
Section 72				
Micro Lenders	72(2)	This subsection is overbroad,	Delete the whole subsection.	The subsection is retained as is.

Association of Namibia		arbitrary and unreasonable. It violates Art 21(1)(j) of the Constitution. It further undermines competitiveness.		
	72(3)	This provision infringes upon the credit providers' A21(1)(j) right to conduct business. By way of illustration: the credit provider's business model may be to require a consumer to take credit insurance as a condition to entering into a loan agreement.	Delete the whole subsection.	Subsection (3) was retained. Section 88 provides for the circumstances under which insurance may be required.
Old Mutual Namibia	72(1)	Is it necessary to state in a separate section that a provision already stated as unlawful is prohibited? The provisions of section 71 are extremely broad and vague and prohibiting direct or indirect require or induce a person to enter into the agreement.	Remove.	Subsection (1) was removed.
EPRA	72(2)	Any prospective credit		Noted.

		provider or his manager, agent, or employee shall not, as an inducement to enter into any credit agreement, directly or indirectly offer, give or promise any benefit to any prospective consumer unless such benefit, in the ordinary course of events, will constitute a condition of the credit agreement. This prohibits what is commonly known as “perverse incentives” and constitutes a criminal offense. Again, this is commended because perverse incentives are a major contributor to consumers becoming overindebted.		
Section 73				
Micro Lenders Association of Namibia	73(1) and (2)	What is the purpose behind this section? Was consideration given as to the effect this will have on factoring and discounting?	Delete the whole section.	The section was removed.

Bank Windhoek	73	What is the rationale of this section? Consider the impact on financial inclusion if this cession is the only form of security the consumer may offer to the credit provider. Subsection 73(2) is alarming. The ability to unilaterally revoke a cession by a consumer in favour of a credit provider makes this form of security worthless to the credit provider.	A request is made to delete this section.	The section was removed.
Section 74				
Micro Lenders Association of Namibia	74(1)(a)		Delete: "a pre-agreement statement (i) in the form of the proposed agreement; or". And replace with: The terms and conditions of the intended agreement. And also delete: "(ii) in another" and replace with "in the". Subsection to read as follows: "A credit provider must not enter into a credit agreement unless the credit	The subsection was amended to refer to the "proposed credit agreement" instead, as well as to substitute "quotation" for "key fact statement".

			provider has given the consumer— (a) The terms and conditions of the intended agreement— (i) In the form addressing all matters required in terms of section 75;"	
	74(1)(b)(iii)		Delete: "initial payment" and replace with "deposit".	Done.
	74(2)	Take issue for the same reason as with section 45: Unreasonable infringement of Constitutional rights and freedoms in Art 21(1)(f), (e), and (j) of the Registrant. Five days is too long - a consumer may take up credit at another institution in the interim and return to the credit provider within the five days, to insist on the conclusion of the credit agreement in terms of the quote - but his circumstances (affordability) may have materially changed. It must		The subsection was removed.

		be up to the credit provider to determine the period for which the quote remains valid.		
	74(4)	1. Superfluous - the manner in which documents may be delivered to consumers have already been addressed earlier in the Act. 2. Does this contradict the "and" in subsection 1?	Delete the whole subsection.	The subsection was removed.
Agra	74(1) and (2)	We cannot always provide the client with anything more than credit terms and conditions as there may not be any existing debt at the time of signing the agreement. Debt and related terms only come into effect once the consumer makes a purchase, which can be long after the credit agreement has been signed.		Noted. The wording of subsection (1) was adjusted to cater for all types of credit agreements.
Bank Windhoek	74		The section should provide for the	

			following: - Allow the consumer to waive the 5 business days provided for in section 74(2). Depending on the needs of the consumer, they may not be in a position to wait for that 5-business period to elapse. - Allow for the pre-agreement disclosure document, provided that it complies with the elements of section 75, to become the final credit agreement upon acceptance of the consumer by way of signature. This avoids unnecessary administrative processes and a back and forth between the consumer and credit provider.	Subsection (2) was removed. Subsection (1) was amended to refer to the proposed credit agreement instead, with effect that the document can become the final document upon acceptance.
First National Bank of Namibia Limited	74(4)	Would this include channels like on the FNB APP or via WhatsApp services? What about telephonic pre-agreements that are recorded during the telephone conversation?	FNB propose that the provisions be extended to include other channels.	The provision was removed. The information to be provided in terms of this section must be in writing, with "written" being defined to include electronic means.
Lewis Stores	74(1)(b)(i)	1. We note from sub-sections		The wording of subsection (1)

(Namibia) Pty Ltd	and (ii)	74(1)(b)(i) and (ii) that the quotation provided to prospective credit consumer must set out the proposed distribution of both the principal debt and interest over the repayment period. 2. We understand from these sub-sections that we are required to provide schedules to consumers that indicate, 1) how the full credit amount (i.e., total cost of credit) will be repaid in the event that the consumer pays exactly the monthly instalment on the exact dates that each instalment falls due, and 2) how interest on the credit agreement is charged monthly and how same is repaid monthly in the event that the consumer pays exactly the monthly instalment on the exact dates that each instalment falls due.		was amended to cater for all types of credit agreements.

		3. In our experience, consumers very rarely pay each and every one of their monthly instalments exactly when they are required to do so for the duration of their credit agreements – many reasons exist as to why consumers may make monthly payments late, or not at all, such as, for example, becoming unemployed, falling ill, transactional (banking) delays, transport difficulties, etc. 4. The effect of a consumer missing a monthly payment, or even making a payment late by a few days, is that their credit agreement would not be paid in line with the distribution schedules as provided prior to the conclusion of their credit		

		agreement due to arrear interest and default administration charges accruing to their account. 5. While we support the disclosure to a consumer of all costs associated with a credit agreement prior to the conclusion of the credit agreement, we do not support the inclusion of the abovementioned schedules as we believe that same will result in confusion and/or anger by a consumer who defaults in their monthly payment obligations and then attempts to reconcile their repayments with the schedules. 6. We submit that the disclosure of fees and charges in the pre-agreement statement and quotations as contained in the remainder of		

		section 74 are appropriate and suitable for purposes of ensuring that consumers are aware of and understand the costs associated with proposed credit agreements and that requiring distribution schedules, in addition to potentially being confusing to consumers, is superfluous.		
Old Mutual Namibia	74(1)(a)	Does the draft agreement, later signed by the borrower, constitute a pre-agreement statement? Does this include the cost of the insurance, and what if the customer provides their own? Is this pre- statement necessary if the customer is provided with a cool-off	Clarify.	Paragraph (a) was amended to refer to the proposed credit agreement instead, with effect that the document can become the final document upon acceptance. The comment is not clear. Pre-agreement disclosure is necessary under all circumstances.

		period?		
Section 75				
Micro Lenders Association of Namibia	75(1)	Superfluous - the manner in which documents may be delivered to consumers have already been addressed earlier in the Act.	Delete the whole subsection.	The section was amended to provide that a copy of the written credit agreement must be provided to the consumer, within three business days from entering into the credit agreement.
	75(2)(a)	The prescription of the form and content of documents (which includes the loan application form, loan agreement, and other documents) has far reaching practical and financial implications to the credit provider. The regulator may prescribe the minimum specific issues or aspects to be addressed but neither the form nor the content.	Delete the whole subsection.	Subsection (2) was removed.
	75(3)(b)		Delete: “initial payment” and replace with “deposit”.	Done.

	75(4)	Consider generally throughout the Bill: Wheresoever reference is made to prescribing or by standard determining the "form" that a document must take, amend to reflect that the regulator can prescribe etc the aspects which, as a minimum, must be addressed, but NOT the content or form.	Delete “forms that a”	Subsection (4) was amended to refer to “additional minimum content requirements”.
	75(5)	See comment at 75(4) above. Prescribing a 'form' or 'content' could be problematic and have far-reaching financial consequences, and intrude on clients' rights in terms of Article 21(1)(j), freedom of contract, etc.	Delete the whole subsection or alternatively change to reflect the aspects to be contained in the document/s.	The provision was removed from section 75 and included under the Standards-section.
Section 76				
Bank Windhoek	76	A distinction must be made to a credit provider blocking	A request is made to delete this section.	Provision was made for the credit provider to block the use of the

		access to the credit facility and a credit provider blocking access of the compromised card/ device / PIN to the credit facility. It may not be in the interest of the consumer for the credit facility to blocked. This section is best dealt with by agreement between the consumer and the credit provider depending on the needs of the consumer at that time and not by way of legislation which creates a solution that does not suit particular needs and therefore does more damage than good.		access device or to block access to the account, as the case may be.
Fashion Retailers (Pty) Ltd	76(3)	The block can only be lifted upon the receipt of the customer's written consent. Provision should be made to allow for consent in general.		The consumer's written consent is required.

		E.g., a recorded call could be made to the consumer to lift the block (after a proper verification of the customer's identity).		
Section 77				
Micro Lenders Association of Namibia	77	What is the mischief this section seeks to address?		The section was removed.
Section 82				
Micro Lenders Association of Namibia	Part C, sections 82 to 88	Very difficult, if not impossible, to evaluate this PART C without sight of the actual fees and charges to be allowed in the relevant Regulations. The Initiation Fee has to be included in the Principal Debt in respect of a microlending transaction. The fee is payable at the inception of the agreement and, if not paid, is deferred and should therefore attract interest.		Noted. The initiation fee remains excluded from the principal debt.

Micro Lenders Association of Namibia	82(1)(d)	1.With reference to "or other amount" - What about full or partial payment of the loan amount to third parties in the case of financing of assets? 2. Subject to comment at section 84.		The provision was retained as is.
	82(2)	The wording here infers that the credit provider will always be the one who sells the goods or provides the services, as inferred by "a higher price for any goods or services than the price charged by that credit provider for the same or substantially similar goods". Credit providers who are not the sellers of goods or the provider of the services but have an arrangement with such suppliers that their goods and services are capable of being purchased on credit through the credit	"A credit provider, who provides goods and/or services on credit, must not charge a consumer a higher price for any such goods or services than the price charged by that credit provider for the same or substantially similar goods or services in the ordinary course of the credit provider's business based on a cash transaction."	Subsection (2) was removed.

		provider may be at risk as such credit providers have no control of the price in respect of such goods and services, it merely provides the credit. It appears to limit the applicability of the provision to a scenario where the credit provider is also the supplier of the goods; it may be necessary to do this more clearly.		
Old Mutual Namibia	82(3)	Are credit providers prohibited from charging an application fee to assess the affordability and risk of the consumer where the customer is found unable to meet the requirements or a risk?	Credit providers should be allowed to charge this. Recommended to remove.	Consumers must be allowed to shop around and not incur a cost for doing so. Read with the definition of 'consumer' which excludes the bigger entities, this protects the smaller, more vulnerable, consumers.
Section 83				
Micro Lenders Association of Namibia	83(1)(a)	In the current Microlending Act the principal debt includes: 1. loan amount		Provision is now made for a regulatory levy and stamp duties under subsection (1).

		2. stamp duties 3. long term insurance premiums 4. NAMFISA levy. Refer to section 84(1). Why are microloans not included in this section? Or why are microloans excluded from this section?		Not clear what is meant, as microloans are not specifically dealt with. The costs relate to all credit agreements, of which microlending transactions for part.
	83(1)(c)(iii)	When and how will the "prescribed amount" be published? Standard / regulation / when / how? The subsection should be changed to give the reader guidance on where to find the "prescribed amount".		"prescribed" is now defined, to mean prescribed by regulation.
	83(1)(g)	With reference to "collection costs" – Double check definition, render consistent with (j).	Change to "enforcement and recovery costs".	The term now referred to is "collection commission" and the definition was amended.

	83(1) Insert new paragraph (h)	A credit provider and especially a microlender should be able to recover any collection costs incurred in collecting the repayments in respect of the loan.	Insert new 83(1)(h): "(h) finance charges, including the total of any valuable consideration a consumer owes to a credit provider or any other person in terms of or because of a credit agreement and costs, fees, charges or expenses paid or incurred by the consumer in terms of or because of the credit agreement whether payable to the credit provider or any other person, which does not form part of the principal debt;"	Proposal was not incorporated.
	83(1) Insert new paragraph (i)		Insert new 83(1)(i): "(i) the payment of any costs order issued by a court in relation proceedings initiated in the event of the credit receiver defaulting in his/her/its obligations in terms of the credit agreement;"	A definition for "litigation costs" is now included, and it is provided for under subsection (1).
	83(1) Insert new paragraph (j)		Insert new 83(1)(j): "(j) legal costs actually incurred by the credit provider after legal proceedings were instituted for the payment of the principal debt or of finance charges owing on the principal debt and where	A definition for "legal costs" is now included, and it is provided for under subsection (1).

			payment of such principal debt or finance charges is made by or on behalf of the consumer, without judgment being obtained by virtue of such proceedings; and"	
	83(1) Insert new paragraph (k)		Insert new 83(1)(k): "(k) any allowable service fee charged by a payment system service provider in relation to the facilitation of a payment from the consumer to the credit provider."	A definition for "payment facilitation fee" is now included, and it is provided for under subsection (1).
	83(2)	The issue is "only to the extent as may be prescribed." Without knowing what will be prescribed, it is extremely difficult to comment. The section in the South African Credit Act reads exactly the same, but it refers to "only to the extent permitted by regulation". The regulation merely states R0. This has caused much controversy and there are various pending litigious matters as a result of	"A credit provider who is a party to a credit agreement with a consumer and enters into a new credit agreement with the same consumer that results in the new loan amount settling, in whole, the total amount outstanding in respect of the first loan agreement, may charge that consumer an initiation fee, contemplated in subsection (1)(b), in respect of the second agreement, limited to the portion of the second loan amount not utilised to settle the total outstanding amount in respect of the first agreement, having regard to	The provision was amended to remove "*only to the extent as may be prescribed, having regard to the nature of the transaction and the character of the relationship between the credit provider and consumer*".

		the legislature's inability to properly deal with the issue. Both credit providers and pawn brokers are seeking clarity on the issue and argue that the provision is irrational and, therefore, arbitrary. This section should be deleted or replaced to provide for pro-rata application in respect of the second agreement.	the nature of the transaction and the character of the relationship between the credit provider and consumer."	
First National Bank of Namibia Limited	83(1)	Principal debt needs to be very clearly defined to avoid a circular definition being used. What is the amount deferred under the agreement?	FNB propose it would be the better to define it instead as the capital amount – the amount advanced at the outset of the agreement.	The reference to "amount deferred under the credit agreement" was retained. Additional provisions are now included to specify what items can be included under the principal debt.
	83(1)	The definition of credit insurance in the Bill is contradicting the term as used in FIMA.	Requires further clarity on how credit insurance payments are to be repaid by the consumer.	The definitions of "credit insurance" and "credit life insurance" were amended. To be determined by the contract between the parties.

	83(2)	Unclear to what extent the "character of the relationship" and how that affects the quantification of the second initiation fee.	Further clarity is required on this subsection.	The provision was amended to remove "*only to the extent as may be prescribed, having regard to the nature of the transaction and the character of the relationship between the credit provider and consumer*".
Nimble Group (Namibia) (Pty) Ltd (Norman, Bissett & Associates of Namibia A Division of Norman Bissett & Associates Group (PTY) LTD)	83	Please advise as to the amounts as currently the amounts are not mentioned, as long as it is not mentioned it will not be possible to determine whether we agree or indifference of the proposal.		The amounts will be prescribed by regulation.
DBN	83 and 121	The Act refers to a "prescribed maximum of collection costs" (refer to section 83 & 121). It is unclear what the prescribed costs cover. (General – Collection Costs)	Clarify the detailed costs included under "prescribed maximum of collection costs".	The amounts / manner of calculation will be prescribed by the Minister.

Old Mutual Namibia	83	A microlending transaction limits the principal debt to N$100 000, and the principal debt definition refers to as calculated in section 83(1)(a), which refers to "*being the amount deferred in terms of the agreement, plus any value of any item contemplated in section 84*". Section 84 is limited to cost related to principal debt "*to the extent that they are applicable in respect of any goods subject to the agreement*". The understanding is that an amount deferred is something yet to pay, such as not paying for an asset under a credit transaction. A loan would constitute immediate payment. What is the limit for principal debt of a microlending transaction? A maximum loan of N$100 000, or is the loan	Clarity required and clear definition to be provided for principal debt.	The reference to "amount deferred in terms of the credit agreement" was retained. Additional provisions are now included to specify what items can be included under the principal debt. The principal debt must fall within the threshold.

		plus associated cost limited to N$100 000? Section 83 and 84 seem to speak only to credit financing for credit transactions.		
	83(2)	Initiation fees on consolidated/replaced agreements may be limited to the prescribed rate, unlike NAMFISA levies and Stamp Duty which become payable on the entire amounts.	Allow the full initiation fee to be charged on the new credit agreement.	The provision was amended to remove "*only to the extent as may be prescribed, having regard to the nature of the transaction and the character of the relationship between the credit provider and consumer*".
Section 84				
Micro Lenders Association of Namibia	84(2)		Insert after "credit provider": ", as contemplated in section 84(1)," Section to read as follows: "(2) A credit provider, as contemplated in section 84(1), must not— "	The subsection was amended to remove paragraph (c) and, in (b), to refer to the choice referred to in paragraph (a).
	Insert new 84(A)	Provision should be made for microloan transactions. It is irrational not to include a microlending transaction under section 84(1). The	Insert new subsection: "84. (A) If a credit agreement is a microloan the microlender may include in the principal debt any of the following items — (a) the loan amount;	The proposal was not incorporated. Adequate provision for all fees and costs is made under section 83.

		nature of the initiation fee is the same for all credit providers, irrespective of the type of credit extended, i.e., the fee is payable at inception. If elected not to be paid at inception, it is deferred, and such deferral attracts interest. Any disbursement costs may be included in the new section.	(b) the costs in respect of stamp duties actually paid or to be paid by the microlender in connection with the microlending transaction and which are owing to the microlender by the borrower; (c) any levy paid or to be paid by the microlender in connection with the microlending transaction; (d) an initiation fee as contemplated in section 83(1)(b), if the consumer has been offered and declined the option of paying that fee separately; (e) subject to section 88, the premiums of any credit or credit life insurance payable in respect of that credit agreement; (f) any other statutory fees, levies or charges; and (g) any cost or expense incurred, or to be incurred, by the microlender directly or indirectly in relation to the conclusion, facilitation, or compliance of any microlending transaction, pursuant to any law, statute, regulation or bylaw relevant to such transaction, including but not limited to those	

			required or stipulated in this Act, shall be chargeable to the borrower."	
Section 85				
Micro Lenders Association of Namibia	85(5)	This provision penalizes compliant consumers and incentivizes default and undermines the entitlements granted to the credit providers in 83(1). This provision aims to extend the common law *in duplum* rule to more than arrear interest. The common law rule is sufficient. Extending it beyond interest may lead to more defaulting consumers. This section is prejudicial to credit providers; the costs provided for in the section (to be included) will result in the credit provider recovering considerably less than its actual spend in the recovery/enforcement process.	Delete whole subsection, alternatively replace "83(1)(b) to (g)" with 81(1)(b) to (d) – limited to costs of credit only.	Subsection (5) was amended to only refer to interest.

	85(6)	Provided that the prescribed default interest rate at least equals the maximum prescribed interest rate chargeable under the agreement.	"In respect of a microlending transaction, the interest rate applicable to an amount in default or an overdue payment may not exceed the maximum prescribed interest rate applicable to that agreement."	Subsection (6) was removed.
First National Bank of Namibia Limited	85(5)	The statutory *in duplum* rule should take into account common law *in duplum* principles like the *oscillation* principle. Another interpretational difficulty may be in the context of credit life insurance, which is included in the calculation of the *in duplum* amount. There is the very real possibility that the application of the *in duplum* rule, which is intended to protect the debtor, may actually prejudice the debtor in these circumstances – in that the statutory *in duplum*		Subsection (5) was amended to only refer to interest.

		rule may prevent the consumer from paying, and the credit provider from receiving, any premiums on the consumer's credit life insurance policy. For the entire duration of the default after the *in duplum* limit has been reached, the creditor will not be obliged or be able to pay any premiums towards the credit life insurance.		
Old Mutual Namibia	85	Will *in duplum* rule apply to microlenders?	Clarify.	It applies to all types of credit agreements.
	85	Given the proposed subsection 85(5) would subsection 54(3) of the Long-term Insurance Act, Act 5 of 1998: "*Interest on an unpaid premium, or on a loan or advance made by a registered insurer or reinsurer on the sole security of a policy under which the registered insurer or reinsurer is liable, shall not*	Clarify.	Subsection (5) was amended to only refer to interest. It will not have an effect on section 54(3) of the Long-term Insurance Act 5 of 1998.

		cease to accrue when that interest has accumulated to an amount equal to the amount of that unpaid premium, loan or advance.", continue to apply?		
	85(5) and (6)	(5) - If the unpaid balance as at date of default is the cap, this essentially means that the credit providers may not have recourse if the collection costs exceed the outstanding amount? (6) - Why is a microlending transaction being isolated and not dealt with all the other transactions?	Remove.	Subsection (5) was amended to only refer to interest. Subsection (6) was removed.
Section 86				
Old Mutual Namibia	86	What is the objective of the 30 days' written notification post-change? Also see comment under section 46 pertaining to "in writing".	Clarify. Define "in writing/written" to include electronic communications.	"written" was defined to include electronic communication.

	86	Written notice is limited to physical delivery, mail or email. In Namibia, physical delivery and registered mail are difficult where people do not have fixed property numbers, and many do not have e-mail.	Allow for electronic communication such as SMS as well.	"written" was defined to include electronic communication.
Section 87				
Micro Lenders Association of Namibia	87	There is a risk that given the uncircumscribed nature of the powers granted to the Minister in this section, there may be an infringement of the credit providers rights in terms of Article 21(1)(j) and the freedom to contract. To consider in conjunction with the comments to the Policy on processes.		It is legitimate for the Legislature to delegate legislative powers to a subordinate authority.
	87(1)	Regular review of interest, fees and charges are essential for the proper functioning of the credit industry.	Insert after "must": "annually". Section to read as follows" "87. (1) The Minister must annually prescribe, by regulation— "	No change to the provision was made. In practice, the Consumer Credit Regulators will make recommendations to the

				Minister, after considering relevant factors.
	87(2)		Delete the whole subsection and replace with: "In exercising the powers conferred under subsection (1), the Minister must consider the risk premium, cost of equity, cost of debt, and all relevant factors including, but not limited to, the prevailing conditions within the consumer credit market, the cost of credit, the market's optimal functionality, other pertinent domestic economic and financial conditions, and possible adverse consequences to credit providers. Prior to finalising any such determination, the Minister is obliged to consider comments and viewpoints received from stakeholders concerning the aforementioned factors, and shall before any exercise of power under subsection 1 provide the stakeholders with the reasons and the underpinning facts for such proposed decision."	The provision was not amended. The subsection is not limited in respect of the consideration of all relevant factors.

	87(4)	Regular review of interest, fees and charges are essential for the proper functioning of the credit industry.	Delete the whole subsection. Refer to proposed change at 87(1).	The comment appears to be misdirected, as there is no subsection (4). However, the Minister will review the cost of credit as and when required.
	Insert new subsection		Insert new subsection: "The Minister must- (1) review interest rates, fees, charges and all other cost factors at intervals of no more than three years and effect any changes that may be required; (2) When performing the review, the Minister must: (a) obtain and consider recommendations from the Consumer Credit Regulators and industry stakeholders; (b) consult with any other appropriate body or authority relevant to performing a review; (c) consider the prevailing socio-economic status of consumers active in the consumer credit market and general financial conditions;	Subsection (2) is not limited in respect of the consideration of all relevant factors. The Minister may consult where deemed necessary.

			(d) consider ruling interest rates and fees; (e) the costs of providing credit and any other mandatory associated or ancillary cost, including but not limited to compliance costs, employment costs and any other operational cost.”	
Lewis Stores (Namibia) Pty Ltd	87	1. We note that section 87 authorises the Minister to prescribe, by regulation, maximum rates or limits in relation to initiation and service fees, interest, default administration charges and collection costs, and that the Minister must take into consideration a number of prevailing factors when prescribing such limits. 2. While we support the limitations and considerations to be taken into account in principle, we note that no draft regulations have been		Noted. Regarding point 3, the Minister will review the cost of credit as and when required.

		published in relation to the proposed limitations to be imposed. We trust that a process of engagement with industry role-players will be followed in formulating the limitations on fees and charges and that the public will be afforded suitable opportunities to engage and to make commentary on such limitations before they are finally promulgated and implemented. 3. In addition to the above, we note that while the Minister is required to take a number of prevailing factors into account when prescribing limitations on fees and charges, such factors are not static and will change over time. To this end, we believe that the CC Bill should impose an obligation on the Minister to periodically		

		review the limitations in order to ensure that the circumstances taken into consideration in order to prescribe the limitations are appropriate to circumstances prevailing at the time of review. In this regard, we believe that a period of no less than every three years is appropriate.		
Nimble Group (Namibia) (Pty) Ltd (Norman, Bissett & Associates of Namibia A Division of Norman Bissett & Associates Group (PTY) LTD)	87	Please advise as to the amounts as currently the amounts are not mentioned, as long as it is not mentioned it will not be possible to determine whether we are in agreement or indifference of the proposal.		The specifics will be prescribed by way of a regulation.
Old Mutual Namibia	87(1)	Are financial services meant to include provision of credit insurance?	Clarify.	The comment is unclear.

EPRA	87	The Minister may prescribe the maximum rates of interest, fees and charges. The Minister may also prescribe the limit in respect of the cost of credit insurance that a credit provider may charge a consumer. This is also commended as exorbitant credit insurance costs offered in especially the retail credit industry (with unscrupulous partners in the short-term insurance industry) is a major concern. We have experience in this with a retailer who was only willing to sell a product on credit (worth N$3,000 at the time) if the consumer also signs for credit insurance. The credit insurance (and other charges) amounted to over N$12,000 (while the consumer defaulted for only one month) within the span of about a year. The		Noted.

		consumer complained to NAMFISA. After around three years NAMFISA eventually acted, and the consumer received credit on the outstanding amount and ultimately paid around N$6,000 to be relieved from her obligations towards the credit provider / retailer. The credit agreement itself was horribly abusive, but not as much as the mandatory credit insurance agreement. We must also mention that the retailer was never licensed to sell credit insurance. We never obtained any feedback on this issue from NAMFISA, and we understand the situation prevails. This example highlights the importance of credit consumer protection, which also deals with credit insurance, and also the risk in NAMFISA being the consumer		

		credit regulator.		
Section 88				
Micro Lenders Association of Namibia	88(1)		Insert after "to": "obtain and". Section to read as follows: "88. (1) A credit provider may require a consumer to obtain and maintain during the term of their credit agreement— "	The provision was amended to refer to "purchase and maintain".
	Insert new subsection 1(b)(iii)		Insert new subsection 88(1)(b)(iii): "(iii) in the case of a microloan, .not exceeding, at any time during the life of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of their agreement."	Subsection (1)(a) is considered sufficient to provide for the consumer's obligations under a microlending transaction.
	88(2)	To include what the Minister is to consider, the scope of the consideration. Problematic - in its current formulation it would suggest that the Minister may, by regulation, require credit providers to require credit	Insert after "consumers to": "obtain and". Section to read as follows: "The Minister may, by regulation, prescribe requirements for credit providers to require consumers to obtain and maintain credit life insurance for the duration of credit agreements not exceeding, at any time during the life of the credit agreement,	Subsection (2) was removed.

		consumers to maintain credit life insurance, and may set requirements in this regard. Whether or not a credit provider requires a credit consumer to obtain and maintain credit life insurance should be exclusively within the discretion of the credit provider.	the total of the consumer's outstanding obligations to the credit provider in terms of that credit agreement."	
	88(3)	Delete section 88(3)(a) – section 88(1) prescribes the maximum cover allowed. Thus, cover exceeding the prescribed maximum would be in contravention of 88(1) – "cover of which is unreasonably high" is uncertain and undeterminable. It is accepted that in consideration for the cover, the premium or cost to the consumer must not be unreasonable.	"Despite or In addition to subsection (1), a credit provider must not offer or demand that the consumer purchase or maintain insurance at an unreasonable cost to the consumer, having regard to the actual risk cover and liabilities involved in the credit agreement."	The subsection was removed.

	88(7)(a)	Prescribing a 'form' or 'content' could be problematic and have far-reaching financial consequences, and intrude on clients' rights in terms of Article 21(1)(j), freedom of contract, etc.	Delete: ",in the prescribed manner and form,"	The requirement to issue a standard was removed.
	88(7)(b)	Prescribing a 'form' or 'content' could be problematic and have far-reaching financial consequences, and intrude on clients' rights in terms of Article 21(1)(j), freedom of contract, etc.	Delete: ",in the prescribed manner and form,"	The requirement to issue a standard was removed.
	88(9) and (10)	Prescribing a limit concerning the cost of credit insurance or the cost of credit life insurance is problematic, especially concerning microlenders or microlending transactions. By nature, microlenders are not	Delete the whole subsection 88(9), alternatively with reference to "subsection (2) is prescribed" – To include what the Minister is to consider, the scope of the consideration. Delete the whole subsection 88(10), alternatively with reference to "cost of	Subsections (9) and (10) were removed.

		necessarily the providers of financial products, and it would be necessary to source the provision of insurance through a financial provider i.e., broker/underwriters. The costs associated (operational and compliance costs) with the provision of insurance for the microlender are much higher than any other credit provider (banks that are also financial service providers). In South Africa, the fact that a cap has been placed on credit life insurance premiums has been detrimental to both microlenders and consumers. It is not viable/sustainable for the microlender to provide the product and as a result, the consumer has no cover in the event of death/disability, etc. If there is an insistence on a cap on premiums, it must be subject to periodic review (at least every two	credit insurance" – To include what the Minister is to consider, the scope of the consideration.	

		years), and the review must take into account, the different credit products and different types of credit providers – a blanket approach leads to irrational results. In South Africa, the cap has not been reviewed for more than three years. This has seriously jeopardised the microlender's ability to make the product available.		
	88(11)	Duty established. Form and manner within discretion of credit provider.	Delete the whole subsection.	The provision was removed.
Bank Windhoek	88	Herewith are current risk scenarios faced by consumers and credit providers in respect of notifications of cession / interest against Long- and Short-Term Insurance providers, the lack of notifications to consumers and credit providers	A request is made for section 88 to be amended to regulate and standardise: • Process and procedure by policy holders to cede insurance; • Process and procedure by credit providers to accept cessions / interest to insurance; • Process and procedure by insurers to	The proposals are noted, but it will not be provided for in this Act (rather under insurance specific legislation).

		informing of arrear and unpaid premiums, and consequent monetary loss suffered by consumers and credit providers as a result of not being notified. Scenario A: Cession of Long-term Assurance Policy proceeds • A credit provider (e.g. bank) accepts a written cession in security agreement over the proceeds of a consumer's Long-term Assurance Policy. • The practice is for a credit provider to notify the Assurer in writing of the credit provider's cession. • Assurer confirms to the credit provider in writing that the cession has been recorded. Problem Statement for Scenario A: • Inconsistent market	record cessions / interest of credit providers and to keep same recorded; • The rights, role, and obligations of policy holders, Insurers, Assurers and credit providers as it relates to notifications to record cessions / interest; • The rights, role, and obligations of policy holders, Insurers, Assurers and credit providers as it relates to notifications in respect of unpaid or partially paid premiums; • The rights, role, and obligations of policy holders, Insurers, Assurers and credit provider as it relates to notifications in respect of lapses policies due to unpaid or partially paid premiums.	

		practice. - Not all Assurers nor policy holders notify the credit provider when a premium has not been paid or only partially paid, nor when the policy ultimately lapses because of arrear premiums. - The credit provider as cessionary is deprived of the opportunity to make suitable arrangements to remedy the premium by arranging payment, with a result that the Assurance policy lapses. - In some cases the policy holder is unaware of the unpaid premium. - Insured peril occurs whilst policy lapsed, resulting in loss to client and loss to credit provider. Scenario B: Noting of Interest against Short-term Insurance proceeds • A credit provider (e.g. bank)		

		accepts a written cover note indicating the credit provider's interest over a financed article insured under a consumer's Short-term Insurance Policy. • The practice is for the credit provider to notify the Insurer in writing to note the credit provider's interest. • Insurer confirms to the credit provider in writing that the Bank's interest has been recorded. Problem Statement for Scenario B: • Inconsistent market practice. - Not all insurers nor consumers notify the credit provider when a premium has not been paid or only partially paid, nor when the policy ultimately lapses because of arrear premiums. - The credit provider as an		

		interested party to the financed and insured article is deprived of the opportunity to make suitable arrangements to remedy the premium by arranging payment, with a result that the Insurance policy lapses. - Insured peril occurs whilst policy lapsed, resulting in loss to consumer and loss to credit provider.		
Lewis Stores (Namibia) Pty Ltd	88(9)	As with the limitations on fees and charges, we trust that a process of engagement with industry role-players will be followed in formulating limitations on the costs of credit insurance and that the public will be afforded suitable opportunities to engage and to make commentary on such limitations before they are finally promulgated and implemented.		Subsection (9) was removed.

Investments Association (NaSIA)	88, read with 134 and 145: Section 88(3)(b): "*unreasonably priced*"; Subsection (9): "*limit in respect of the cost of credit insurance*"; Subsection (10): "*the Minister must prescribe the limit in respect of the cost of credit life insurance*"	How will NAMFISA determine whether the cost for credit insurance is unreasonable and will an actuarially sound calculation, taking the specific risk and fees (regulatory and other) be used? Based on which criteria will this cost limit be determined? Will all the different benefits be considered?	We recommend that this section be removed.	Subsection (3) was removed.

	Section 134(1)(f): "*unreasonably priced*" Section 145(2)(z)(aa): "*limit in respect of the cost of credit insurance*" and "*cost of credit life insurance*"			
Old Mutual Namibia	88(3)	What is considered to be unreasonable?	Remove - the current Long-Term Insurance Act and Short-Term Insurance Act already regulates this scenario and to be catered for under FIMA.	Subsection (3) was removed.
	88(4) and (5)	Provision/selling/soliciting of insurance policies is regulated by the Long-Term Insurance Act,1998 (Act No. 5 of 1998) and the Short-Term Insurance	Remove - only one Act should govern insurance business.	Subsection (4) was removed, while subsection (5) was retained as is. Regarding subsection (5), it is necessary, in this Act, to prescribe that consumers must be

		Act, 1998 (Act No. 4 of 1998) and will be regulated by the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021). (5) - The credit provider cannot be forced to accept the insurance cover of any insurer, and this is also subject to the insurer agreeing to issuing the cover based on the risk faced.		given a choice.
	88(6)(d)	It is unclear what is meant by a loss payee, and there are various provisions in this Bill that states the maximum amount that may be covered is equal to the unpaid debt, therefore there cannot be remaining proceeds.	Amendment required to align to other provisions.	The credit provider must be the "loss payee" – the party who will receive the insurance payout. The provision regarding "remaining proceeds" will not find application if it is not relevant.
	88(8)	The section assumes that all premiums are paid monthly, where in fact, premium are calculated annually and may be received monthly. It does	Revise.	If there is no "unused portion", the provision will not find application.

		not seem to make provision for single premium or term insurance policies. The premium is a determinable amount for a fixed term, and risk for the insurer exists while the policy is on books. Whether to allow refunds should be for the insurer to decide. This section seems to talk to early settlements during a year, which is not indicated, as if the credit agreement is settled per normal agreement, there would be no unused portion.		
	88(9) to (11)	Long-Term Insurance Act,1998 (Act No. 5 of 1998) and the Short-Term Insurance Act, 1998 (Act No. 4 of 1998) regulate insurers and their solvency requirements. The Financial Institutions and Markets Act, 2021 (Act No. 2	Remove and regulate under the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021).	The provisions were removed.

		of 2021) will similarly sufficiently regulate insurance business. It is not recommended that two pieces of legislation regulate the same industry.		
Section 89				
Micro Lenders Association of Namibia	89(2)	This is unpractical and costly to provide obligatory periodic statements for credit agreements with a repayment period of shorter than six months. The consumer should retain the right to request a statement in which event the credit provider must provide the statement, irrespective of the period for which the credit agreement spans. Section 24(6) of the current Microlending Act only requires a microlender to provide a borrower with a statement, at the request of the borrower.	Add: "(2)(A) Sections 90, 91 and 92 do not apply in respect of credit agreements in respect of which the repayment period is 6 months or shorter."	The requirement was changed to a monthly statement.

Section 91				
Micro Lenders Association of Namibia	91(2), (3) and (4)	The prescription of the form and content of documents (which includes the loan application form, loan agreement, and other documents) has far reaching practical and financial implications to the credit provider. The regulator may prescribe the minimum specific issues or aspects to be addressed but neither the form nor the content.	Delete these subsections in total.	Sections 90, 91 and 92 were merged. Subsections (2), (3) and (4) were removed.
Old Mutual Namibia	91	In what manner must these accounts be delivered? Mail will have a significant cost implication and not all consumers have email addresses in Namibia.	Guidance required.	Sections 90, 91 and 92 were merged. “deliver” was removed and replaced with “provide”.
Section 92				
Micro Lenders Association of Namibia	92(1)	Places undue financial burden on credit provider to issue statements. The prescription of the form and content of	Delete “without charge”. And add after “following”: “and may impose a charge for the provision of a duplicate copy of the statement but in no case may the	Sections 90, 91 and 92 were merged. The monthly statements of

		documents (which includes the loan application form, loan agreement, and other documents) has far reaching practical and financial implications to the credit provider. The regulator may prescribe the minimum specific issues or aspects to be addressed but neither for form nor the content. As a GENERAL PROPOSITION - refer to "standards" to prescribe - it is difficult to comment on the provision without having sight of the proposed standards and client reserves right to augment comments when the draft documents have been received.	charge exceed the amount per page of the statement as required by the standard". Section should read as follows: "92. (1) At the request of a consumer, a credit provider must deliver to the consumer a statement of all or any of the following, and may impose a charge for the provision of a duplicate copy of the statement but in no case may the charge exceed the amount per page of the statement as required by the standards —"	account must be provided free of charge. For duplicate copies, the credit provider may charge a fee (to be prescribed). Noted. The draft standards will be published for comment in due course.
	92(2)	The obligation to deliver the statement within a specified	Delete "delivered" and replace with "dispatched".	Sections 90, 91 and 92 were merged.

		period is onerous and impractical, since the period for delivery of the statement can be influenced by factors beyond the control of the credit provider, such as instance of delivery by mail (which method of delivery is at the sole election of the consumer). It places an unnecessary burden on the credit provider.		"delivered" was replaced with "provided".
	92(3)	Leaving the "in person" delivery address open ended is impractical. This could lead to issues with delivery in remote areas / outside the jurisdiction of Namibia. Credit provider's place of business is certain and practical.	Insert "at the credit provider's place of business" after "in person". Insert "reasonably" between "as" and "directed".	Sections 90, 91 and 92 were merged. The subsection was removed.
Section 93				
Micro Lenders Association of Namibia	93(2)(a)	How should the written communication be received by the consumer? What happens in the instance		"written" was defined, and includes electronic means.

		where the consumer cannot be located? Written notice places onus on credit provider.		
	93(2)(b)	This provision has the potential to infringe on our members rights in terms of Article 12 of the Constitution which makes provision for fair trial and access to courts.	Remove this subsection in total.	The credit provider must simply provide the written explanation – explaining the entry in reasonable detail – before the credit provider may institute enforcement proceedings on the basis of a default arising from that entry.
Section 94				
Micro Lenders Association of Namibia	94(2)	Monies cannot be accounted for without actually being received.	Remove "the consumer makes a payment to the credit provider, or otherwise earns the right to have the account credited" and replace with "that the payment is received by the credit provider". Sentence to read as follows: "(2) A credit to a consumer's account takes effect on the date that the payment is received by the credit provider."	The provision was amended to include a reference to receipt.
Section 95				

Micro Lenders Association of Namibia	95(2)(a)	The obligation to deliver the statement within a specified period is onerous and impractical, since the period for delivery of the statement can be influenced by factors beyond the control of the credit provider, such as instance of delivery by mail (which method of delivery is at the sole election of the consumer). It places an unnecessary burden on the credit provider.	Delete “delivered” and replace with “dispatched”.	“deliver” was replaced with “provide”.
	95(2)(b)(ii)	Leaving the “in person” delivery address open ended is impractical. This could lead to issues with delivery in remote areas / outside the jurisdiction of Namibia. Credit provider’s place of business is certain and practical.	Add “at the credit provider’s place of business” after “in person”. Sentence to read as follows: “(ii) in writing, either to the consumer in person at the credit provider’s place of business or by sms, mail, fax or email or other electronic form of communication, to the extent that the credit provider is equipped to offer such facilities, as directed by the consumer when making the request;”	Subsection (2)(b) was removed.
Section 97				

Old Mutual Namibia	97	Access to court should always be available and does not require any law to allow a person to challenge a matter in court.	Remove.	The provision was retained.
Section 98				
First National Bank of Namibia Limited	98	This provision will have serious unintended consequences. It is proposed that the provisions should be extended to include specifically voice recordings which seems to be the intention at (d) however it is not clear.	FNB propose that it be aligned to provisions in the Electronic Transactions Act.	Sections 98, 99 and 102 were merged. This provision was amended to specify that parties may, in writing, agree to change the credit agreement.
First National Bank of Namibia Limited	98, 99 and 102(1)	The Bill has very onerous and formalistic provisions relating to amendments to credit agreements which is consulted and superfluous. They also appear to contradict each other to some extent. There is no provision that speaks to amendments being	FNB propose having only one clause dealing with alterations/amendments and including consent as an exception to the rule. FNB further propose provision to stipulate that a credit provider may unilaterally change the agreement except in certain instances and include a list of exclusions to the provision.	Sections 98, 99 and 102 were merged. Provision was made for the parties to agree, in writing, to a change. Section 86 provides for changes to interest, fees or charges, and sections 100 and 101 provide for changes to the credit limit.

		possible on express consent from client and it's common cause that where a consumer agrees to the alteration or amendment – the credit provider would be able to amend the terms accordingly.		
Section 101				
Micro Lenders Association of Namibia	101(3)	This subsection is in contradiction with subsections 101(4) & (5).		Section 101 was amended to require fresh affordability assessments for any increase of the credit limit.
	101(4)	Refer to subsection 101(3) above which require "a fresh affordability assessment". This subsection contradicts 101(3). Bring the two in line with each other.		Section 101 was amended to require a fresh affordability assessment for any increase of the credit limit.
Section 102				
Micro Lenders Association of Namibia	102	There may be circumstances where the credit provider and consumer agree to give the credit provider certain discretions, i.e. the consumer	Delete "*Despite any provision to the contrary in a credit agreement*"	The words were deleted as proposed. The change cannot be made unilaterally.

		experiences financial difficulties and the credit provider extends the period for repayment.		
Fashion Retailers (Pty) Ltd	102(a)	Section 102(a) - stipulates that a credit provider may not unilaterally change the period of payment. Allowing for unilateral term extensions, creates an effective remedy to assist customers in getting out of debt by extending their repayment period and thus making monthly instalments more affordable. This assists the consumer and ensures that their credit record is maintained in good order.	We would propose adding the following wording "except to lengthen it".	The change cannot be made unilaterally. It must be done with the agreement of the consumer.
Section 103				
Micro Lenders Association of Namibia	103(1)	Bring the period to be in line with section 26(1) of the Microlending Act. Why is the cooling off period only appliable to	Delete subsection and replace with "*A consumer has the right to terminate the microlending agreement within a period 3 business days after the conclusion of the credit agreement, provided that the consumer first repays*	Section 103 was moved to Part C of Chapter 5. The period was reduced to three business days.

		microlenders? This provision should be changed to include all credit agreements. The exercising of any right to cool off must also be cognizant of the rights of the microlender and ensure that the microlender receives repayment of the principal debt (subject to the pro-rata interest provision), and is not out of pocket or otherwise financially prejudiced in relation inter alia to costs already incurred by the microlender.	*the principal debt to the microlender in full simultaneously with seeking to exercise his/her aforementioned right to terminate. Should the principal debt not be repaid in full as aforesaid, the microlending agreement will remain valid and enforceable.* *The Minister may prescribe a cooling-off period in respect of other credit agreements*."	The cooling-off period only applies to microlending transactions and microloans. Provision was made for the initiation fee to be retained.
	103(2)	The exercising of any right to cool off must also be cognizant of the rights of the microlender and ensure that the microlender receives repayment of the principal debt (subject to the pro-rata interest provision), and is not out of pocket or otherwise	Delete *"loan amount"* and replace with *"principal debt".* Inset after *"the microlender": "as provided in subsection (1)"* Insert at the end of the section *"and an early termination charge no more than that prescribed."*	"loan amount" was replaced with "principal debt". Provision was made for the initiation fee to be retained.

		financially prejudiced in relation inter alia to costs already incurred by the microlender.	Sentence to read as follows: *"(2) If the consumer terminates the microlending transaction within the period referred to in subsection (1) and simultaneously repays the principal debt to the microlender, as provided in subsection (1), the microlender may only stipulate for, demand or receive from the consumer pro rata interest at the rate applicable to that microlending transaction and an early termination charge no more than that prescribed."*	
	Insert new (3)		*"(3) The Minister may prescribe a cooling-off period in respect of other credit agreements."*	The proposal was not incorporated.
	Sections 103, 104, 105, 108, 109	IMPORTANT - Section 103, section 104, section 105, section 108, section 109 - These provisions all relate to the consumer's right to terminate a credit agreement before the expiry thereof and the consequences which follow. The provisions as they		Noted. Refer to the changes made to the sections.

		currently read provide for different processes, different rights and obligations, and in relation to different actors. In other instances, the provisions overlap in respect of the same actors. These provisions need to be synthesized and microlenders should not be unreasonably discriminated against in respect of the right to charge an early termination charge.		
Old Mutual Namibia	103	Why is this provision only applicable to microlenders? Does the loan amount include all costs associated, including initiation fees to cover operational costs incurred?	Clarify.	Section 103 was moved to Part C of Chapter 5. The cooling-off period only applies to microlending transactions and microloans. “loan amount” was replaced with “principal debt”. Should the consumer terminate the transaction in terms of this provision, only *pro rata* interest, the initiation fee and stamp

				duties may be recovered from the consumer.
Section 104				
Agra	104(1) to (3)	How would we manage this in the event of a special order made for a customer, where the customer no longer wishes to have the item and a handling fee has been charged? This specifically applies to items we would not be able to sell to someone else.		Section 104 was removed.
Nictus (Pty) Ltd	104(1)	Allowance to be made for an admin fee to be charged when a sale agreement contract is cancelled, to reimburse the credit provider for the costs incurred during the application and invoicing, eg. Credit report charge, stamps on the contract, transport or other relevant charges that my have occurred during the initial		Section 104 was removed.

		transaction.		
Old Mutual Namibia	104	The provisions are not reasonable to allow consumers to use items for 5 days and then cancel the contract unilaterally and the seller has to accept second hand/used property. It is also not reasonable for the only option to be court where no agreement can be reached. This provision will be abused by the public.	Recommended to be removed. It can be amended to accept termination/cool-off if the items are unused and still unopened.	Section 104 was removed.
DBN	104(3)(b)	References to "reasonable expenses incurred" by a credit provider in connection with a sale of goods. It is unclear as to who is responsible for determining the reasonability of costs and charges by service providers of credit providers, unlike in litigious matters, disputes around costs are referred to		Section 104 was removed.

		the "'taxing master". We propose a clear position in respect of the responsible entity or regulator alternatively, the adoption of a fee bracket.		
Section 106				
Micro Lenders Association of Namibia	106(1) and (2)	These subsections infringe on the following: - Right to a fair trial - Freedom to contract - Freedom to conduct business (Art 21(1)(j)) How does this provision affect existing rights? Schedule 3 is vague and unclear.		Section 106 was removed.
	106(6)	It seems as if the (unintended?) consequence of this section may be that the Credit Provider may be forced to keep on delivering service to the consumer, even if he is not paying, and even if the facility has been		Section 106 was removed.

		suspended or terminated. This provision is unreasonable and arbitrary and serves to undermine and infringe: - Right to a fair trial - Freedom to contract - Freedom to conduct business (Art 21(1)(j)). This provision impacts on pre-existing rights and is unconstitutional.		
First National Bank of Namibia Limited	106	The provision limits termination to instances only relating to default. This would have impacts on our business if as a bank we are not permitted to terminate a credit agreement of a consumer who may be on a sanctions list. This poses a significant threat to the financier to continue doing business with such individuals.	FNB propose that in the event any other regulatory body either locally or internationally instructs a bank to exit a relationship with an individual the Bill should make provision for such instances.	Section 106 was removed.

Section 107				
Micro Lenders Association of Namibia	107(1)	Sections 107(1) and 71(2)(n) - what does the content of these provisions mean, how are they to be read together? It appears as if the intent is to deal with debit order payments. This is regulated by the Payment Systems Management Act 14 of 2023 and should be done in accordance therewith.		The credit provider (referring more to banking institutions) may not, if it is not a standing debt arrangement or does not comply with section 107, recover any instalment or premium from another account that the consumer may have with the same bank in the event that a debit order, for example, failed to go off from one account. Simply because they may have access to a consumer's assets does not entitle them to collect from the assets under their care in the case of a default.
	107(2)	Refer to the comment at 107(1) above.	Delete the whole subsection.	The subsection was retained.
	107(3)		Remove "2003 (Act No. 18 of 2003)" and replace with "(2023 (Act No. 14 of 2023)".	Done.
First National Bank of Namibia	107(3)	Refers to the Payments System Management Act but		Determinations are issued in terms of the Payment Systems

Limited		it should refer to directives, determinations, regulations and industry rules. A lot of the material provisions governing the national payment system is contained in determinations etc under the Payment System Management Act.		Management Act; it is appropriate to refer to the Act.
Section 108				
Micro Lenders Association of Namibia	108(2)	Early termination charges must be indicated as a possible fee with other allowable fees and charges in the Act.		Sections 108 and 109 were merged. The proposal was not accepted.
	108(3)	Microlenders should be entitled to an early termination charge and should not be excluded in the regulations.		Sections 108 and 109 were merged. If the microlending transaction falls within the thresholds determined by the Minister, then the credit provider will be able to impose an early termination charge.

	108(4)	1. Why is early termination charges restricted to mortgage bonds only? Other credit agreements also have costs when agreements are terminated early. 2. Early termination charges must be stipulated in the credit agreement to ensure disclosure and fairness to the consumer.		Sections 108 and 109 were merged. Early termination charges are not restricted to mortgage bonds only, but is usually applicable to longer term credit agreements. The credit provider earns interest, and charges fees and other costs up to the date of termination. The credit agreement must contain the principles regarding the early termination charge, but it will not be known what exact charge will be at the start of the credit agreement. Hence, the need to calculate it in accordance with the provisions of the Act.
Section 109				
Old Mutual Namibia	109	The credit provider and the consumer must be allowed to agree to whether the payment is to service interest or settle the principal debt.	Amend accordingly.	Sections 108 and 109 were merged. The provision was not amended. If no amounts are due or unpaid, the parties can agree on how to

				appropriate the payment. But, if there are due or unpaid amounts, the payment must be appropriated as per the law.
Section 110				
Micro Lenders Association of Namibia	110	CLARIFICATION REQUIRED: Is the purpose of this section to prohibit debt restructuring or debt counselling? It appears to be an attempt to prohibit debt informal restructuring (and "debt counselling") practices which we fully support, if we interpret the provisions correctly. Our only proposal would be that the intention is expressed with more clarity. Furthermore we propose that a contravention of these provisions carry a criminal sanction.		Section 110 was removed.
	110(4)	The term "credit repair" is not defined. It seems that this		Section 110 was removed.

		provision attempts to address the services offered for the removal of adverse listings from a credit bureau. If that is so, we propose that this be stated with more clarity.		
Creditinfo Namibia Bureau (Pty) Ltd	110(3)(a) and (b)	May not charge a consumer, or receive payment from consumer for the credit repair service until that service has been fully performed – Was provision made in the Act for Debt Counsellors?	This aspect will be covered by Debt Counsellors, which is also recommended to be prescribed to bureaus and authorization to be granted in the Act that Debt Counsellors can act on behalf of consumers. Debt Counsellors should not be provisioned to request a consumers free annual credit report, but if they are charging a consumer to assist in updating their credit profile, they should subscribe to a credit bureau to access the data as a subscriber under a specific prescribed purpose.	Section 110 was removed.
Section 111				
Micro Lenders Association of Namibia	111	There is well-established common law in terms of prescription – why do we	Delete this whole section.	The section is considered necessary to protect consumers.

		want to put this in the Act?		
DBN	111	Section 111 is undesirable as it raises the defense of prescription on behalf of the consumer. In the current framework, prescription is a special defense which does not absolve a consumer from pleading on the merits of a claim against him/her. Same is within the court's discretion to sustain or dismiss.	Section 111 should be effectively removed from the Bill.	The section is considered necessary to protect consumers.
First National Bank of Namibia Limited	111(2)	Refers to "re-activation of a debt" – it is superfluous by virtue of the reference in (1) to the extinguished debt under the Prescription Act.	Please remove the reference to re-activation – in law it's an impossibility.	The reference to "re-activation" was removed.
Old Mutual Namibia	111	Would subsection 54(4) of the Long-term Insurance Act, Act 5 of 1998: *"In the case of a policy issued after 31 December 1973, a debt arising out of an unpaid premium, or out of a loan or*	Clarify.	It will continue to apply.

		advance referred to in subsection (3), shall not become prescribed before the liability of the registered insurer or reinsurer under that policy becomes prescribed" continue to apply?		
	111	Prescription is to be raised by the person who deems it to be a valid defense. The Act itself provides that the court will not of its own accord raise it as a defense.	Remove.	The section is considered necessary to protect consumers.
Section 112				
DBN	112(2)	The surrender of goods should make provision for the prevailing market conditions (i.e., depressed economy, depreciation) and independent valuation of the asset concerned.		The credit provider's estimation of the value of the goods should take the prevailing market conditions into account.
DBN	112(5)	References to "reasonable expenses incurred" by a	We propose a clear position in respect of the responsible entity or regulator	The costs will be different from case to case, depending on the

		credit provider in connection with a sale of goods. It is unclear as to who is responsible for determining the reasonability of costs and charges by service providers of credit providers, unlike in litigious matters, disputes around costs are referred to the "'taxing master".	alternatively, the adoption of a fee bracket.	specific circumstances. It is not possible to prescribe a fee bracket.
Old Mutual Namibia	112(1)	It is unreasonable for the credit provider to be expected to sell the goods.	Remove.	If the credit provider retains ownership or the right to repossess, then there is no alternative.
Section 113				
DBN	113	Court review of disputed sale of goods under an instalment sale agreement - We propose the establishment of a Tribunal to deal with compensation complaints, alternatively a Review Panel as the costs associated with courts are excessive and may be burdensome to consumers		Noted. But in the absence of a Tribunal, the court process is the only alternative.

		in the event of an adverse cost order.		
Old Mutual Namibia	113	Should this not be with the Regulators instead of the court?	Revise.	The Credit Regulators cannot determine a dispute of this nature. The court is unfortunately the only option in the absence of another Tribunal.
Section 114				
Micro Lenders Association of Namibia	114(1)	The process is too long and onerous on the credit provider. Read with 115.		The process is considered reasonable. The days provided for under sections 114 and 115 can run concurrently.
DBN	114(1)	Period of 10 days upon the occurrence of an event of default within which the credit provider should place the consumer in default is unreasonable.	We propose a turnaround time of 30 business days after the occurrence of a default.	30 business days is considered too long. In terms of section 114, read with section 115, the consumer is already given 20 business days to rectify a default.
	114(1)	The engagement required before debt enforcement appears to duplicate the existing court connected mediation process in respect		The provision should not affect the court connected mediation process, although nothing stops the court from taking it into consideration.

		of debt recoveries. Clarify whether court connected mediation will be foregone in respect of debt collection matters in light of the proposed engagement in sec. 114.		
First National Bank of Namibia Limited	114(5)	The requirement in the provision for costs to be reasonable are subjective and may lead to differences of interpretation.	FNB propose that to avoid attracting interest on costs to date, the consumer should at least pay the credit provider all actual costs incurred for enforcing the agreement up to that stage. We also propose that the Bill be revised to make notice to the credit provider mandatory of the consumer intends to reinstate the credit agreement to avoid unintended consequences and prejudicing bona fide third parties.	Subsection (4) was amended to refer to "all other fees and charges lawfully payable up to the time the default was remedied". Subsection (5) deals with a situation where the credit provider re-instates or revives a credit agreement. The credit provider is therefore already involved.
Section 115				
Micro Lenders Association of Namibia	115(1)	Prohibits access to courts. Process is too long and onerous on the credit provider. Read with sec 114.		Not in agreement that the provision prohibits access to court. The process simply allows for the notices referred to under section 114, before the credit

				provider approaches the court. The days provided for under section 114 and 115 can run concurrently.
	115(1)(a)	Why not immediately after the 10 business days in terms of section 114(1) has lapsed?		The 20 days (overall) is considered reasonable to allow consumers adequate time to take steps to rectify a default (or make alternative arrangements).
Section 118				
DBN	118(3)	Subsection (3) does not stipulate the grounds on which an application may be made to have the interdict set aside. It is also concerning that the interdict referred herein is automatic by mere notice without the court sanctioning same. This may not pass the constitutional test owing to there being oversight by the court and the intrusive nature of an interdict.	Clarify the grounds on which an application to have an interdict set aside can be lodged.	The grounds for the setting aside of an interdict falls within the jurisdiction of the court.

Section 120				
Micro Lenders Association of Namibia	120(3)(e)	It appears that section 33(1) allows the regulator, in a standard, to determine minimum requirements in respect of codes of conduct. Section 120(3)(e) accordingly serves to prohibit a credit provider and other persons referred to from contravening or failing to comply with a code of conduct. In other words, the regulator is given the power (uncircumscribed, unguided, and over broad) to set standards which may impact on credit providers and the conduct of their business. This subsection is also undermining the credit provider's rights under Article 21(1)(j)) of the Constitution.		The provision was removed.
	120(3)(g)	Vague.	Delete the whole subsection.	Paragraph (g) was amended to provide for further principles on consumer protection in relation to prohibited collection and

				enforcement practices in a standard.
Section 121				
Micro Lenders Association of Namibia	121(1), (2) and (3)	Unnecessary duplication of section 83. Already dealt with in detail.	Delete the whole section.	The provision was retained, as it now includes a reference to a debt collector.
Nimble Group (Namibia) (Pty) Ltd (Norman, Bissett & Associates of Namibia A Division of Norman Bissett & Associates Group (PTY) LTD)	121	Please advise as to the amounts as currently the amounts are not mentioned, as long as it is not mentioned it will not be possible to determine whether we are in agreement or indifference of the proposal.		The amounts (limits, thresholds) will be prescribed by the Minister in terms of section 83.
Section 122				
Micro Lenders Association of Namibia	Sections 122 to 126	Further commentary on Chapter 7 reserved. Generally, the provisions infringe on the rights enshrined in Article 12(1)(a), (d), read with Article 78(1) (which vests the judicial		Noted.

		power in the court of Namibia).		
	Sections 122, 123	GENERAL COMMENT: NAMFISA must be mandated in terms of provisions similar to those contained under Part A, to act against unregistered persons contravening provisions of this Act.		Sections 35 and 123 are adequate to act against unregistered persons. Section 123 was amended to include a reference to "unregistered persons".
	122(3) and (4)	These provisions are overbroad, and seemingly allow a credit regulator to proceed on behalf of a consumer without any mandate. In any event, it is not clear how in this event the regulator aims to resolve a complaint which it initiates itself on behalf of a consumer. The regulator can already act against a registrant in terms of this Act, why must the regulator also have this specific power? Providing the functionality of	Delete both subsections.	Subsections (3) and (4) were removed.

		sections 122(3) & (4), the net effect is that the regulator will pick up the legal costs of the consumer against the credit provider in these cases. To level the playing fields, this should now also translate to the regulator acting and initiating court action/s against consumers. Anything else would not be fair and equal.		
Old Mutual Namibia	122	The procedure relating to court applications is concerning and will be expensive and lengthy.	The Regulators should oversee the compliance.	Subsection (2) were removed. For some types of complaints, the court is, unfortunately, the only option in the absence of a Tribunal.
EPRA		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 CCRs must		Noted.

		deal with consumer disputes as far as is it is provided for in their enabling legislation. We are of the opinion that an independent, dedicated Financial Services Adjudicator would have been a better option for amongst others, the following reasons: • The legal department of especially NAMFISA is overloaded with work, and any matter that must be dealt with by that department takes ages to reach finality, to great frustration of consumers. • The financial services regulators are not independent adjudicators if they stand to benefit financially from their own rulings. The lack of independence is a distinct, and probably untenable disadvantage for all registrants who are parties to		

		complaint proceedings. • A Financial Services Adjudicator would issue rulings. In South Africa the equivalent of this office has often in the past ruled against the financial services regulator itself. It is unlikely that NAMFISA or BoN will for instance "rule" against themselves. So, they set the law, and also rule on their own law. This is undesirable.		
Section 123				
Micro Lenders Association of Namibia	123(1)	No remedy is made available to a registrant to approach court for e.g. interdict or interim relief. Registrant must rely on common law and will be shown away by court. The registrant is left and stuck with internal remedies. There is also no provision to take non-registrants to court.		A registrant's ability to approach a court, for final or interim relief, is not affected. Subsection (1) was amended to include a reference to "unregistered persons".

Old Mutual Namibia	123	Court proceedings should not be dictated by individual pieces of legislation.	Recommended to be removed.	Not in agreement that section 123 dictates court proceedings. The discretion ultimately lies with the court to make any order it deems fit.
Section 124				
Micro Lenders Association of Namibia	124(3)	Referring to "section 13" - Incorporate appointment of investigator in body of section.		The Consumer Credit Regulator may investigate a complaint as part of their usual business. Section 127 now provides for inspections and investigations.
Section 126				
First National Bank of Namibia Limited	126	This is a very onerous provision on a credit receiver (consumer). It will require someone to go to court, which is lengthy, complex and expensive.	FNB propose inserting a provision relating to alternative dispute resolution through a tribunal instead of a court of law.	Section 126 was removed.
Old Mutual Namibia	126	Should the internal appeal processes of the Regulators not be the desired outcome to handle this?	Revise.	Section 126 was removed.

Section 127				
Micro Lenders Association of Namibia	Sections 127 –131	In terms of Article 13(1), persons may only be subjected to interference with the privacy of their homes, correspondence or communications if in accordance with law and as is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others. In terms of Article 13(2), searches of the person or the homes of individuals shall only be justified where these are authorised by a competent judicial officer and in cases where delay in obtaining such judicial authority carries with it the		Not in agreement.

		danger of prejudicing the objects of the search or the public interest, and such procedures as are prescribed by Act of Parliament to preclude above are properly satisfied. Generally, these provisions are vague, uncertain and unintelligible, conferring a constitutionally impermissibly vague, wide, unguided and unfettered discretion on the regulator, and also serve to infringe upon the rights enshrined in Articles 8(1) (human dignity), 12(1)(a), 13(1) (the right to privacy), 18 and 21(1)(j).		
	127(1)	Referring to "section 13" – Incorporate content of section 13 in body of subsection.		Section 13 was moved to Chapter 8. Subsection (1) cross-references to that section.
Agra	127(1)	Not sure of the practicality of this as at least the custodian of the information has to be		Provision must be made for inspections to be done without prior notice if circumstances so

		notified?		require.
Old Mutual Namibia	127(1)	(1) authorises inspections without prior notice, and the sections do not obligate the inspector to identify themselves when conducting an inspection.	Prior notice must be given, and formal notice when entering the premises must be given indicating under which authority the inspection is conducted.	Provision must be made for inspections to be done without prior notice if circumstances so require. Section 13 – now moved to Chapter 8 – provides for the inspector to identify themselves.
Section 128				
Micro Lenders Association of Namibia	128	The constituent elements of this impugned provision are vague, uncertain and unintelligible, conferring a constitutionally impermissibly vague, wide, unguided and unfettered discretion on the regulator, and also serve to infringe upon the rights enshrined in Articles 8(1) (human dignity), 12(1)(a), 13(1) (the right to privacy), 18 and 21(1)(j).		Not in agreement.
	128(3), (4)	This is overbroad, overreach		The powers are deemed

	and (5)	of power, and an infringement on constitutional rights to privacy, dignity, and right to conduct business.		necessary to ensure thorough inspections.
Old Mutual Namibia	128	Empowers the inspector to gain access to any document, which may be confidential, sensitive and/or privileged.	Documents requested must be limited to the scope of the inspection.	The section indeed provides for the qualification "related to the inspection". In addition, section 129(8) provides for privileged information.
	128(3)	(3) authorises an inspector to inspect any person not even subject to the Act. The authority provided here is too broad and may lead to abuse of authority.	Remove.	The powers are deemed necessary to ensure thorough inspections.
Section 129				
Micro Lenders Association of Namibia	129(9)	The Act should be clear on the authority to infringe on the rights of the client. Cannot merely limit the constitutional rights. The constitution requires same.		The provision was retained as is.

Old Mutual Namibia	129(10)	(10) provides concerning excessive power to use any force reasonably required to perform an inspection. These provisions are aimed at criminal offences and not aligned to consumer protection. The provisions of section 129 resemble criminal proceedings which fall within the ambit of the police by allowing a person to be represented by a legal representative and application for search warrants. It creates the impression that the inspector appointed by the Regulator has authority of the police.	Remove.	The provision, read with subsection (11), is necessary to deal with instances of resistance.
Section 130				
Micro Lenders Association of Namibia	130	This provision infringes on the rights enshrined in Articles 12(1) and 16(1), and, infringing the rights enshrined in Article 18, purportedly permits unfair, unreasonable		Not in agreement.

		or arbitrary decision-making. This impugned provision purportedly permits constitutionally impermissible vague, wide, unguided and unfettered discretion.		
Agra	130	Do other agencies apply the same rule? This does not seem fair to us as these audits are mandatory and imposed on us by the regulator.		The provision was amended to specify that if the registrant is not conducting its affairs in terms of the Act, the costs of the inspection may be recovered from them.
First National Bank of Namibia Limited	130	The provision is unreasonable and subjective. This is not akin to any other piece of legislation applicable in Namibia. It is unreasonable to expect credit providers to fund costs for a baseless investigation. The registrant should not be required to fund this exercise.	FNB propose that the Bill sets out specific criteria under which circumstances the registrant will be liable for the cost and remuneration (objective criteria for example the registrant was obstructive and uncooperative etc.). Any costs in terms of this section should also be subjected to a review process at the behest of the registrant.	The provision was amended to specify that if the registrant is not conducting its affairs in terms of the Act, the costs of the inspection may be recovered from them. Any person who is aggrieved by a decision of the Consumer Credit Regulator may, at any time, submit an appeal to the relevant Appeal Board in terms of section

				44.
Old Mutual Namibia	130	There are no guidelines provided for limiting the expenditure the inspector will incur and this should be subject to court judgement considering the extent to which the matters must be taken to court.	Amend.	The provision was amended to specify that if the registrant is not conducting its affairs in terms of the Act, the costs of the inspection may be recovered from them.
Fashion Retailers (Pty) Ltd	130	CP could be held liable for the costs of inspection. These costs should be covered under all administrative fees paid by registrants, or at the very least the CP should be able to appeal a decision related to costs.	Insert provisions allowing for an appeal to a High Court regarding these costs.	The provision was amended to specify that if the registrant is not conducting its affairs in terms of the Act, the costs of the inspection may be recovered from them. Any person who is aggrieved by a decision of the Consumer Credit Regulator may, at any time, submit an appeal to the relevant Appeal Board in terms of section 44. Further, no person's right to approach the High Court at any time, for a review of any decision, is affected in any way.

Section 131				
Old Mutual Namibia	131	The provision seems to indicate that the Regulators are assuming authority to enforce any other laws applicable in or outside Namibia. The provision is not necessary considering this is catered for under the Bank of Namibia Act, 2020 (Act No. 1 of 2020) and the Namibia Financial Institutions Supervisory Authority Act, 2021 (Act No. 3 of 2021). The provision to provide information to public bodies and regulatory authorities infringes the rights to privacy of the person who may not even be regulated under this Act.	Remove.	The provision simply provides that if the Consumer Credit Regulator believes that it is necessary or desirable to do so for the purposes of this Act or other applicable laws, the Consumer Credit Regulator may convey information obtained to relevant parties (including law enforcement authorities).
Fashion Retailers (Pty) Ltd	131	The results of an inspection should potentially be released to a public body - CP should at all times have	Insert provisions allowing for an appeal to a High Court.	Any person who is aggrieved by a decision of the Consumer Credit Regulator may, at any time, submit an appeal to the relevant

		the right to appeal investigations. Further, the Regulators and its employees are indemnified in respect of such decisions (section 147) so may not be as careful as they should be when releasing information.		Appeal Board in terms of section 44. Further, no person's right to approach the High Court at any time, for a review of any decision, is affected in any way. The indemnification provision will not apply in situations of fraud or gross negligence.
Section 132				
Micro Lenders Association of Namibia	132(1)	The complainant should be entitled to a copy of the outcome of the investigation, including the factual basis of the outcome.		Section 128(6) provides that a copy of the report must be provided to the registrant.
Section 133				
Micro Lenders Association of Namibia	133	Section 133 read inter alia with section 38 is completely overbroad, unspecified, unguided and offends against the most fundamental principles of the rule of law	Delete the section in total.	The provision was retained as is.

		and certainty in establishing what the governing law is and what may or may not constitute an offence in terms of Section 133. It is reminiscent of authoritarian powers. Article 12(1)(d) provides that all persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against them. Article 12(3) provides that no persons shall be tried or convicted for any criminal offence or on account of any act or omission which did not constitute a criminal offence at the time when it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time when		

		the offence was committed. The impugned provision purports to accord a constitutionally impermissibly vague, wide, unguided and unfettered discretion and, infringing the rights enshrined in Article 18, and purportedly permit unfair, unreasonable or arbitrary decision-making. The impugned provision is also grossly disproportionate. The provisions the non-compliance with which is sought to be penalised, amount to administrative provisions and non-compliance would simply amount to an administrative transgression, not meriting such or any criminal sanctions. This impugned provision infringes the rights enshrined in Articles 8(1), 10(1) and 11(1).		
Old Mutual	133	The section creates an	Remove.	Section 13 – now moved to

Namibia		offence without obligating the inspector to identify themselves and provide notice of authority to inspect.		Chapter 8 – requires the inspector to identify themselves, and show the certificate of appointment to the person being inspected, as well as to any person who requests to see the certificate.
Section 134				
Micro Lenders Association of Namibia	134(1)	To include what the Minister is to consider, the scope of the consideration. Problematic - in its current formulation it would suggest that the Minister may, by regulation, require credit providers to require credit consumers to maintain credit life insurance, and may set requirements in this regard. Whether or not a credit provider requires a credit consumer to obtain and maintain credit life insurance should be exclusively within the discretion of the credit provider.		Section 134 was removed, as the powers to impose administrative sanctions are deemed adequate.

		Article 12(1)(d) provides that all persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against them. Article 12(3) provides that no persons shall be tried or convicted for any criminal offence or on account of any act or omission which did not constitute a criminal offence at the time when it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed. The impugned provision purports to accord a constitutionally impermissibly vague, wide, unguided and unfettered discretion and, infringing the rights enshrined		

		in Article 18, and purportedly permit unfair, unreasonable or arbitrary decision-making. The impugned provision is also grossly disproportionate. The provisions the non-compliance with which is sought to be penalised, amount to administrative provisions and non-compliance would simply amount to an administrative transgression, not meriting such or any criminal sanctions. This impugned provision infringes the rights enshrined in Articles 8(1), 10(1) and 11(1).		
	134(2) and (3)	There is well-established common law in terms of prescription – why do we want to put this in the Act?	Delete both subsections in total.	Section 134 was removed.
Old Mutual Namibia	134(1)	(d) & (e) - The prohibitions in section 70 and 71 are vague and do not justify offences.		Section 134 was removed, as the powers to impose administrative sanctions are deemed adequate.

		1(f) - The credit provider is not an actuary and does not determine the cost of the premium of the insurer, this cannot be an offence.		
	134(3)	The onus to raise prescription is on the party who wishes to rely on it. It cannot be an offence without the consumer raising the defense.		Section 134 was removed.
EPRA	134	Any credit provider who makes a consumer sign an agreement that contains an unlawful provision commits an offense. This constitutes very strong protection for the consumer, for the consumer could otherwise only have to rely on the outcome of (costly) civil court proceedings.		The offences have been removed, as the powers to impose administrative sanctions are deemed adequate.
Section 135				
Micro Lenders Association of	135 to 138	Sections 135 to 138: This penalty section needs to		Section 135 was removed.

Namibia		be broadened to cover any person who conducts business in respect of credit agreements to which the Act applies, but who is not registered as a credit provider, credit bureau, and debt collector (whenever a person is required to be registered).		Section 35 provides for a criminal offence regarding unregistered persons.
Section 136				
Micro Lenders Association of Namibia	136	Definition for "officer" please. Who will be considered to be an "officer"? Article 12(1)(d) provides that all persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against them. Article 12(3) provides that no persons shall be tried or convicted for any		The section was amended to refer to specific persons. “officer” was removed. The offence is created under this law, while the court will determine guilt or innocence. The presumption of innocence is not affected.

		criminal offence or on account of any act or omission which did not constitute a criminal offence at the time when it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed. The impugned provision purports to accord a constitutionally impermissibly vague, wide, unguided and unfettered discretion and, infringing the rights enshrined in Article 18, and purportedly permit unfair, unreasonable or arbitrary decision-making. The impugned provision is also grossly disproportionate. The provisions the non-compliance with which is sought to be penalised, amount to administrative provisions and non-compliance would simply		

		amount to an administrative transgression, not meriting such or any criminal sanctions. This impugned provision infringes the rights enshrined in Articles 8(1), 10(1) and 11(1).		
Old Mutual Namibia	136	The provision is not necessary to specifically include as the general fiduciary duties of directors and officers would dictate this.	Remove.	The provision was amended to refer to specific persons.
Fashion Retailers (Pty) Ltd	136	Directors could be liable for a fine and/or imprisonment.	This provision should allow for a defense of directors having taken reasonable steps to prevent a contravention.	The relevant circumstances of every case will be considered by court.
Section 137				
Micro Lenders Association of Namibia	137(b)	This subsection is vague. Can the lawmaker please explain the purpose of this subsection? Alternatively write it in a different manner which would make the intention of same clear.	Delete the subsection in total.	Paragraph (b) was removed.

		Article 12(1)(d) provides that all persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against them. Article 12(3) provides that no persons shall be tried or convicted for any criminal offence or on account of any act or omission which did not constitute a criminal offence at the time when it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed. The impugned provision purports to accord a constitutionally impermissibly vague, wide, unguided and unfettered discretion and,		The offence is created under this law, while the court will determine guilt or innocence. The presumption of innocence is not affected.

		infringing the rights enshrined in Article 18, and purportedly permit unfair, unreasonable or arbitrary decision-making. The impugned provision is also grossly disproportionate. The provisions the non-compliance with which is sought to be penalised, amount to administrative provisions and non-compliance would simply amount to an administrative transgression, not meriting such or any criminal sanctions. This impugned provision infringes the rights enshrined in Articles 8(1), 10(1) and 11(1).		
	137(c)	Overbroad. There must be an underlying obligation to provide information, if none then this subsection not justified.	Delete the subsection in total.	The obligation to provide information is contained in various provisions in the Act.
Old Mutual	137(a) and	(a) - Prohibition of influencing	Remove.	Paragraph (a) was amended to

Namibia	(b)	an inspection is adequately covered in the Anti-Bribery and Corruption related legislation. The prohibition here is broad and vague. (b) - The provision is extremely vague and is not clear how an anticipation of findings can be calculated to influence findings?		refer to the performance of the functions and powers in terms of the Act. Paragraph (b) was removed.
Section 138				
Micro Lenders Association of Namibia	138	Article 12(1)(d) provides that all persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against them. Article 12(3) provides that no persons shall be tried or convicted for any criminal offence or on account of any act or omission which did not		The presumption of innocence is not affected.

		constitute a criminal offence at the time when it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed. The impugned provision purports to accord a constitutionally impermissibly vague, wide, unguided and unfettered discretion and, infringing the rights enshrined in Article 18, and purportedly permit unfair, unreasonable or arbitrary decision-making. The impugned provision is also grossly disproportionate. The provisions the non-compliance with which is sought to be penalised, amount to administrative provisions and non-compliance would simply amount to an administrative transgression, not meriting such or any criminal		

		sanctions. This impugned provision infringes the rights enshrined in Articles 8(1), 10(1) and 11(1).		
Old Mutual Namibia	138(1)	138(1)(a) - the penalties are excessive and Sec 137 is vague. 138(1)(b) - the provisions of section 70 and 71 are vague and the resultant penalty for non-compliance is excessive in the absence of clarity/certainty. 138(1)(b) - 10% of annual turnover is excessive. 138(1)(c) - No indication is provided of the limit of the fine.	The provisions need to be amended to provide certainty	The section was amended as a consequence of the amendments made to section 137. A general penalty provision was kept to cater for all contraventions of the Act, as well as a penalty for the person who is not a natural person. These are maximum penalties, and the court will exercise discretion.
	138(3)	It is not clear what the turnover of a credit provider would constitute; the provision is vague.	The provisions need to be amended to provide certainty	It will be determined by the court.

Section 139				
Old Mutual Namibia	139	Jurisdiction will be guided by the relevant judicial legislation.	Remove.	The provision was retained as is.
Fashion Retailers (Pty) Ltd	139	Considering the severity of the penalties, this should be in High Court jurisdiction.	Replace Magistrate's Court with High Court.	The provision was retained as is.
Section 140				
Micro Lenders Association of Namibia	140	The reference to "court" must be removed - contrary to Article 12 of the Constitution. "Complaint" is not defined - what is meant by a complaint or what type of complaints are envisaged here?		The section was moved to section 122 (the old). The reference to "a court" was removed.
Agra	140	Can it not be 5 years or is this in terms of the prescription act?		It aligns with the Prescription Act.
Section 141				
First National Bank of Namibia Limited	141	Domicile is chosen in the credit agreement by the consumer.	Please include domicile address as indicated on the customer's credit agreement.	Section 141 was removed.

Old Mutual Namibia	141	Written notice is already defined. The relevant judicial legislation will dictate the serving of documents.	Remove.	Section 141 was removed.
Section 142				
Micro Lenders Association of Namibia	142(1) and (2)	Infringes on one's constitutional right to a fair trial. Refer to Article 12 of the Constitution and the presumption of innocence.	Delete these sections in total.	Section 142 was removed.
Old Mutual Namibia	142(1) and (2)	142(1) provides that the person is presumed guilty unless proven innocent. 142(2) is unnecessary as admission of evidence is already provided for.	Remove.	Section 142 was removed.
Section 143				
Micro Lenders Association of Namibia	143	The issue of standards (in respect of which, in terms of Section 143(3), the public can make representations, but only as to whether the		The section was retained as is. It is acceptable to provide for these details in subordinate legislation (standards).

		standards are to be issued "as originally published or in a modified form"), and in respect whereof there are no proper (if any) guidelines provided for in the Act), are intended to govern pivotal aspects of the Act which must have been legislated upon by Act of Parliament, and not impermissibly delegated to a statutory body (whose function it is to ensure compliance with law, and not make law). The provision is unconstitutional in that it is impermissibly vague, wide, unguided and unfettered, and militates against the separation of powers enshrined in the Namibian Constitution, elevating the "standards" to primary legislation, and introducing administrative acts of		

		functionaries (including the Executive) as primary legislation. The making of legislation falls within the purview of the Legislature. This provision accords a constitutionally impermissibly vague, wide, unguided and unfettered discretion and also constitutes an infringement of the rights enshrined in Articles 12(1)(a), 16(1) and 21(1)(j) and purportedly permits unfair, unreasonable and arbitrary decision-making, infringing the rights enshrined in Article 18.		
Old Mutual Namibia	143 (1) and (3)	143(1) is excessively broad and provides unqualified authority to the Regulators to issue any standard it desires. 143(3) is not clear on whether both Regulator's Boards must	143(1) – Remove 143(3) - Amend to clarify	The section was retained as is. It is acceptable to provide for these details in subordinate legislation (standards). Subsection (3) must be complied with by the Consumer Credit

		approve the standard or whether each Regulator can issue their own standards.		Regulator when it wants to issue standards. Each Consumer Credit Regulator will be able to issue their own standards where necessary, but the Regulators will also be able to issue combined standards.
Section 144				
Micro Lenders Association of Namibia	144	It is impossible to give constructive comments on most parts of the bill if the draft standards that are referred to in section 144 and the rest of the bill are not presented to be studied. The standards, in respect whereof there are no proper (if any) guidelines provided for in the Act), are intended to govern pivotal aspects of the Act which must have been legislated upon by Act of Parliament, and not impermissibly delegated to a statutory body (whose function it is to ensure		The specifics will be provided in the standards, and consultation will take place in accordance with that section.

		compliance with law, and not make law). The provision is unconstitutional in that it is impermissibly vague, wide, unguided and unfettered, and militates against the separation of powers enshrined in the Namibian Constitution, elevating the "standards" to primary legislation, and introducing administrative acts of functionaries (including the Executive) as primary legislation. The making of legislation falls within the purview of the Legislature. This provision accords a constitutionally impermissibly vague, wide, unguided and unfettered discretion and also constitutes an infringement of the rights enshrined in Articles 12(1)(a), 16(1) and 21(1)(j) and purportedly permits unfair, unreasonable and arbitrary decision-		

		making, infringing the rights enshrined in Article 18.		
Old Mutual Namibia	144(2)(a) and (c)	144(2)(a) provides for Fit and Proper criteria for which a Regulator may instruct a registrant to remove the person and direct it to appoint another. This level of authority is too broad for the Regulators to have and should be published by the Minister in Regulations following consultation. 144(2)(c) provides authority to the Regulator to dictate how an applicant may run its business operationally and human resources required. This should be left to the relevant business to determine.	Amend.	The specifics will be provided in the standards, and consultation will take place in accordance with the relevant section. The same changes were made to this provision to align with the substantive registration provision.
	144(3)	If the Minister prescribes the administrative penalties by regulation, then the	144(3) Remove. 144(4) and (5) - move to section 145 under regulations	The Minister will determine the amount of the administrative penalty, but the Consumer Credit

		Regulators do not have to provide for it.		Regulator must specify, in the specific standard, when such administrative penalty will apply. It is believed that subsections (4) and (5) are correctly placed.
Section 145				
Micro Lenders Association of Namibia	145	Wheresoever provision is made for the Minister to make regulations impacting on microlenders, provision should be made compelling the Minister to first engage in meaningful consultations with the microlending industry and affording them an opportunity to make recommendations on any proposed regulations, sufficiently in advance. Wheresoever provision is made for the Minister to make regulations impacting on microlenders, provision should be made compelling the Minister to first engage in		The discretionary power to consult was retained.

		meaningful consultations with the microlending industry and affording them an opportunity to make recommendations on any proposed regulations, sufficiently in advance. A provision should also be included compelling the Minister to take into consideration any representations made and apply his mind to any representations so made. The Minister should also be compelled to provide the microlending industry with underlying basis and reasons for any proposed regulation. The regulations, in respect whereof there are no proper (if any) guidelines provided for in the Act), are intended to govern pivotal aspects of the Act which must have been legislated upon by Act of		It is acceptable to provide for these details in subordinate legislation.

		Parliament, and not impermissibly delegated to a statutory body (whose function it is to ensure compliance with law, and not make law). This provision accords a constitutionally impermissibly vague, wide, unguided and unfettered discretion and also constitutes an infringement of the rights enshrined in Articles 12(1)(a), 16(1) and 21(1)(j) and purportedly permits unfair, unreasonable and arbitrary decision-making, infringing the rights enshrined in Article 18.		
Nimble Group (Namibia) (Pty) Ltd (Norman, Bissett & Associates of Namibia A Division of Norman Bissett &	145(2)(l)	This is the funds of the clients, and they should be entitled to the interest thereof.	No trust interest to be paid to the Consumer Credit Regulator.	The substantive provision was amended, with the result that this paragraph was also amended.

Associates Group (PTY) LTD)				
Old Mutual Namibia	145(1) and (2)	145(1)(b) is too broad and provides basically unlimited authority to issue regulations. 145(2) - The definition of microlending transaction provides the term and maximum debt, it is recommended to remove this from the main Act and stipulate by means of regulation. 145(2)(h) - provision to be made for subsidiaries of listed entities.	Remove. Amend.	It is acceptable to provide for these details in subordinate legislation. The definition was retained. The substantive provision was amended, with the result that this paragraph was also amended.
	145(2)	No limit indicated in respect of paragraphs (ee), (ff), (gg), (hh) and (ii). Paragraphs (gg) - (ii) provides basically unfettered discretion to issue regulations on any matter.	Amend to: "(ee) pursuant to section 144(3) and 145(5), the maximum administrative penalty per day in respect of a failure to comply with a standard issued or regulation made"	Paragraphs (ee) and (ff) aligns with the substantive provisions.

			"(ff) the maximum rate of interest payable on overdue and outstanding administrative penalties imposed;" (gg)-(ii) to be tied back to specific objectives or sections of the Act or removed.	 Sub-paragraphs (gg) – (ii) were retained as is.
	145(4), (5) and (9)	145(4) provides for discretionary consultation with the public and Regulators. 145(5) provides no limit: "A regulation made under this section may, in respect of a contravention or a failure to comply with the regulation, prescribe a daily administrative penalty, for as long as the non-compliance exists." 145(9) provides that a regulation in terms of this Act must be made by notice in	(4) Amend to "The Minister must". (5) Amend to: "A regulation made under this section may, in respect of a contravention or a failure to comply with the regulation, prescribe a daily administrative penalty not exceeding the maximum penalty prescribed by the Minister, for as long as the non-compliance exists. 145(9) - Remove	The discretionary power to consult was retained. It is the Minister who is issuing the regulation, with the result that the Minister will determine the thresholds. Subsection (9) was removed.

		the Gazette. It is not necessary to state this in the Act.		
Section 146				
Micro Lenders Association of Namibia	146	GENERAL COMMENT ON 146: Must be removed. In its current form it gives the Minister the power to legislate. In the alternative, and if it stays, it must be substantially limited with regards to the scope of power (specific provisions must be identified in terms of which the Minister may grant exemptions) as well as the considerations to be taken into account must be definitive and more specific. This Exemptions, in respect whereof there are no proper (if any) guidelines provided for in the Act), are intended to govern pivotal aspects of the Act which must have been legislated upon by Act of		The Minister must consider public interest considerations, the interests of consumers, and whether it will frustrate the achievement of the purpose of this Act. The Minister must also consider the nature, scale and complexity of the business of the affected persons or of the relevant types of credit agreements.

		Parliament, and not impermissibly delegated to a statutory body (whose function it is to ensure compliance with law, and not make law). The provision is unconstitutional in that it is impermissibly vague, wide, unguided and unfettered, and militates against the separation of powers enshrined in the Namibian Constitution, introducing administrative acts of functionaries (including the Executive) as primary legislation. The making of legislation falls within the purview of the Legislature. This provision accords a constitutionally impermissibly vague, wide, unguided and unfettered discretion and also constitutes an infringement of the rights enshrined in Articles 12(1)(a), 16(1) and 21(1)(j) and purportedly		

		permits unfair, unreasonable and arbitrary decision-making, infringing the rights enshrined in Article 18.		
	Insert new subsection (1)(c)	The affected parties should be granted an opportunity to respond to the application for exemption. These provisions are overbroad and effectively give the Minister the power to legislate.	"(c) and after having afforded the registered credit providers an opportunity to make representations and having considered same."	The proposal was not incorporated. The Minister must consider public interest considerations, the interests of consumers, and whether it will frustrate the achievement of the purpose of this Act. The Minister must also consider the nature, scale and complexity of the business of the affected persons or of the relevant types of credit agreements.
	146(1)	Refer to "exempt any person or category of persons" – This must be paired in. Limited to specific provisions.		The proposal was not incorporated.
	Insert new subsection	The rights of registered credit providers are to be taken into	"(iv) prejudice the rights of credit providers in terms of this Act."	The proposal was not incorporated.

	(1)(iv)	consideration.		
Old Mutual Namibia	146(4)	146(4) does not provide for penalties for non-compliance to the exemption conditions.	Clarity sought whether penalties may be imposed.	The Minister may withdraw or amend the exemption.
Section 147				
Micro Lenders Association of Namibia	147(1) and (2)	This section should be removed from the bill. If a person creates damages he/she should be held responsible for same. Refer to Financial Intelligence Act relevant provisions. It further also impacts on Article 21(1)(j) of the Constitution as it infringes freedom to contract.	Delete this section in total.	The section was retained as is.
Creditinfo Namibia Bureau (Pty) Ltd	147(2)	Indemnification to CB.	Need to develop on "reasonable measures" to ensure accuracy of consumers' CI.	The section was retained as is. Under section 32, a credit bureau must take reasonable precautions to ensure that consumer credit information received or collected is properly and accurately recorded, and current, authentic, legitimate and reliable.

Section 148				
Old Mutual Namibia	148	148(1) - Schedule 1 is incomplete. 148(2) - Schedule 2 is incomplete.	Revise.	Schedules 1 and 2 were removed.
Schedule 1				
Old Mutual Namibia	Schedules 1, 2 and 3	Incomplete. Cannot consult effectively.	Complete.	Schedules 1 and 2 were removed, while Schedule 3 was amended to align with the changes made elsewhere.
Schedule 3				
Micro Lenders Association of Namibia	SCHEDULE 3 – Transitional provisions Definitions	Schedule 3 is vague and unclear, with several different possibilities of interpretation. We harbour serious concerns about these transitional provisions (which may have retrospective effect or in any event a prejudicial consequences to microlenders) which appear to nullify or at least prejudicially impact on the	In light of these concerns, we strongly advocate that if the Act is to be enacted, its provisions should apply prospectively, thereby safeguarding the rights, duties, and obligations of all parties as they were understood prior to this legislation. Alternatively, but without derogating from the aforementioned, consideration could be given to a reasonable phasing in period of	Schedule 3 was amended to align with the changes made elsewhere. The Bill applies to pre-existing credit agreements to the extent provided for under Schedule 3. This is necessary for, especially referring to longer-term credit agreements, the protection of consumers who will otherwise not enjoy the protections under the Act for many years.

		vested rights of credit providers. The presumption against the retrospective application of legislation is a well-established principle in law, founded on an extensive body of case law relevant to both statutory and constitutional interpretation. This presumption serves as a crucial safeguard for the principles of legal certainty, predictability, and fair treatment. It is worth noting that this presumption is not an arbitrary rule - it serves to prevent any arbitrary deprivation of vested rights and the unforeseen imposition of new obligations. Such a presumption ensures that individuals and entities may operate their respective businesses with a reasonable degree of security and predictability. The provisions as they currently read are also	provisions which may be required to be implemented on the date of the coming into effect of the Act.	

		unclear as to what the extent of the retrospective application and the consequences thereof may be. This also impacts detrimentally on Article 1(1) of the Constitution and potentially on other Constitutional rights including Article 21(1)(j), freedom of contract etc. Legislation that retroactively alters vested rights or imposes new obligations should explicitly state such intent within its provisions. This ensures fair treatment of all parties and sectors impacted by the law, which is of paramount importance for democratic governance. Moreover, credit providers make risk assessments and engage in contractual obligations based on existing laws and regulations. Retroactively altering the legal landscape		

		could result in significant financial repercussions and may deter future investment and participation in the consumer credit market. This would be counterproductive to the intended goals of the Act.		
	Schedule 3: 4(1)	This provision impacts on pre-existing rights and is unconstitutional.		The Bill applies to pre-existing credit agreements to the extent provided for under Schedule 3. This is necessary for, especially referring to longer-term credit agreements, the protection of consumers who will otherwise not enjoy the protections under the Act for many years.
	Schedule 3: 7(2)	This provision is insufficient to protect the microlender's existing rights.		Item 7(2) were removed.
Old Mutual Namibia	Schedule 3	3.2 - Par (b) speaks to temporary compliance if the application is submitted. Experience has shown that the renewal applications for	Reconsider annual registration requirement.	The provisions pertaining to the validity period of registration remains unchanged.

		microlenders are not approved by the expiration of the 12- month period. There will also be an influx of applications with the new categories of registrations required affecting the capacity of the Regulators.		
		3.4 - General - The proposal is to have the new requirements apply retrospectively to contracts lawfully concluded prior to the implementation of the new law. It will be administratively near impossible to implement the new requirements on existing provisions considering the average length of the type of transaction.	Remove the requirements and apply the Act going forward.	The Bill applies to pre-existing credit agreements to the extent provided for under Schedule 3. This is necessary for, especially referring to longer-term credit agreements, the protection of consumers who will otherwise not enjoy the protections under the Act for many years.
		(3) - Is compliance to this provision required if the credit agreement is no longer active by the time the	Remove.	The provision was removed.

		communication is to be sent? (5) - If amendments are made, how will levies and taxes, stamp duty, etc. be charged, and can the costs be charged again by the credit provider? 3.7 - (2) - It is not clear how the Act can be retrospectively applicable to existing contracts and also still guarantee the rights of the agreement entered into previously. 3.8 - This provision provides retrospective authority to the Regulators to prosecute any conduct of the last 3 years under the process of the new Act, and also aims to equate the Regulators to the powers of the Minister.	Remove.	If a new agreement is concluded, such fees, charges and levies would have to apply anew for a new credit agreement. The provision was removed. The Consumer Credit Regulator will exercise the powers in terms of the previous Act.
Fashion Retailers	Schedule 3	Making certain provisions of	Credit agreements entered into prior to	The Bill applies to pre-existing

(Pty) Ltd		the Bill applicable to credit agreements entered into before the Bill/Act becomes operational will result in confusion and goes against the principle that laws should not be retrospective.	the Bill/Act becoming operational should not be subject to any of the provisions of the Bill/Act.	credit agreements to the extent provided for under Schedule 3. This is necessary for, especially referring to longer-term credit agreements, the protection of consumers who will otherwise not enjoy the protections under the Act for many years.