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ACT NO. 7 OF 2022

Financial Consumer Protection Act of 2022

An Act to make provision for the establishment of the rights of consumers of financial products and services and the manner of exercising and protecting these rights; and related matters.

Short title and commencement

1. This Act may be cited as the Financial Consumer Protection Act, 2022 and shall come into operation on the date of publication in the Gazette.

Application

2. This Act shall apply to market participants that offer financial products and services.

Interpretation

3. In this Act, unless the context otherwise requires -

“affordability” means a capacity of a consumer to pay a price of a financial product or service, or repay a contractual obligation and still be able to satisfy everyday expenses;

“bundled or tied package” means a package of products or services offered, but a consumer retains a choice to purchase each product or service separately from the same financial service provider;

“complaints handling mechanism” means the internal consumer complaint system established under section 46;

“component product” means a separate product or service which constitutes part of the bundled or tied package;

“credit bureau” means a person registered as such under the Credit Reporting Act, 2012¹;

“declining balance calculation method” means a method of calculating

interest charged on a loan payment by computing such interest based on the current outstanding principal and accounting for all payments made in previous periods;

“durable medium” means a channel that enables storing of information in a way accessible for future reference for a period of time adequate for the purpose of the information and allows the unchanged reproduction of the information stored;

“electronic payment” means a non-cash payment that involves a usage of an electronic channel or a delivery mechanism;

“financial consumer” means a person that contracts with a financial service provider for the purpose of acquiring or receiving a financial product or service;

“financial service provider” means a person that provide a financial product or service;

“financial service representative” means a person who acts on behalf of the financial service provider;

“financial product or service” means a financial product or service provided by the financial service provider;

“money remittance” means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or another payment service provider acting on behalf of the payee, or where such funds are received on behalf of and made available to the payee;

“money transfer” means a payment instruction from an account of a consumer to the financial service provider to transfer an amount of money to another account;

“non-public client data” means a personally identifiable information that a financial institution collects about a customer in connection with the provision of a financial product or service;

“person” includes a juristic person.

“Regulator” means the Central Bank of Lesotho continued into existence by the Central Bank of Lesotho Act of 2000; and

“standardised calculation method” means a uniform formula or manner of calculation that a financial service provider shall apply in calculating the total cost of a yield on a financial product or service, as mandated by the Regulator.

Powers of the Regulator

4. The Regulator shall have the power to -
 - (a) conduct inspection or examination on any financial service provider;
 - (b) request information about an activity, practice, policy and procedure of a financial service provider;
 - (c) request a report from a financial service provider or its agent, financial industry association, government office and other party on its financial product or service;
 - (d) publish a report on a consumer protection performance of a financial service industry;
 - (e) determine a consumer complaint handling and the dispute resolution process;
 - (f) take action against a financial service provider for contravening a provision of this Act or its regulations;
 - (g) coordinate inspection with a government agency, Financial Consumer Protection Organisation, independent certification body or financial industry association;
 - (h) coordinate the development of a report required under this Act with a government agency, independent certification body or a self-regulatory body;

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- (i) liaise with an international authority with similar functions as the Regulator;
 - (j) direct a financial service provider to -
 - (i) compensate a consumer for damages;
 - (ii) refund fees, charges or commission payments to a consumer;
 - (iii) implement a new policy and procedure;
 - (iv) be subject to external audit and oversight for a specific period of time;
 - (v) provide a monetary contribution to a financial education program or financial consumer protection organisation identified by the Regulator;
 - (vi) correct erroneous data, information or statement;
 - (vii) discontinue offering a particular product or service or class of products or services; and
 - (viii) remove or suspend an official responsible for a violation from working for a financial service provider;
 - (k) ban the official of the financial service provider removed in terms of subsection (j) (viii) from working for any financial service provider for a period as shall be determined by the Regulator;
 - (l) issue a directive;
 - (m) restrict the ability of a financial service provider to continue to collect fees or charges in connection with a particular product or service or class of products or services;

- (n) order a discontinuation of a particular product or service or class of products or services;
- (o) ban a promotional advert on a product in question;
- (p) order the placing of a financial service provider into administration;
- (q) impose an administrative penalty or fine; and
- (r) refer a matter to a court of law.

Advertising and promotional material

5. A financial service provider shall, in its advertisement and promotional material include at the minimum, the following:

- (a) identity of a financial service provider;
- (b) licence status of a financial service provider; and
- (c) critical aspects of terms and conditions of a financial product.

Pre-contractual disclosure

6. (1) A financial service provider shall offer free of charge, a key fact statement for its financial product and service offered to a consumer.

(2) A key fact statement in subsection (1) shall summarise the key terms and conditions of a product, allowing for easier comprehension by a financial consumer and comparison across different providers.

(3) The Regulator shall, by regulations, provide for a format, content, timing and related rules applicable to key facts statements.

Fairness and transparency in the delivery of information

7. A financial service provider shall, regardless of a delivery channel -

-
- (a) provide all material information to a consumer, and the information shall, at any point in time of the product or service lifecycle, including the advertising stage, be clear, fair and legible;
 - (b) not provide misleading or false information;
 - (c) furnish material information to a consumer before a consumer is bound to an agreement;
 - (d) disclose all material information in -
 - (i) plain and intelligible language that an ordinary consumer could be expected to understand its content, significance and importance; and
 - (ii) any of the official languages, according to the preference of a consumer.

Generic terms and conditions

8. (1) A financial service provider shall make publicly available to a consumer, a generic form of the terms and conditions of a product and service offered.

(2) A generic form in subsection (1) shall be made available -

- (a) on a website of a financial service provider or other electronic medium; or
- (b) in a hard copy at a branch or other establishment where a product and service is offered.

(3) The Regulator shall determine a minimum requirement of a generic form and any applicable exception to this provision in the regulations.

Obligation to explain contract to a consumer of financial service or product

9. Before a consumer can acquire a financial product or service, a financial

service provider shall explain, in a fair and impartial manner, the following information:

- (a) the main characteristics of the product or service;
- (b) a detailed explanation of the terms and conditions;
- (c) inherent actual and future key risks;
- (d) associated fees and charges; and
- (e) any other information necessary for a consumer to acquire an effective understanding of a product or service.

Program to improve financial literacy

10. The Regulator may require a financial service provider to develop financial literacy program targeting a financially vulnerable group.

Prohibition to induce an acquisition of a product and service

11. (1) A financial service provider shall not compel a consumer to contract another product or service with a financial service provider or another party, as a condition for receiving a financial product or service.

(2) The Regulator may prescribe exceptions to subsection (1).

Requirements for bundled and tied package

12. (1) A financial service provider that offer a bundled or tied package shall inform a consumer before being bound to an agreement, of material information in a prominent and accurate manner regarding -

- (a) a price;
- (b) terms and conditions;
- (c) risk of both a package and its component product; or
- (d) alternative similar product offered by the financial service provider.

Standardized calculation method

13. A financial service provider shall use a standardized calculation method in calculating and disclosing the total cost of or yield on a financial product or service, inclusive of fees, at any stage of the product or service lifecycle.

Issuance of complete contractual disclosure

14. (1) A financial service provider shall -
- (a) issue, in a durable medium, a complete copy of a contractual disclosure before a consumer acquires a financial product or service; and
 - (b) provide a contractual disclosure in subsection (1)(a) and subsequent copies to a consumer, free of charge.
- (2) A disclosure referred to in subsection(1) shall be provided timeously to give a consumer sufficient time to deliberate about a benefit or a disadvantage of entering into a contract.

(3) The Regulator shall outline a minimum delivery time to comply with this provision and applicable exception for a certain product and service.

Cooling off period

15. (1) A financial service provider shall give a consumer a right to cancel a contract for a financial product or service, within five working days after a date in which an agreement was entered into by both parties.

(2) A financial service provider shall disclose cooling off rights to a consumer in a key fact statement and a contract.

(3) A contract entered into contravention of subsection (2) shall remain cancelable without a time limitation.

(4) A financial service provider shall refund fees and advances made on a contract cancelled within a cooling off period.

(5) The Regulator may determine a product and service to which

this provision applies and other cooling off time frame as and when necessary.

Prohibition of charging interest, fees and charges unless disclosed

16. (1) A financial service provider shall not -
- (a) deduct interest, fees or charges, unless they have been previously disclosed to and agreed upon by a consumer in a contract; and
 - (b) make any change to an initial term unless agreed to by a consumer.
- (2) An amount deducted by a financial service provider in contravention of subsection (1) shall be void and be refunded with an applicable interest to a consumer.

Assumption

17. (1) A financial service provider shall specify an assumption underpinning information that is disclosed to a consumer.
- (2) An assumption in subsection (1) shall be presented in plain language alongside with what is being disclosed.
- (3) The Regulator may prescribe an assumption that shall be mandatorily made and disclosed in respect of a specific product or service.

Confirmation of a transaction

18. (1) A financial service provider shall issue a confirmation to a consumer each time a transaction has occurred in relation to a financial product or service it holds free of charge.
- (2) A confirmation in subsection (1) shall contain a contact information of an internal complaints mechanism of a financial service provider and the Regulator's consumer complaints unit.
- (3) The Regulator shall determine a type of transaction for which a confirmation shall be delivered in a physical or electronic format.

(4) A consumer shall maintain a right to opt to receive a confirmation by electronic medium, and a financial service provider shall retain proof of the medium preferred by the consumer.

Statement required for a financial product or service

19. (1) A financial service provider shall issue, upon request by a consumer, a periodic statement that contain sufficient information on a financial product or service.

(2) The Regulator may prescribe a content and format for a periodic statement required for different products and services.

Disclosure and publication of changes in terms and conditions of a product and service

20. (1) A financial service provider shall notify a consumer about a change in a product or service in accordance with the terms of a consumer agreement and the provisions of this Act and the regulations.

(2) A change in subsection (1) that affects the consumers collectively shall be posted on the -

- (a) website of a financial service provider;
- (b) newspaper of wide national circulation;
- (c) prominently displayed digital platforms;
- (d) physical branches; or
- (e) similar facilities.

(3) This section applies to changes to -

- (a) a key product feature;
- (b) an interest rate paid or charged on a product or service;
- (c) fees and charges;

(d) a renewal and cancellation notice; and

(e) any other changes to business.

(4) Disclosure of a change in terms and conditions shall be communicated to a consumer within a minimum of thirty calendar days before a change takes effect.

(5) An exception to subsection (4) shall be determined by the Regulator.

(6) If a revised term is not agreed to by a consumer and was not foreseen in the original agreement, a consumer may exit a contract without penalty, as originally established in the agreement.

Pre-enforcement notice

21. (1) Enforcement proceedings over a credit liability shall commence after a consumer has been -

(a) notified of a default; and

(b) informed of his rights.

(2) A financial service provider shall be required to issue a written notice explaining an amount overdue and how a default can be remedied by a consumer.

(3) A financial service provider shall observe a minimum notice period between a pre-enforcement notice and a commencement of action, commensurate with a type, length and amount of credit, as outlined by the Regulator.

Prohibition to discriminate and target consumer segment

22. A financial service provider shall not -

(a) discriminate against a consumer based on gender, marital status, ethnicity, sexual orientation, religion, political belief or disability and any other protected class to prevent them access to a financial product or service; and

- (b) target a specific consumer segment to impose a term, condition or practice in a product or service offered, that perpetuate discrimination based on gender, marital status, ethnicity, sexual orientation, religion, political belief, disability or any other protected class.

Product risk management

23. (1) A financial service provider shall develop a policy and procedure that addresses risk of harm to a consumer associated with a product and service, before it is offered in the marketplace.

(2) A policy and procedure referred to in subsection (1) shall, at a minimum -

- (a) provide for a system of control for a product and service offered across a lifecycle of a product or service;
- (b) include an evaluation of product suitability for a consumer segment being targeted;
- (c) address a testing of an adequacy of a term and condition to ensure transparency and fair treatment, in accordance with this Act and its regulations; and
- (d) outline a process for authorization and introduction of a new product and service.

(3) The Regulator shall determine an extent and manner to which a financial service provider of different size and complexity shall comply with this section.

Affordability and suitability assessment

24. A financial service provider shall -

- (a) not encourage, incentivise or induce a consumer to obtain an unsuitable product or service or to enter into an agreement for an amount higher than requested or unable to afford; and

- (b) establish written procedures that outline the method to determine a suitability of a consumer and affordability, before acquiring a financial product or service.

Pricing procedure

25. A financial service provider shall -

- (a) outline an internal policy and procedure and methodology used to set a price to a product and service offered; and
- (b) systematically document within a loan file, a pricing calculation displaying a rationale employed to arrive at a given price.

Mandated credit reporting

26. A financial service provider shall furnish information to a credit reporting system in accordance with the Credit Reporting Act, 2012.

Obligation in regard to credit reporting

27. A financial service provider shall -

- (a) inform a consumer applying for a credit product and service that checks will be made at, and information collected and provided, to credit reporting system;
- (b) disclose an identity of a controlling credit reporting information entity;
- (c) notify a consumer if an application is declined due to information obtained from a credit reporting system and advise him of his right to obtain a copy of his credit report free of charge once a year; and
- (d) immediately notify a credit reporting system and take a necessary step to enable correction upon gaining knowledge of inaccurate information in a credit record of a consumer.

Unilateral change to contract

28. A financial service provider shall not make a change to a term and condition of a financial consumer contract, unless the contract gives a financial service provider a power to make such a change and specifies a condition under which it may be completed.

Unfair contract term

29. A financial service provider shall not use a term or condition that -

- (a) causes a significant imbalance to a right and obligation of a party under a contract;
- (b) does not reasonably protect an interest of a party seeking to take advantage of a term; and
- (c) would be detrimental to a party if applied or relied on.

Prohibition to amendment of unfair practice

30. (1) A financial service provider shall not engage in practice, act, omission, or representation that distorts a behavior of a consumer by impairing his ability to make an informed decision.

(2) Subject to subsection (1), “unfair practice” includes -

- (a) imposing -
 - (i) excessively high default fees;
 - (ii) a contract on a consumer, while giving a financial service provider a discretion to determine whether to provide a service; and
 - (iii) terms that effectively limit the ability of the consumer to assert his right under a contract, such as establishing some type of arbitration clause.
- (b) automatically renewing a fixed-lengthy contract, or pro-

- viding an option to opt-out of an automatic renewal with an unreasonably short deadline;
- (c) misleading a consumer about his legal right under a contract;
- (d) allowing a financial service provider to transfer its consumer obligation to a third party without properly notifying a consumer according to the terms of a financial contract;
- (e) any other term as may be prescribed by the Regulator.

No waiver of right

31. A financial service provider shall not include in a contract, a provision that involve a waiving of a consumer right including a right to -

- (a) sue a financial service provider;
- (b) receive information;
- (c) submit a complaint; and
- (d) repay a credit before a due date.

Right to make advance payment

32. (1) A consumer shall have a right to make an advance payment on an outstanding balance of a credit account, at any time during a life of a product or service.

(2) A financial service provider shall calculate an outstanding obligation or a settlement amount based on the -

- (a) outstanding principal debt and interest as of a date of a prepayment request;
- (b) outstanding fees and charges in accordance with a contractual agreement; and

- (c) prepayment penalty established by a financial service provider in accordance with a contractual agreement.

(3) A consumer shall have a right to re-negotiate a term and condition of a contract with a financial service provider subsequent to an advance payment to an outstanding balance.

Consumer mobility

33. A financial service provider shall -

- (a) develop a policy to facilitate a process of switching from one financial service provider to another; and
- (b) not unduly limit the ability of a consumer to cancel or transfer a product or service to another provider.

Competency of representative

34. A financial service provider shall ensure that its representative is competent to adequately deliver a product and service to a financial consumer.

Liability for an act of a representative

35. (1) A financial service provider shall be liable for an action of its representative.

(2) Subsection (1) does not relieve a representative of any potential liability to a financial consumer or financial service provider.

Requirement when engaging with a third party representative

36. A financial service provider shall, prior to engaging with a third party or agent for a delivery of a financial product or service -

- (a) enter into a formal agency agreement that govern an agency relationship;
- (b) perform appropriate due diligence before contracting with any agent or agent network manager; and

- (c) monitor a performance of its agent, including adherence to a legal and regulatory requirement and a financial service provider policy and procedure.

Fraud and misuse of an asset of a consumer

37. (1) A financial service provider shall -

- (a) develop an adequate policy and procedure demonstrating solid mechanism to prevent and mitigate a case of fraud; and
- (b) be liable for loss due to fraud or misuse involving an asset of a consumer under its administration or control.

(2) Subsection (1) does not apply to a case where gross negligence or fraud has been performed by a consumer.

Responsible business conduct

38. A financial service provider shall develop and implement a policy and procedure to encourage responsible business conduct by its staff and representative.

Debt collection practice

39. A financial service provider shall not -

- (a) use false statement, practice akin to or constituting harassment;
- (b) give false or unauthorised credit information to a third party;
- (c) retain or possess ATM card, passport and identity document for collateral purpose; or
- (d) use any other abusive practice when conducting debt collection.

Policy and procedure

40. A financial service provider shall develop a policy and procedure outlining an acceptable debt collection practice, standard and mechanism to verify compliance.

Consumer undergoing financial difficulty

41. A financial service provider shall -
- (a) establish a mechanism and process to identify its consumer who may be undergoing financial difficulty; and
 - (b) act promptly and efficiently to address a situation with a consumer.

Third party acting on behalf of financial service provider

42. A financial service provider is responsible and directly liable for a debt collection practice used by its representative, including agent and third party acting on its behalf.

Lawful collection and usage of consumer data

43. A financial service provider shall -
- (a) be responsible for a non-public data collected from its consumer; and
 - (b) process a consumer data in terms of the Data Protection Act, 2012³.

Privacy policy

44. (1) A financial service provider shall develop and provide a consumer with a privacy policy that clearly outlines a practice and guideline of a financial service provider with respect to a non-public data.

(2) A policy referred to in subsection (1) shall ensure confidentiality, security and integrity of a data stored in a database of a financial service provider

that relates to personal and account information of its consumer.

Disclosure of non-public data

45. A financial service provider may disclose non-public data to a third party only when a -

- (a) consumer has been informed about such disclosure and consent has been obtained in writing; and
- (b) financial service provider is legally required to disclose nonpublic data pursuant to the Data Protection Act, 2012.

Internal complaint handling mechanism

46. (1) A financial service provider shall establish an adequately independent internal complaint handling mechanism to manage and resolve a complaint raised by a consumer.

(2) The adequacy of an internal complaint mechanism in subsection (1) shall be determined by the Regulator by regulations.

Internal policy and procedure

47. A financial service provider shall develop a policy and procedure that address the following:

- (a) step by step process and maximum time frame for a handling of a complaint;
- (b) method through which a consumer can submit a complaint;
- (c) manner in which -
 - (i) a consumer complaint shall be documented and recorded to finality; and
 - (ii) a data collected from an internal complaint handling unit shall be periodically used to improve

the quality of its process.

- (d) minimum training required to ensure that staff is equipped and empowered to act decisively to resolve a consumer complaint; and
- (e) mechanism to ensure independence from other functions and business units.

Complaint data collection and reporting

48. (1) A financial service provider shall retain a record pertaining to a consumer complaint for period of time prescribed by the Regulator.

(2) The Regulator shall -

- (a) request a periodic data reporting process; and
- (b) engage in monitoring a complaint handling process.

Consumer complaint unit

49. (1) The Regulator shall establish a consumer complaint unit within Central Bank as a mechanism of recourse for circumstances where a consumer has not obtained a satisfactory response to a complaint against a financial service provider.

(2) A complaint handling unit shall establish a procedure to receive, investigate, mediate, and resolve a complaint against a financial service provider within an adequate time frame.

(3) The Regulator shall have power to issue binding decision on a financial service provider.

(4) A financial service provider shall notify a consumer of an existence of a consumer complaint unit -

- (a) at a time he enters into a contract;
- (b) at a time that a complaint is made to a financial service

provider; and

- (c) when a complaint is not resolved satisfactorily by a financial service provider.

Miscellaneous provisions

50. The Regulator shall -

- (a) encourage the establishment of a self-regulatory organization and industry association to enable and strengthen financial consumer protection issues in Lesotho.
- (b) act as a consultative body to issue guidance on best practice and compliance with the provisions of this Act and its regulations.
- (c) have powers to issue regulations for the implementation of this Act.

NOTE

- 1. Act No. 1 of 2012
- 2. Act No. 2 of 2000
- 3. Act No. 5 of 2012

GOVERNMENT NOTICE NO. 36 OF 2022

The Parliament of Lesotho

Statement of Objects and Reasons of the Financial Consumer Protection Act, 2022

**(Circulated by the Authority of the Honourable Minister of Finance
Honourable Thabo Sophonea)**

The main object of the Act is to establish the rights of consumers of financial products and services and the manner of exercising and protecting these rights. The Act applies to all market participants that offer financial services and products in Lesotho.

The Act recognises the supervisory role played by the Central Bank of Lesotho as the Regulator of all financial institutions in Lesotho under the Central Bank of Lesotho Act, 2000. The Central Bank is further empowered to, among others, inspect and examine financial service providers, request information about the activities, practices, policies and procedures of financial service providers as well as determining consumer complaints handling and dispute resolution process.

The Act provides for a standard to be applied in advertisement and promotional material, the type of statements to be issued by a financial service provider, the charges, format, timing and content to be provided in such statements.

The Act goes further to provide for limitations on the conduct of a service provider in offering a service and gives the guidelines on how the service provider should perform his duties and functions.

The Act further provides for obligations of a financial service provider towards a consumer and a need to notify the consumer of a default and inform him of his rights prior to commencement of enforcement proceedings.

The Act also obliges a service provider to comply with the applicable legislation like the Data Protection Act, 2011 and Credit Reporting Act, 2012 and it provides that it is a responsibility of a service provider to inform the consumer that credit information will be collected and shared within a credit reporting system.

The Act prohibits retention of certain personal items such as ATM cards, passport or identity document for collateral purposes. It makes it a responsibility of a service provider to get early warning signs for consumers who might be undergoing financial difficulty.

The Act makes it a requirement for a service provider to have a policy that will help govern the relationship over and above the written agreement and obliges the Regulator to establish a consumer complaints unit in order to respond to the complaints against the service providers.