Malawi

Credit Reference Bureau Act

Chapter 46:09

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Malawi

Credit Reference Bureau Act

Chapter 46:09

Assented to on 22 April 2010

Commenced on 1 October 2010

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Forth Revised Edition of the Laws of Malawi (L.R.O. 1/2015), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide for the regulation and supervision of credit reference bureau business and to make provision for matters connected therewith or incidental thereto

Part I – Preliminary

1. Short title

This Act may be cited as the Credit Reference Bureau Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

"**account holder**" means any person whose credit information is administered by a credit reference bureau;

"**credit facility**" includes financing by means of loans, overdrafts, credit cards, factoring, leasing, hire purchase, accepting of trade and other bills, discounting of such bills and notes, the opening or confirming of documentary credit, the issue of letters of standby credit, guarantee or surety, the undertaking to pay on account of another person, and such other similar undertakings as may be prescribed by the Registrar from time to time;

"**credit reference bureau**" means a company that allows users to exchange information on their clients' repayment history and current debt profiles and which compiles a database that collects, stores, consolidates and processes information related to credit history of persons;

"**credit reference bureau business**" means the business of compiling and processing credit information and disseminating credit information among users for their businesses;

"**credit information**" means the history of a person with regard to credit and financial obligations that a credit reference bureau may collect pursuant to this Act;

"**database**" means a set of information administered by a credit reference bureau;

"**financial services law**" has the meaning ascribed to it in the Financial Services Act and includes this Act;

[Cap. 44:05]

"**person**" includes any company or association or body of persons, corporate or unincorporated;

"**Registrar**" means the Registrar of Financial Institutions appointed under the Financial Services Act;

[Cap. 44:05]

"**Reserve Bank**" means the Reserve Bank of Malawi established under the Reserve Bank of Malawi Act;

[Cap. 44:02]

"**user**" means any financial institution entitled, or any person authorized, to access credit information from a credit reference bureau.

(2) Subject to subsection (1) and except where a contrary intention appears, expressions used in this Act shall have the same respective meanings as in the Financial Services Act.

[Cap. 44:05]

3. Application

This Act shall apply, in addition to the Financial Services Act, to all persons conducting credit reference bureau business except to the extent that such persons are exempted by the Registrar pursuant to his authority under the Financial Services Act.

[Cap. 44:05]

Part II – Licensing

4. Prohibition against operating credit reference bureau business without licence

(1) No person shall conduct credit reference bureau business unless he is licensed as a credit reference bureau under the Financial Services Act.

(2) No person, other than a limited liability company, shall be licensed as a credit reference bureau.

[Cap. 44:05]

5. Application for licence

(1) An applicant for a licence to operate a credit reference bureau shall submit an application in writing in a form prescribed by the Registrar under the Financial Services Act, and containing such information as the Registrar may specify.

(2) An application under subsection (1) shall be accompanied by such fee as the Registrar may specify.

[Cap. 44:05]

6. Criteria for licensing

In considering an application for a licence to operate a credit reference bureau, the Registrar shall, in addition to the requirements stipulated under the Financial Services Act, take into account the following factors—

(a) the background, reputation, integrity, competence and expertise of the proposed owners, directors, board members and executive officers of the applicant;

(b) the business plan of the applicant, including the scope and capability of the business;

(c) the financial condition of the applicant;

(d) the adequacy, reliability and security features of the proposed management information systems; and

(e) any other matter that may be deemed essential by the Registrar.
[Cap. 44:05]

7. Refusal to grant licence

(1) Without limiting the powers of the Registrar, the Registrar may refuse to grant a licence to an applicant if he is not satisfied that the applicant has complied with the requirements of this Act:

Provided that reasons for the refusal shall be given to the applicant in writing.

(2) The decision to grant or refuse to grant a licence shall be communicated in writing by the Registrar within sixty days—

(a) after receipt of the application; or

(b) where further information has been required, after receipt of the last of such further information.

8. Revocation of licence

(1) Without limiting the powers of the Registrar, the Registrar may revoke a licence if the licensee—

(a) supplied false information in its application;

(b) ceases to conduct business for which the licence has been granted;

(c) fails to comply with any condition of the licence;

(d) fails to comply with any written directive or instruction of the Registrar; or

(e) fails to comply with any provision of this Act or any other Act relevant to its business.

(2) The Registrar may, basing on a report produced in accordance with this Act establishing violations committed by a credit reference bureau, cancel the licence of the credit reference bureau.

9. Expiry of licence

A licence shall automatically expire if a credit reference bureau has not commenced business within six months of the date of issue of the licence.

10. Renewal of licence

(1) A credit reference bureau may, two months prior to the expiry date of the licence, make an application for renewal of the licence to the Registrar in the form and manner which the Registrar shall prescribe by directive.

(2) An application under subsection (1) shall be accompanied by such fee as the Registrar may specify.

(3) Sections 6, 7 and 8 shall apply, *mutatis mutandis*, to an application for renewal of licence.

11. Register of credit reference bureaux

The Registrar shall keep a register of credit reference bureaux and shall publish, in the *Gazette*, or in at least two newspapers of national circulation, the entry in, and cancellation from, the register, of any credit reference bureau.

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12. Operational requirements

The Registrar shall prescribe the operational requirements for establishment of a credit reference bureau.

Part III – Operations of a credit reference bureau

13. Collection of information

(1) A credit reference bureau shall collect information on the background and credit history of persons required by this Act.

(2) In obtaining information referred to in subsection (1), a credit reference bureau shall take all practicable steps to ensure that the information is accurate, and that the person providing the information has obtained the general particulars to enable identification and location of the account holder, including but not limited to—

(a) valid identification particulars;

(b) physical residential address; and

(c) postal address.

(3) A credit reference bureau may—

(a) collect credit information from financial institutions and any other institution as may be prescribed by the Minister, upon recommendation by the Registrar; and

(b) consult public sources of information for data in official records:

Provided that the rights and liberties of the account holder shall not be violated.

14. Dissemination of credit information

(1) Except as provided in subsection (2), a credit reference bureau shall provide credit information services only to financial institutions regulated under the Financial Services Act.

(2) In cases where providing information to users other than financial institutions is required, authorization by the account holder to provide the account holder's credit information shall be submitted by the user, in writing, to the credit reference bureau before accessing the information.

[Cap. 44:05]

15. Data security and system integrity

A credit reference bureau shall—

(a) establish controls and procedures in order to ensure the quality of its database and preserve the confidentiality of its information as prescribed by the Registrar; and

(b) utilize the information collected exclusively for the purpose of meeting the objectives of the credit reference bureaux business in accordance with this Act.

16. Accuracy of data provided

(1) A credit reference bureau shall ascertain that it provides accurate, legitimate, reliable, truthful and current information that reflects the existing situation of the account holder at any given time.

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(2) If after having provided information pursuant to subsection (1), the credit reference bureau discovers that the information in its custody is inaccurate or no longer valid, it shall promptly take the corrective measures necessary to remedy the deficiencies and update its database.

17. Actions requiring prior approval

A credit reference bureau shall obtain prior written approval of the Registrar for the following matters—

(a) appointment of directors, executive officers and senior officers;

(b) changes in the articles of association;

(c) reduction of its capital base by repayment of capital or distribution of reserves;

(d) opening and closing of branches;

(e) opening of establishments abroad;

(f) liquidation; and

(g) arrangement or agreement—

(i) for the sale or disposal of its shares or business; or

(ii) affecting voting power, management or other matters which may result in a change in the control or management of the company.

18. Prohibition of access for direct marketing

(1) A credit reference bureau shall not request, collect or grant information, other than information related to its business.

(2) A credit reference bureau shall not provide credit information of persons held in its database, to a user or any other person for the purposes of offering or advertising the availability of goods, facilities or services to such persons.

19. Submission of information to Registrar

Every credit reference bureau shall—

(a) provide to the Registrar unrestricted access to all the information managed by the credit reference bureau, whether through access to its systems according to published services, or in the manner stipulated by the Registrar, for the purpose of supervision; and

(b) observe, through its shareholders, directors and officers, a perpetual duty of confidentiality with regard to the information divulged to them by information provider.

20. Inspection by the Registrar

(1) The Registrar may, at his discretion, carry out on-site inspection of the premises of a licensee to determine the adequacy of the security system and to confirm the following matters—

(a) suitability of premises for the business operations;

(b) separation of credit reference bureau business from other business performed by the licensee;

(c) the adequacy of the management information system; and

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(d) administrative and operational processes and the internal control systems.

(2) Examiners and investigators appointed by the Registrar for the purpose of subsection (1) may at any time examine or investigate, as the case may be, the business or any part of the business of a credit reference bureau.

21. Retention of data

A credit reference bureau shall maintain a historical database covering a seven year period for the purpose of providing detailed credit information.

22. Fees

A credit reference bureau may, on approval by the Registrar, charge fees for its services, which fees shall be agreed upon between the user and the credit reference bureau, and shall be denominated in Malawi Kwacha.

23. Rights of account holders

(1) An account holder shall access any credit information relating to him that is registered in a database administered by a credit reference bureau.

(2) The information referred to in subsection (1) shall be obtained—

(a) free of charge, by viewing the data on a screen; or

(b) by paying a fee, prescribed by the credit reference bureau, for the issuance of a document containing credit information relating to the account holder.

24. Illegal or inaccurate information

(1) Where an account holder believes that the information contained in the database is illegal, inaccurate, erroneous or outdated, he may request a review by the credit reference bureau of the information, and any deficiency identified shall be promptly remedied, except that where any legal liability or cost arises from the illegal, inaccurate, erroneous or outdated information, the person providing the wrong information shall be liable for the relevant cost of reviewing the information.

(2) Where the illegal, inaccurate, erroneous or outdated information referred to in subsection (1) is as a result of an error and the error is attributable to the source from which the information originated, the information provider shall be liable for any claims arising therefrom.

(3) Where the illegal, inaccurate, erroneous or outdated information referred to in subsection (1) is as a result of an error and the error is attributable to a credit reference bureau, the credit reference bureau shall—

(a) at its own expense, rectify its database;

(b) promptly notify any person who may have used the information of the error and its rectification; and

(c) be liable for any claims arising therefrom.

(4) Where the account holder has made an unfounded claim, a credit reference bureau may charge the account holder a penalty for the inconvenience, or take legal action against the account holder.

25. Claim against information providers

(1) With regard to the civil and criminal liability assumed by information providers, a credit reference bureau may file a claim against the information providers and users when ever the credit reference bureau is held liable for any responsibility to the account holder or to a third party as a result of having provided false information received from the providers and users.

(2) Users of information provided by a credit reference bureau shall be held liable—

(a) in the event of wrongful or fraudulent use of the information; or

(b) if the users cause damage to the account holder, in accordance with the law.

(3) Without prejudice to subsections (1) and (2), a credit reference bureau may take action against the information users in a case where it has assumed responsibility to the account holder or to a third party.

26. Claims and enquiries department

(1) A credit reference bureau shall have a customer claims and inquiry service section to attend to customers who may be negatively affected by the information contained in the database and who allege that the information is illegal, inaccurate, erroneous or outdated pursuant to section 24.

(2) A credit reference bureau shall have staff of a number sufficient to provide the services referred to in subsection (1), and shall, within five working days, remedy the corresponding errors in its database which supply the information.

(3) Any illegal, inaccurate, erroneous or outdated information shall not be used until corrected.

27. Information requirement

The Registrar may request, at any time, any information he may require in order to evaluate complaints, accusations or inconsistencies detected in a credit reference bureau.

28. Warning and revocation of licence for non-compliance

Where a credit reference bureau fails to comply with the requirements of this Act, the Registrar may—

(a) impose monetary penalties to the credit reference bureau;

(b) issue a warning, in writing, to the credit reference bureau; or

(c) revoke the licence of the credit reference bureau.

29. Immunity of credit reference bureau, etc.

No action shall lie against a credit reference bureau or officer or employee of credit reference bureau or any person acting under the direction of the credit reference bureau for anything done in good faith in the administration or discharge of any powers, duties or functions under this Act.

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Part IV – Winding-up

30. Approval of winding-up

(1) A resolution, demand or other step to wind-up a credit reference bureau shall be of no effect unless the Registrar has approved it.

(2) An application to the Court for an order to wind-up a credit reference bureau, whether under the Companies Act or under any other law, shall not be made except by the Registrar, or with the Registrar's approval.

[Cap. 46:03]

(3) The Registrar shall not give approval under subsection (2) unless the credit reference bureau's licence has been or is to be revoked and that the winding-up shall be on such terms and conditions as the Registrar may determine.

(4) The Registrar may apply to the Court for an order that a credit reference bureau be wound-up if the Registrar is satisfied that the institution is insolvent and will not be restored to solvency within a reasonable period.

(5) An order granted under subsections (2) and (4) shall be made public through print and electronic media in Malawi by the Registrar.

(6) Notwithstanding any provision in the Companies Act, where any proceeding for the winding-up of a credit reference bureau is commenced under this section, the Registrar or any other person appointed or approved by the Registrar shall be the liquidator of the credit reference bureau.

[Cap. 46:03]

(7) The remuneration of the liquidator appointed under this section, the cost and expenses of his establishment and the costs and expenses of the liquidation shall be met out of the assets of the credit reference bureau under liquidation.

Part V – Miscellaneous provisions

31. Offences relating to information, etc.

A credit reference bureau which—

(a) delays in providing information and documents to the Registrar;

(b) wrongfully alters, modifies or deletes records from its database; or

(c) fails to adopt security and control measures that are necessary to prevent the wrongful use or lapse in management of information,

commits an offence.

32. General offences and penalties

(1) Any person who contravenes a provision of this Act for which no offence is specifically provided commits an offence.

(2) The provisions of the Financial Services Act governing imposition of penalties shall apply to any person who commits an offence under this Act for which no penalty is specifically provided.

[Cap. 44:05]

33. Regulations

(1) The Minister may, on the recommendation of the Registrar, make regulations for the better carrying out of this Act and for its better administration.

(2) For avoidance of doubt, the power to make regulations in this Act does not extend to making regulations about a matter in respect of which the Registrar may issue directives.

34. Directives, guidelines and instructions

(1) The powers conferred on the Registrar under this Act shall, without prejudice to the powers of the Registrar under the Financial Services Act, be exercised through issuance of directives, guidelines or instructions.

(2) The Registrar may issue directives and instructions to a credit reference bureau in respect of the enforcement of any provision of this Act.

(3) The directives may include provisions on any corrective action or administrative sanctions which the Registrar considers appropriate.

(4) The Registrar may issue guidelines, bulletins or other regulatory statements as he may consider necessary or desirable for the implementation or explanation of any provision of this Act.

[Cap. 44:05]

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