

**CONSUMER PROTECTION IN MICROFINANCE SERVICES IN
MAINLAND TANZANIA: A CRITICAL ANALYSIS OF THE
LAW**

**CONSUMER PROTECTION IN MICROFINANCE SERVICES IN
MAINLAND TANZANIA: A CRITICAL ANALYSIS OF THE LAW**

By

Mossy Lukuvi

**A Dissertation Submitted in Partial Fulfilment of the Requirements for the
Award of Degree of Master of Laws (Commercial Law) of Mzumbe University.**

2019

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend acceptance by the Mzumbe University, a dissertation entitled “**Consumer Protection in Microfinance Services in Mainland Tanzania: A Critical Analysis of the Law**” in partial fulfilment of the requirements for the award of degree of Master of Laws (Commercial Law) of Mzumbe University.

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DEAN, FACULTY OF LAW

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I, Mossy Lukuvi, do hereby declare that this dissertation is my own original work and that it has not been presented and will not be presented to any other university for the award of a similar or any other degree award.

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DEDICATION

I dedicate this dissertation to my lovely mother Mrs. Philomena Vangimembe Lukuvi, my lovely wife Mrs. Jackline Mossy, my lovely son Moren Mossy and my newly born lovely daughter princess Janice Mossy, the memory of my great father Ex-Jumbe Vangimembe Lukuvi and the entire extended Lukuvi Family.

LIST OF STATUTES

The Republic of Kenya

The Consumer Protection Act, No. 46 of 2012 [R.E 2016].

The Republic of South Africa

The Protection of Personal Information Act, No. 4 of 2013.

The Republic of Uganda

The Data Protection and Privacy Act, 2019.

The United Republic of Tanzania Constitution and Statutes

The Constitution of the United Republic of Tanzania, 1977 [Cap.2].

The Anti-money Laundering Act, [Cap. 423].

The Prevention of Terrorism Act [Cap. 19].

The Banking and Financial Institutions Act [Cap.342].

The Bank of Tanzania Act [Cap. 197].

The Banking and financial Institutions Act, No. 12 of 1991 [Cap. 342] (Repealed).

The Bank of Tanzania Act No. 1 of 1995 [Cap. 197] (Repealed).

The Business Licensing Act [Cap. 208].

The Companies Act [Cap. 212].

The Capital Markets and Securities Act [Cap.79]

The Cooperative Societies Act No. 6 of 2013 [Cap. 211].

The Insurance Act [Cap. 394].

The Local Government (District Authorities) Act [Cap. 287].

The Local Government (Urban Authorities) Act [Cap. 288].

The Microfinance Act, No. 10 of 2018 (This Act is yet to be assigned a Chapter number).

The National Bank of Commerce (Establishment and Vesting of Assets and Liabilities) Act No. 1 of 1961

The Non-Governmental Organisations Act [Cap. 56 R.E 2002].

The Tanzania Rural Development Bank Act No.7 of 1971

The Social Security (Regulatory Authority) Act [Cap. 135].

The Societies Act [Cap. 337 R.E 2002].

The Trustees Incorporation Act [Cap. 318 R.E 2002].

Subsidiary Legislations

The Banking and Financial Institutions (Disclosure) Regulations, 2014, GN No. 289 of 2014.

The Banking and Financial Institutions (*Microfinance Activities*) Regulations, 2014 GN No. 298 of 2014.

The Savings and Credit Cooperative Societies Regulations, 2016 GN. No. 115 of 2016.

LIST OF POLICIES

The National Microfinance Policy, 2017.

The National Microfinance Policy, 2000.

LIST OF ABBREVIATIONS AND ACRONYMS

BoT	-	Bank of Tanzania
BRELA	-	Business Registration and Licensing Agency
BSBS	-	Basel Committee for Banking Supervision
CAP	-	Chapter
CRDB	-	Cooperative and Rural Development Bank
Etc.	-	Et cetera/and others
G.N	-	Government Notice
I.e.	-	Id est/that is
Ibid	-	Ibidem/in the same source
Inc.	-	Incorporation
L.L.M	-	Legum Magister
LART	-	Loan Advancement and Realization Trust
Loc.cit	-	Loco citato/in the same place cited
MFIs	-	Microfinance Institutions
MNO	-	Mobile Network Operations
MoFP	-	Ministry of Finance and Planning
NBC	-	National Bank of Commerce
NGOs	-	Non-Governmental Organisations
NMP	-	National Microfinance Policy
No.	-	Number
OECD	-	Organisation for Economic Co-operation and Development

Op.cit	-	Opere citato/in the work cited
p.	-	Page
pp.	-	Pages
R.E	-	Revised Edition
S.	-	Section
SACCOS	-	Savings and Credit Cooperative Societies
Ss.	-	Sections
TAMFI	-	Tanzania Association of Microfinance Institutions
TCDC	-	Tanzania Cooperatives Development Commission
TFC	-	Tanzania Federation of Cooperatives
TIRA	-	Tanzania Insurance Regulatory Authority
USA	-	United States of America
VICOBA	-	Village Community Bank
Vol.	-	Volume

ABSTRACT

This study examined the extent to which consumers of microfinance services in Mainland Tanzania are protected under the current legal framework. Specifically, it entailed the exploration of the legal framework for financial consumer protection in microfinance services in Mainland Tanzania, an examination of the extent to which consumers in microfinance services are protected under the existing legal framework, and recommended reforms in the existing legal framework so as to enhance financial consumer protection in microfinance services.

The study deployed more doctrinal research where a documentary review was conducted by reviewing various materials including Statutes, Books, Journal Articles, conference papers, theses, and online materials.

The study also conducted a little field research where in-depth interviews and questionnaire survey were used to collect data from the respective respondents.

The findings reveal that consumers of microfinance services are not adequately protected under the current legal and supervisory framework. It has been found that there is an inadequate institutional arrangement for the regulation of microfinance service providers, the over-arching mandate of the BoT, over-reliance of regulations to prescribe substantial matters, absence of data protection and privacy legal framework as well as the absence of comprehensive mechanisms for disputes resolutions.

In light of the above findings, the study recommends the following: (a) enactment of a new and standalone legislation on Financial Consumer Protection;(b) enactment of a new standalone legislation on data protection and privacy; (c) reconciliation between the NMP 2017 and the Microfinance Act; and (d) hasten the process of making regulations as an alternative route in addressing factors that hinder effective protection to consumers of microfinance services.

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CHAPTER ONE

GENERAL INTRODUCTION AND BACKGROUND INFORMATION

1.1 Introduction

Microfinance has been hailed by many to be one of the most effective tools in the process of fighting global poverty in both the developed and developing world. It has been particularly effective and beneficial in bringing products such as savings, deposits, insurance, and credit to the unserved and underserved community.¹ However, despite its importance, if microfinance services are not properly regulated many poor and voiceless people may fall victims of predatory lending practices.² Thus, in many countries including Tanzania microfinance subsector has grown to the extent where financial regulators have seen the need to frame a policy and eventually integrate it into the framework of regulated financial services institutions.³ One of the rationales behind such regulation is the protection of consumers in microfinance services.

This study, therefore, examined consumer protection in microfinance services in Mainland Tanzania. In particular, it examined the legal and regulatory framework to see how it has been designed to provide protection to consumers of microfinance services from various risks. Such risks include high-interest rates, unfair loan collection and recovery measures, inadequate data protection, inadequate disclosure of lending terms and conditions and other malpractices by microfinance service providers. Moreover, the study sought to provide a deeper understanding and insights into the legal framework on consumer protection in microfinance services in Mainland Tanzania, to determine the extent to which consumers of microfinance services are protected under the existing

¹W.H. Abera (2019). Is Microfinance an Effective Social Program Intervention for Poverty Reduction? Impact Analysis Approach, University of Kwazulu Natal, Research Gate, p.3. Retrieved on 23rd February, 2019 from the World Wide Web: <https://www.researchgate.net/publication/331132233>.

² Predatory lending practices refers to those credit practices that take advantage of the borrowers' lack of financial literacy exploit customers through high-interest rates.

³P. Meagher. (2002). Microfinance Regulation in Developing Countries: A Comparative Review of Current Practice, IRIS Center, University of Maryland, 2002, p.1. Retrieved on 16th January, 2019 from the World Wide Web: <https://www.citeseerx.ist.psu.edu>.

legal framework and to recommend for reforms that are necessary to improve the existing legal framework.

1.2 Background to the Problem

The rise and growth of microfinance all over the world has a unique history. When Professor Muhammad Yunus⁴ founded and established the iconic Grameen Bank, ‘a bank for the poor’⁵ thirty five years ago, the Bank was positioned as the role model local financial institution for poverty reduction in Bangladesh. The success of the bank marked the ushering of microfinance in many developing countries. After successful operation of the Bank, the “Grameen clones”⁶ spread in many other developing countries. The importance of microfinance in developing countries lies in the influence on poverty reduction and indirectly in the disproportionate indebtedness reduction in these countries.⁷

In developed countries, microfinance, originated in Germany some 150-200 years ago from small informal beginnings as part of an emerging self-help movement: with the first thrift society established in Hamburg in 1778; the first community bank in 1801; and the first urban and rural cooperative credit associations in 1850 and 1864, respectively.⁸

⁴ was awarded the Nobel Peace Prize in 2006 (as one the first, he established and successfully developed a micro- financial system in LDCs, concretely in Bangladesh for the so-called Grameen Banks).

⁵ M. Bateman, (2014) The Rise and Fall of Muhammad Yunus and the Microcredit Model, International Development Studies, Working Paper Series, St. Mary’s University, No. 001, p.1.

⁶ *Ibid*

⁷ K. Srnec & E. Svobodova. (2009). Microfinance in Less Developed Countries: History, Progress, Present – Charity or Business? Czech University of Life Sciences Prague, Institute of Tropics and Subtropics, Kamýcká, Agric. Econ-Czech 55, No. 10, p.467.

⁸ H.D Seibel. (2003). Microfinance in Nigeria: Origins, Options and Opportunities, University of Köln, 2003 at p.1. Retrieved on 22nd December, 2018 from

<file:///C:/Users/Hp/Desktop/Microfinance%20in%20Nigeria%20Origins-Options%20and%20Opportunities-PROF-HANS%20DIETER.pdf>.

In Tanzania, the country's microfinance sector has its roots in the late 1960s.⁹ For most of such period, the financial sector in Tanzania was mainly government-owned with pervasive government interference in the financial system.¹⁰ Credit was issued on the basis of government priorities with little regard to credit-worthiness, and banks were convenient agents of fiscal policy. The National Bank of Commerce (NBC) and the Cooperative and Rural Development Bank (CRDB) were dominant in providing microfinance services. NBC provided working capital and other short term finance to agriculture and other rural activities while CRDB provided development finance to rural development activities. These two institutions had a virtual monopoly in their functional areas: Each institution was governed by its own statute¹¹ and the Bank of Tanzania's (BoT) supervisory role was limited.¹²

Both NBC and CRDB were not performing the way it was anticipated in terms of loan portfolio which led to the inability to attract new deposits from their customers. The failure¹³ of these two financial institutions in the mid-1980's, financial sector reforms were inevitable. In the circumstances, Tanzania initiated economic reform measures in 1986. As part of the economic reform program, implementation of the financial sector reforms started in 1991 and aimed to develop a sustainable, efficient and effective financial system. The reforms included liberalization of interest rates, elimination of administrative credit allocation, strengthening of the BoT 'regulatory and supervisory role, restructuring state-owned financial institutions and allowing entry of privately

⁹ Wangwe, S Innovation in Rural Finance in Tanzania: Paper Prepared for the Third Annual Conference on Microfinance Held from 15th to 17th March 2004 at the AICC Arusha, p.4. Retrieved on 24th December, 2018 the World Wide Web: from <https://www.bot.go.tz/MFI/Library/InnovationInRuralMFinTZ.pdf>.

¹⁰ *Ibid.*

¹¹ CRDB was governed by the Tanzania Rural Development Bank Act No.7 of 1971 while NBC was governed by the Bank of Commerce (Establishment and Vesting of Assets and Liabilities) Act No. 1 of 1961 respectively.

¹² *Ibid.*

¹³ According to the Loan Advancement and Realization Trust (LART) Annual Report, June 2002, 70% of NBC's loan portfolio was in arrears and 95% of this was accounted for by parastatals and a substantial share by cooperatives as of 1988. The Cooperative Rural Development Bank's (CRDB) rural sector loan portfolio was no better, with 66% of its loan portfolio in arrears as of end 1988. With a non-performing loan portfolio, the two banks were unable to attract new deposits from their customers.

owned financial institutions.¹⁴ Indeed the reforms sought to create an effective and efficient regulation on the financial system in the country.¹⁵

In making these reforms a reality, Tanzania enacted the Banking and Financial Institutions Act (the Banking Act 1991).¹⁶ The Banking Act 1991 provided a room for the establishment of privately owned banks. The Banking Act 1991¹⁷ also provided for the structure of regulation and supervision of the financial sector in the country.¹⁸ These reforms brought an appreciable impact on the development of financial systems in the country.

The reforms brought efficiency and competition in the banking sector. On the other hand, these reforms resulted in widening the institutional gap in the provision of financial services to the lower income segment where access to basic financial services by the majority of Tanzanians increased proportionately. In the circumstances, the Government was prompted to initiate a process for mainstreaming microfinance services. The process aimed at ensuring the development of a broader-based financial system comprised of a variety of sustainable institutions, with wide outreach and diverse financial products.¹⁹

The reforms also led to more competition and development of the financial sector with new and more efficient financial services.²⁰ The reforms also forced the restructuring of state-owned banks so as to comply with the prudential requirements and to be able to compete in the market.²¹ The Banking Act 1991²² also gave autonomous power to the Bank of Tanzania (BoT) not only in the formulation of monetary policies but in

¹⁴ G.C Rubambey. (2005). Policy, Regulatory and Supervisory Environment for Microfinance in Tanzania, Essays on Regulation and Supervision, IRIS Centre University of Maryland, No. 15. Accessed from www.arabic.microfinancegateway.org/sites/default/files/mfg-en-paper-policy-regulatory-and-supervisory-environment-for-microfinance-in-Tanzania-2005.pdf on 18 November, 2018.

¹⁵ D.Chuku and N.Ndanshau. (2016). The Non-Bank Financial Intermediaries and Economic Growth in Tanzania: An Empirical Analysis 1967-2011, *Tanzania Economic Review*, Vol.6, No.1 & 2-1-25, p. 1.

¹⁶ No. 12 of 1991.

¹⁷The Banking Act 1991.

¹⁸ See Part II of the Banking Act.

¹⁹ See Part II of the Banking Act.

²⁰ B. Randhawa and J. Gallardo. (2003) Microfinance Regulation in Tanzania: Implications for the Development and Performance of the Industry, African Region Working Paper Series No.51, p.13.

²¹*Ibid.*

²² The Banking Act 1991.

regulation and supervision of the financial sector. This was followed by the enactment of the Bank of Tanzania Act, 1995 (the BOT Act 1995)²³ which repealed the Bank of Tanzania Act, 1965 (the BoT Act 1965).²⁴

However, these reforms were seemingly relevant only in the mainstream banking system and its clients and not to microfinance institutions. Both the Banking Act²⁵ and the Bank of Tanzania Act (the BoT Act 1995)²⁶ did not cover the aspects of regulation and supervision of microfinance institutions such as credit companies, Savings and Credit Cooperative Societies (SACCOS), Village Community Bank (VICOBA), Non-Governmental Organisations (NGOs) Microfinance and individual money lenders. These institutions were established and operated under different pieces of legislation such as the Cooperative Societies Act,²⁷ the Social Security (Regulatory Authority) Act,²⁸ the Capital Markets and Securities Act,²⁹ the Companies Act,³⁰ the Trustees Incorporation Act,³¹ the Non-Governmental Act,³² the Societies Act,³³ the Business Licensing Act³⁴ and the Insurance Act.³⁵ However, all these legislations did not provide for aspects of consumer protection in microfinance services.

Thus, having realised the importance of the microfinance industry and the need for consumer protection in microfinance services, the government took some significant initiatives by initiating a microfinance policy formulation process in 1996.³⁶ In 1997 the BoT was appointed by the Government as a government focal point for microfinance in enhancing and coordinating the government's support towards mainstreaming

²³ No. 1 of 1995.

²⁴ The BoT Act 1995.

²⁵ The BoT Act 1995.

²⁶ The BoT Act 1995.

²⁷ CAP 211.

²⁸ CAP 135.

²⁹ CAP 79.

³⁰ CAP 212 which *inter alia* provides for incorporation and management of credit companies.

³¹ CAP 318.

³² CAP 56.

³³ CAP 337.

³⁴ CAP 208.

³⁵ CAP 394.

³⁶ B. Randhawa, p.13.

microfinance into the financial system. As the Government's hub and agency with oversight on the banking system, the BoT, on behalf of the Government, led the process for the formulation of the microfinance policy and the review of the legal, regulatory and supervisory framework.³⁷

This process went on until 2000 when the government approved the first National Microfinance Policy (referred to as NMP 2000).³⁸The policy called for regulation and supervision of microfinance industry in the country.

In NMP 2000, the government recognised the microfinance sector as an integral part of the financial sector³⁹ by acknowledging the need for regulation and supervision of microfinance operations. However, the NMP 2000 could not acknowledge the need to have a legal framework for regulation and supervision of microfinance sub-sector.⁴⁰ Thus, only those institutions licenced to accept deposits from the general public or from other financial institutions were subjected to regulation and supervision.⁴¹

One of the reasons for such non-regulation was that it was difficult to regulate and supervise small microfinance service providers because such institutions are formed by persons who are familiar to each other, thus, reducing financial risks that regulation could protect.⁴² In these premises, it entailed that the government could not realise the need to provide legal regulation and supervision on microfinance institutions. As pointed out earlier, the lack of specific legislation to regulate microfinance services was also reflected in the existing banking laws.⁴³

Nevertheless, the emerging trends, developments, complexities and challenges in the microfinance industry prompted the government to review the NMP 2000. Other reasons which prompted the government to review the NMP 2000 were the growing

³⁷ *Ibid.*

³⁸ (2000) issued by the Government through the Ministry of Finance of the United Republic of Tanzania.

³⁹ *bid.*

⁴⁰ See NMP 2000, p. 14.

⁴¹ See NMP 2000, p.14.

⁴² See NMP 2000, p.14.

⁴³ See section 3 of the Banking Act and the BoT Act on the interpretation of terms "bank" and "financial institution" respectively.

public concern on the business conduct of microfinance institutions which is associated with inadequate disclosure of lending terms and conditions, excessive interest rates, reckless lending and multiple loans contributing to over-indebtedness and unfair loan collection and recovery procedures.⁴⁴ These malpractices also brought about public complaints and concerns on issues related to consumer protection. Thus, in the new Policy⁴⁵ the government proposed to establish microfinance legal, regulatory and supervisory framework which could help to address the identified issues of consumer protection in microfinance sub-sector.

The identified gap within the existing legal framework called for enactment of the Microfinance Act⁴⁶ to provide for licensing, regulation, supervision and protection to consumers of microfinance services by ensuring that consumers of microfinance services are protected and offered appropriate products and services for their wellbeing while enhancing the Government's objective to reduce poverty in the country by empowering low-income earners through financial inclusion and self-employment.

Despite these developments, it was imperative to explore the extent to which consumers in microfinance services are protected under the existing legal framework. It is against this backdrop that this study was conducted.

1.3 Statement of the Problem

Microfinance services play a vital role in providing financial services to those who do not have access to the formal financial sector. It also facilitates entrepreneurship and economic development by providing entrepreneurs with small credits to finance their businesses.⁴⁷ Thus, considering such role to both the country and its people, and considering the number of people using microfinance services which is about 48.6

⁴⁴NMP 2017, p. 23.

⁴⁵NMP 2017, p.30.

⁴⁶No. 10 of 2018. This Act is not yet in force.

⁴⁷Karim, Z.A. *et al.* (2015). Client Protection in microfinance: the current state of law and regulation. Ernest & Young Global Limited, United Kingdom, p.3. Retrieved on 11th November, 2018 from the World Wide Web:[https://www.ey.com/Publication/vwLUAssets/EY-client-protection-in-microfinance/\\$FILE/EY-client-protection-in-microfinance.pdf](https://www.ey.com/Publication/vwLUAssets/EY-client-protection-in-microfinance/$FILE/EY-client-protection-in-microfinance.pdf).

percent of Tanzanian's labour force,⁴⁸ the Parliament of Tanzania enacted the Microfinance Act which provides for licensing, regulation and supervision of microfinance services in Mainland Tanzania.

One of the key objects of the Microfinance Act is to provide protection to consumers of microfinance services in Mainland Tanzania by establishing microfinance consumer protection principles⁴⁹ and other oversight mechanisms. The principles that microfinance service providers are required to comply with provisions of fair terms and conditions in the loan contract, full disclosure of products information, transparency on interest rates, provision of financial education to the consumers, to put in place complaints handling and dispute settlement mechanisms. Despite these achievements, it is not clear from the law on how those principles are going to be implemented, considering the fact that the institutions⁵⁰ charged with regulation and supervision of microfinance services are also vested with other broad functions.⁵¹

For example, BoT under the Banking Act and the BoT Act is charged with the functions of licensing, regulation and supervision of banks and deposit-taking financial institutions including mortgage financing, development financing, lease financing⁵² formulate and implement monetary policy including exchange rate policy issue currency, issue currency, to deal, hold and manage gold and foreign exchange reserves of Tanzania⁵³ and act as banker and fiscal agent of the Government.⁵⁴ These broad functions are likely to hinder the realisation of the intended results regarding regulations of microfinance services.

⁴⁸ This is according to FinScope Tanzania 2017, p. 44. This report was retrieved on 30th October, 2018 from the World Wide Web: <http://www.fsdt.or.tz/wp-content/uploads/2017/09/FinScope-Tanzania-2017-Insights-that-Drive-Innovation.pdf>.

⁴⁹ ss. 50 and 51 of the Microfinance Act.

⁵⁰ In this case the BoT.

⁵¹ See the functions and duties of the BoT under the Banking Act and the BoT Act, the functions of TCDC under the Cooperative Act and the functions of the local government authorities under CAP 287 and CAP 288.

⁵² See section 4 of the Banking Act.

⁵³ See section 5 of the BoT Act.

⁵⁴ See section 32 of the BoT Act.

In addition, provisions relating to consumer complaints handling mechanism and procedures, consumers' data protection mechanism as well as dispute settlement mechanism under the Microfinance Act are still wanting.

In those premises, it was imperative to investigate on the extent to which the current microfinance legal framework accommodates financial consumer protection concerns in microfinance services so as to make recommendations to address the factors that hinder effective consumer protection in microfinance services in Mainland Tanzania.

1.4 Research Objectives

During the investigation of the research problem, the researcher was guided by one general objective and three specific objectives as provided hereunder:-

1.4.1 General Objective

The general objective of this study was to examine the extent to which consumers of microfinance services in Mainland Tanzania are protected under the current legal framework.

1.4.2 Specific Objectives

- i. To identify legal regime/framework for financial consumer protection in microfinance services in Mainland Tanzania.
- ii. To examine the extent to which consumers in microfinance services are protected under the existing legal framework.
- iii. To recommend reforms in the existing legal framework so as to enhance financial consumer protection in microfinance services.

1.5 Research Questions

- i. What is the existing legal framework for consumer protection in microfinance services in Mainland Tanzania?

- ii. To what extent are consumers of microfinance services protected under the existing legal framework?
- iii. What reforms are necessary to improve the existing legal framework on consumer protection in microfinance services in Mainland Tanzania?

1.6 Significance of the Study

This study was important in informing the relevant authorities about the weaknesses in the existing legal framework in relation to financial consumer protection in microfinance services in Mainland Tanzania.

The study also provides some recommendations that may help the lawmakers to realise the need to make reforms to improve the existing legal framework so as to provide for effective regulation of microfinance institutions with an ultimate goal of strengthening financial consumer protection in microfinance services in the country.

Also, the study adds important information on how the government and other stakeholders should work together to improve the delivery of microfinance services with a view of affording protection to consumers of those services.

Ultimately, the study contributes to the literature on financial consumer protection, especially in microfinance services.

1.7 Literature Review

The aspect of consumer protection in microfinance services has received attention of many scholars around the globe. Studies and surveys have been conducted and the outcomes have been compiled in reports, books, journals and other media. However, literature from Tanzania scholars in relation to this area of the study is limited, thus the researcher consulted literature from other jurisdictions. The following is a discussion on the identified relevant scholarly works of other authors who have highlighted issues of consumer protection in financial services both local and from other jurisdictions with a view of identifying what have been done and what have not been done.

Binamungu C.S and Ngwilimi G.S⁵⁵ in their book entitled ‘Regulation of Banking Business in Tanzania,’ discussed about regulation of banking business in Tanzania where they acknowledged the absence of clear legal framework governing microfinance business in Tanzania.⁵⁶ The authors went further highlighting on the National Microfinance Policy of 2000 (NMP 2000) which attempted to integrate microfinance operations into the financial system where the Bank of Tanzania was vested with the overall responsibility to coordinate its implementation.⁵⁷

Also, the authors noted that the NMP 2000 covered a wide range of microfinance operations conducted by commercial banks, by rural community banks, by non-governmental organisations (NGOs) and by cooperative societies like savings and credit societies (SACCOS).⁵⁸

Apart from that, the authors attempted to answer two important questions which are ‘why’ and ‘how’ do we regulate banks and financial institutions?⁵⁹ In answering those questions, the authors provided for the reasons or rationale behind banking regulation by arguing that financial regulation have four main objectives which are protection of the economy against systematic risk, protection of individual depositors, protection of customers⁶⁰ against business misconduct⁶¹ and protection of the society against financial crimes.⁶² Additionally, the authors considered consumer protection as one of the rationale for banking regulation on the basis of market imperfections and failures due to information asymmetry.⁶³ Thus, in their view consumers in financial services or products are less informed than their suppliers and in most cases they would rely on

⁵⁵Binamungu, C.S. and Ngwilimi, G.S. (2006). Regulation of Banking Business in Tanzania, Mzumbe Book Project, Mzumbe, Morogoro Tanzania.,p.1.

⁵⁶*Op.cit*, p.58.

⁵⁷*Ibid*.

⁵⁸Binamungu, C.S *Op.cit*, p. 59.

⁵⁹Binamungu C.S, *Op.cit*, p.2.

⁶⁰In this study termed as consumers.

⁶¹Emphasis is added.

⁶²Binamungu C.S, *Op.cit*, p. 22.

⁶³*Op.cit*, p.26.

suppliers' information to accept the products giving opportunity to suppliers to exploit the market at the expense of consumers.⁶⁴

They went further highlighting on the regulatory and supervisory framework for banking and financial institutions in Tanzania by identifying the regulatory authority and explaining about the licensing procedure for banking and financial institutions in the country.

This work was useful as it provided him with necessary insights into the rationale for financial regulation and how financial institutions should be regulated for consumer protection purposes.

Pierce M⁶⁵ in his Article entitled 'Regulation of Microfinance in United States: following Peruvian Model,' argues that regulation of MFIs plays a vital role in the protection of consumers, MFI investors and help the microfinance sector to grow.⁶⁶ Citing an Indian experience to amplify the need for MFIs regulation, the author is of the view that if the sector is left unregulated, consumers of microfinance services are likely to face harassment during collection and recovery measures and other sort of humiliation to consumers by money lenders.

The author further argues that these incidences and other malpractices are the main considerations for the need to have a microfinance regulator by considering a Peruvian model as the best model for regulation of the United States of America (USA) microfinance.⁶⁷

Thus, this work provides some insights into the best practices affording protection to consumers of microfinance services. With the aid of this work the researcher was able to learn how Peruvian model has been designed and the mechanisms they employed to enhance protection to consumers in microfinance services.

⁶⁴*Op.cit.* p. 27.

⁶⁵Pierce, M. (2013). 'Regulation of Microfinance in the United States: Following Peruvian Model', North Carolina Banking Institute, Vol.17 (1), p. 211.

⁶⁶*Ibid.*

⁶⁷*Op.cit.*, p.213.

Haiyambo E⁶⁸ in the thesis entitled ‘the impact assessment of regulation of microfinance institutions in Namibia. She argues as to whether microfinance institutions should be regulated and how they should be regulated. By using the case study of Namibia, the author came to the conclusion that regulation is necessary to enhance development of microfinance sector. The author further argues that regulation is important as it provides protection on financial system and safety to depositors.⁶⁹

On the other hand the author argues that regulation also enhances consumer protection by setting interest rates limits, requiring transparency and disclosure and preventing fraudulent practices.⁷⁰

The author also discussed about two main approaches of regulation that is prudential regulation and non-prudential regulation. The discussion of these two approaches aimed at differentiating the two approaches and recommending the best approach for regulation of microfinance institutions in Namibia.⁷¹ Her findings and recommendations helped in analysing research findings and reaching a well-reasoned conclusion. The researcher also found Haiyambo’s work as relevant and useful as it provides a rigorous discussion on why microfinance institutions should be and how they should be regulated and by whom.

Muganga D .L⁷² in his Thesis entitled ‘the Role of Regulation and Supervision of Microfinance Institutions: Evidence from South Africa and its Implications for the Development of Non-Deposit Taking Microfinance Regulation in Kenya’, is of the view that regulation of microfinance institutions helps to define the legal status of institutions,

⁶⁸E.Haiyambo. (2016). An Impact Assessment of the regulation of microfinance institutions in Namibia, PhD Thesis, Stellenbosch University, p.178. Retrieved on 11th September, 2018 from the World Wide Web: [file:///C:/Users/Hp/Downloads/haiyambo_impact_2016%20\(5\).pdf](file:///C:/Users/Hp/Downloads/haiyambo_impact_2016%20(5).pdf) .

⁶⁹*Op.cit*, p.180.

⁷⁰*Ibid*.

⁷¹*Op.cit*, see pp.188-197.

⁷²D.L Muganga. (2010). The Role of Regulation and Supervision of Microfinance Institutions: Evidence from South Africa and its Implications for the development of Non-deposit Taking Microfinance Regulation in Kenya. A Master DegreeThesis, State University of Bergamo-Italy. Retrieved on 3rd September , 2018 from the World Wide Web: www.universitymeetsmicrofinance.eu/uploads/2/5/8/2/25821214/thesis_muganga.pdf.

pointing out allowable and prohibited activities as well as the scope of offering microfinance activities.⁷³ He further argues that regulation of microfinance institutions plays a vital role in enhancing consumer protection in microfinance services.⁷⁴

The author also notes that financial services offered by microfinance institutions can help poor people to transform their lives but if not designed and implemented properly, they can in some cases do more harm than good.⁷⁵ Therefore, the author is of the opinion that regulation of microfinance institutions can help to avoid over-indebtedness, bring transparent pricing, set appropriate debt collections measures, set mechanisms for redress of grievances and provide mechanism for protection of client's data.⁷⁶

However, the author does not provide for how the law should be designed to deal with the identified risks. This prompted the researcher to investigate on what should be included in the existing legal framework so as to improve and enhance consumer protection in microfinance services in Mainland Tanzania.

Makuyana T⁷⁷ in his Article entitled 'Microfinance Regulation and Supervision in Zimbabwe: A Critical Overview' argues that regulation of microfinance institutions becomes necessary considering the unequal bargaining power that exists between consumers and providers of microcredit services.⁷⁸ According to the author, the regulation of microfinance institutions is necessary because their failures and their market misconducts will not only cause harm to the owners but to the consumers of their services as well.⁷⁹ For purposes of consumer protection, he argues that the law should

⁷³D.L Muganga. (2010). The Role of Regulation and Supervision of Microfinance Institutions: Evidence from South Africa and its Implications for the development of Non-deposit Taking Microfinance Regulation in Kenya. A Master Degree Thesis, State University of Bergamo-Italy. Retrieved on 3rd September, 2018 from the World Wide Web: www.universitymeetsmicrofinance.eu/uploads/2/5/8/2/25821214/thesis_muganga.pdf.

⁷⁴*Ibid.*

⁷⁵*Ibid.*

⁷⁶*Op.cit.*, p. 23.

⁷⁷(2016), Microfinance Regulation and Supervision in Zimbabwe: A Critical Overview, *Mediterranean Journal of Social Sciences*, MCSER Publishing Vol. 7, No. 1, p. 376.

⁷⁸*Ibid.*

⁷⁹*Ibid.*

seek to regulate microfinance institutions so as to minimise chances of those institutions in jeopardising the rights of their consumers.

He further submits that the law should be couched to enhance consumer protection by providing for transparency and disclosure of lending terms and conditions, provisions which will help to avoid over-indebtedness to consumers⁸⁰ but also to provide other relevant provisions.

The author further argues that the supervisory role of microfinance institutions should be conferred upon another independent authority devoted for that purpose instead of the central bank.⁸¹ His argument is based on the truth that central banks have numerous tasks in their mandate as bankers to governments, other commercial banks, and deposit-taking financial institutions.⁸²

Thus, Makuyana's work is relevant as it provides certain guidance on the appropriate measures which Tanzania can learn to enhance financial consumer protection in microfinance services. From that work, the researcher borrowed a leaf on how Zimbabwe and other jurisdictions laws have managed to provide effective protection to consumers of microfinance services.

Cranston R⁸³ in his book entitled "Principles of Banking Law" argues that consumer protection is one of the main reasons for banking regulations although; the issue of specific consumer protection for bank customers has been a rarity.⁸⁴ He further points out with examples from different jurisdictions, the reasons as to why banking regulation was necessary to accord protection to consumers of financial services.⁸⁵ Usury⁸⁶ was one of the reasons as to why money lending need specific government regulation which

⁸⁰ *Op.cit*, p.379.

⁸¹ *Op.Cit*, p.383.

⁸² *Ibid*.

⁸³ (2002), *Principles of Banking Law*, 2nd Ed, Oxford University Press, New York, p. 65.

⁸⁴ *Op.Cit*, p. 76.

⁸⁵ *Op.Cit*, p.77.

⁸⁶ Refers to exorbitant interest rates charged on loans or credits.

could put certain interests rates under control. Furthermore, the author submits that in western countries, it reached a stage where usury was declared unlawful.⁸⁷

Other literature shows that such kind of practices is happening in Tanzania especially in microfinance institutions. Thus, although Cranston did not directly deal with the importance of regulation of microfinance institutions on consumer protection, the researcher found his work as useful as it lays down the foundation as to why financial consumer protection is necessary for this era.

Roy T⁸⁸ in his paper entitled 'Regulation and Supervision of Microfinance Institutions: Principles and Best Practice, A Paper presented at the South Asian Association for Regional Cooperation (SAARC) Finance Seminar on Regulation and Supervision of Microfinance Institutions in SAARC Region' amplified the concerns which call for regulation of microfinance institutions at the best interests of consumers of microfinance services. He identifies usurious interest rates, coercive recovery practice and other lending malpractices⁸⁹ as part of the burning public concerns regarding the microfinance institutions. He further submits that non-regulation of microfinance institutions is rather benefiting the private shareholders, including foreign investors at the expense of poor borrowers.⁹⁰

The author went further sharing some experience on the regulation of microfinance institutions which reveals the nature and mode of microfinance regulations in other jurisdictions.⁹¹ It has been stated that in most jurisdictions, microfinance institutions are subjected to non-prudential regulation where the process of registration and licensing of microfinance institutions is not done by the central bank.⁹² Although, he notes that there

⁸⁷ *Ibid.*

⁸⁸ (2013) Regulation and Supervision of Microfinance Institutions: Principles and Best Practice, a Paper Presented at SAARCFINANCE Seminar on Regulation and Supervision of Microfinance Institutions in SAARC Region on 20-22 March, 2013, Kathmandu Nepal. This Paper was retrieved 16th September, 2018 from the World Wide Web: https://nrb.org.np/saf/seminar/mfonsaarregion/Resource-Paper_Dr-Roy.pdf.

⁸⁹ *Ibid.*, p.2.

⁹⁰ *Ibid.*

⁹¹ Roy T, p. 9.

⁹² *Ibid.*

are some cases where central banks are involved in registration or licensing of certain categories of microfinance institutions. This experience seems to reflect the real situation in Tanzania jurisdiction where some of the microfinance institutions are licenced by the BoT and some are licensed by other delegated Government authorities.

The experience learned from this work helped the researcher in building up his study as to why microfinance regulation is necessary for the best interest of consumers of microfinance services and what kind of regulation is appropriate for microfinance institutions.

Amin N and Ilias I⁹³ in their Article entitled 'A study on the financial consumer protection in Malaysia with Specific Reference to the Financial Services Act' argue that the most common elements of financial consumer protection frameworks include disclosure and transparency, financial education, fair treatment, and dispute settlement mechanisms. But in some jurisdictions, financial consumer protection includes rules preventing over-indebtedness by placing minimum household earnings to qualify for an unsecured loan. The authors examined the financial consumer protection under the Malaysian Financial Services Act⁹⁴ which provides for fair contract terms, prohibited business conduct, transparency and disclosure, redress mechanisms and responsible lending provisions.

This work is useful as it gives the most recent experience on how other jurisdictions have addressed financial consumer protection in microfinance services. Thus, this work provided guidance in providing appropriate measures to address the identified legal weaknesses on consumer protection of microfinance services in Mainland Tanzania.

⁹³Amin, N. & Ilias, I. (2013). A study on the financial consumer protection in Malaysia with Specific Reference to the Financial Services Act. *Malaysian Journal of Consumer and Family Economics*. Retrieved on 12th September, 2018 from the World Wide Web: <http://www.majcafe.com/wp-content/uploads/2017/04/1.-consumer-protection.pdf>.

⁹⁴(2013).

Ardic *et al*⁹⁵ in their paper entitled ‘Consumer Protection Laws and Regulations in Deposit and Loan Services: A Cross-Country Analysis with a New Dataset’ presented their findings of a survey on consumer protection Legislations which was conducted in 142 countries including Tanzania.⁹⁶ The paper revealed that although consumer protection laws are in place in the majority of countries surveyed, it has been noted that the majority of those consumer protection laws do not respond to the issues specific to the protection of the consumer of financial services.⁹⁷

The findings of the survey found a number of challenges obstructing the effective implementation of the existing consumer protection laws. These challenges include ineffective enforcement mechanism which is caused by limited enforcement powers on the part of the regulators and limited monitoring capacity which is caused by the shortage of officials who could discharge the monitoring task.⁹⁸

It is also argued that unregulated financial institutions are rarely covered by existing financial consumer protection legislation. Despite its relevance and usefulness in this study, the paper does not clearly state the effects of lack of legal protection to consumers of financial services especially those offered by microfinance institutions. Thus, the researcher was sparked to investigate the extent to which consumers of microfinance services are protected under the existing legal framework.

Jaeger *et al.*⁹⁹ in report entitled ‘TANZANIA: Diagnostic Review of Consumer Protection and Financial Literacy: Key Findings and Recommendations’ argue that the existing legal and regulatory framework in Tanzania provide less protection to consumers of financial services in microfinance institutions compared to those regulated

⁹⁵ (2011). Consumer Protection Laws and Regulations in Deposit and Loan Services: A Cross-Country Analysis with a New Dataset, Policy Research Working Paper (5536).

⁹⁶ *ibid*, See Annex I, p.42 which indicate that Tanzania is one of the countries surveyed on consumer protection legislation

⁹⁷*Ibid*, p. 16.

⁹⁸*Ibid*.

⁹⁹Jaeger J. *et al* (2013). TANZANIA: Diagnostic Review of Consumer Protection and Financial Literacy: Key Findings and Recommendations, Vol. 1, p. 16.

by the BoT. They also argued that the current legal framework¹⁰⁰ does not provide clear provisions dealing with the protection of consumers of financial services.¹⁰¹

Furthermore, the authors are of the view argue that the existing legal framework contains a number of flaws as it does not provide for requirements of transparency, clear and comparable disclosure of key terms and conditions, applicable interests rates, fees and charges, debt collection mechanisms and handling of consumer complaints.¹⁰²

The authors further recommend for the inclusion of financial consumer protection provisions in the Banking Act. However, the report did not state categorically as to what aspects should be included in the current legal framework to enhance financial consumer protection. Thus, this study sought to go an extra mile by investigating on how the law should be designed to enhance financial consumer protection in microfinance services in the country. This study also proposed the most effective financial consumer protection mechanism to enhance financial consumer protection in the sub-sector.

Flaming M, *et al.*¹⁰³ in their report entitled 'Consumer Protection Diagnostic Study in Kenya' argues that the absence of regulation and supervision agency for microfinance institutions in Kenya reduces the chances for enforcing consumer protection related to transparency, fair practice, and recourse.¹⁰⁴

The study further found that microcredits consumers suffer frustrations with hidden fees and understanding the terms and conditions of their credit agreements.¹⁰⁵ To enhance consumer protection against those practices, the study recommended to the Kenyan Ministry of Finance to make regulations under section 3(2)(b) of the Kenyan Microfinance Act¹⁰⁶ that could set standards for transparency and disclosure, fair

¹⁰⁰ Banking Act and its Regulations the Banking and Financial Institutions(Microfinance Activities) Regulations, 2014, GN No. 298 of 2014.

¹⁰¹ *Op.cit*, p.16.

¹⁰² *Ibid.*

¹⁰³ (2011). Consumer Protection Diagnostic Study in Kenya, p.49.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ No.19 of 2006.

practices, plain language contracts and establishment of formal and informal dispute settlement mechanisms.

It is further argued that those standards could help to provide valuable consumer protection, especially to the poor and low-income households and micro scale enterprises.¹⁰⁷ The findings and recommendations of the study were useful and relevant to this study as they gave the researcher some basic insights into what Tanzania can learn to enhance financial consumer protection in microfinance services in Tanzania.

1.8 Research Methodology

This part provided for the research design and methods which were used in the study as indicated hereunder. This part is intended to answer questions like, what was the type of data required, what were the sources of data, what methods were employed to obtain the required data? Where the study was conducted, what type of data was required, what kind of data collection instruments appropriate, what were the methodological limitations and how the researcher managed to mitigate them

1.8.1 Research Design

Research as a scientific study has to be properly designed and planned. A well-defined research design enabled the researcher to conduct his study smoothly from the beginning to the end of the study with a view of saving time and finances. Not only that a well-defined research design helped the researcher to come up with the useful findings that enabled him to make suitable recommendations to address the identified problem.

Taking into account the nature of the study, the researcher employed analytical research which enabled him to identify the legal weaknesses in the existing legal and regulatory framework for consumer protection in microfinance services in Mainland Tanzania.

¹⁰⁷*Ibid.*

1.8.2 Scope of the Study

This study focused on examining the extent to which consumers of microfinance services are protected under the existing consumer protection legal framework with a view of suggesting the best practice that will help to enhance consumer protection by addressing the identified weaknesses in the existing legal framework.

1.8.3 Area of the Study

The researcher conducted his study in Dar es Salaam, Morogoro and Dodoma. The choice of these areas was influenced by the easy accessibility to well-equipped libraries such as the University of Dar es Salaam Library, the National Assembly Library, Dodoma Regional Library and the Mzumbe University Library which were used to access relevant materials for documentary review. On the other hand, Dar es Salaam and Dodoma were also chosen because most of the targeted respondents from the respective government institutions such as the Ministry of Finance and Planning, BoT, Business Registration and Licensing Agency (BRELA) and consumers of microfinance services were to be found.

1.8.4 Population and Sampling Design

Initially, the researcher intended to obtain the required data from some officials of the Ministry of Finance and Planning (MoFP), BoT, BRELA, microfinance institutions, umbrella organisations and consumers of microfinance services. The respondents were selected through both random and systematic sampling. Systematic sampling was employed in obtaining data from the respective government officials and officials from selected microcredit institutions; while random sampling was employed to collect data from consumers of microfinance services. However, the researcher could not manage to reach a satisfactory number of respondents due to a number of reasons the main one being tight work schedules which caused non-response to the scheduled interview sessions and to the questionnaires.

1.8.5 Methods of Data Collection

The study mainly employed doctrinal research and partly a field research.¹⁰⁸ With doctrinal research the research employed documentary review method by critically reviewing relevant instruments, both local and foreign statutes as primary sources of information.

The researcher also reviewed relevant books, journal articles, conference papers, research papers and various published and unpublished materials pertinent to the study as secondary sources of information. Apart from that internet was also used to access online information on the subject matter. This method helped the researcher to extract information which was relevant to the study.

Materials for review were obtained from Mzumbe University Library in Morogoro, Bunge Library in Dodoma and the University of Dar es salaam Library. The researcher also used Dodoma Regional Library to search materials for documentary review.

Questionnaire survey method was also employed but only few two respondents one from the Ministry of finance and the other from the Business Registration and Licensing Agency were able to complete and return the questionnaire within the required time. While in-depth interviews which were scheduled with key officials from BoT, and MoFP, TAMFI and TFC failed as the respondents could not show up. Despite the fact that data from interviews were not obtained yet it did not affect the study as the researcher relied on the data obtained from a documentary review.¹⁰⁹

¹⁰⁸ Also known as non-doctrinal research.

¹⁰⁹ The required data were obtained from the NMP 2017, the study by the World Bank, Tanzania Diagnostic review of consumer protection and financial literacy, Vol.1. Key Findings and recommendations, Washington D.C: World Bank, a study by Brown, A. et al. (2015). Financial Inclusion and Microfinance in Tanzania, Inclusive Growth: Tanzania Country Report, University of Dar es Salaam, Tanzania Financial inclusion and Infrastructure Practice, Financial Inclusion and Consumer Protection Service Line, Africa Region, a book by Thomas D & Frizon, F. (2012) Resolving Dispute between Consumer and Financial Businesses, Fundamental for a Financial Ombudsman, Washington D.C and a Journal Article by H. Ahmed & I. Ibrahim. (2017). Financial Consumer Protection Regime in Malaysia: Assessment of the Legal and Regulatory Framework, *Journal of Consumer Policy*, Vol.41 (2).

1.8.6 Data Collection Instruments

Since the study employed both doctrinal and non-doctrinal research following instruments were used in collecting the required data:

- (a) Notebook and checklist for documentary review. A notebook was used to take down some relevant information extracted from the reviewed documents.
- (b) Interview guide and open ended questionnaires for field research. Interview guide and open ended questionnaires were intended to help the researcher in collecting data from the respondents.

1.8.7 Data Analysis and Interpretation

The researcher used qualitative method of data analysis. Analysis of secondary data was done through content analysis by carefully examining and analysing the content of relevant reviewed documents which were appropriate for identifying the legal weaknesses in the existing consumer protection legal framework in microfinance services. Analysis of primary data involved screening, summarisation, and categorisation of key findings. This process helped the researcher to determine as to whether the data collected matched with the research questions and objectives.

1.8.8 Limitations of the Study

In the course of conducting this study the researcher encountered some methodological limitations in the process of data collection. The limitations include tight schedules of the respondents and lack of commitment from some of the respondents. This happened due to the nature of work of some respondents who happened to have tight work schedules. Their tight schedules resulted into non-response to the questionnaire and non-appearance to the scheduled interview session(s). Despite these limitations, the researcher managed to collect the requisite data through documentary review as highlighted under paragraph 1.8.5 of this Chapter.

1.8.9 Dissertation Scheme

This Chapter has provided introductory information about the study, statement of the problem, objectives of the study, literature review and research methodology of the study. The dissertation has other four chapters as described hereunder:

Chapter Two provides for conceptual framework of the study. Under this chapter established financial consumer protection principles that are necessary in improving and enhancing consumer protection in microfinance services are discussed. This chapter also defines some key concepts used in the study in an operational manner.

Chapter Three analyses the existing legal framework for consumer protection in microfinance services in Mainland Tanzania. Under this chapter the researcher outlined all relevant legislations which provide for legal, regulatory and supervisory framework for consumer protection in microfinance services in Mainland Tanzania. The study also managed to identify strength and weaknesses of the legal framework which helped to come up with the recommendations for improvements.

This chapter set a basis for what was investigated and presented in the next chapter for analysis and discussion in relation to the research problem.

Chapter Four is designated for data presentation, analysis and discussions of research findings. Under this chapter the researcher shows the relationship between the research findings, research problem, research objectives and research questions. This chapter assess the extent to which Tanzania legal framework protects consumers in microfinance services by looking at the best practices from other jurisdictions. Thus, this chapter also enlightens on what should be learnt from the other jurisdictions so as to improve and enhance consumer protection in microfinance services in our country.

Chapter Five concludes the study and makes recommendations.

1.8.10 Conclusion

This Chapter introduced the study by providing for background information about the research problem, statement of the problem by showing the preliminary evidences relevant to the stated legal problem, research questions, research objectives and significance of the study. Furthermore, the chapter provided literature review showing what others have done and what has not been done; what was relevant in this study, research methodology, scope of the study and methodological limitations which the researcher encountered during the study and how he managed to overcome them.

The following chapter provides for the conceptual framework on consumer protection in microfinance services and the meaning assigned to various concepts used in relation to the study.

CHAPTER TWO

CONCEPTUAL FRAMEWORK OF THE STUDY

2.1 Introduction

The study of consumer protection in microfinance services in Mainland Tanzania carries with it one major theme, namely financial consumer protection. This Chapter is necessary for building a better understanding of the concepts of the study. Thus, it is important to have a discussion on consumer protection principles from different perspectives and good practices from other jurisdictions. Apart from that it is also necessary to have a discussion on some key concepts used in the study by assigning them meanings in an operational manner. In a nutshell, this chapter is crucial as it gives a direction to the answers of the questions of this study as explained hereunder.

2.2 Financial Consumer Protection

Consumer protection frameworks in the financial services are growing as products become more complex and a number of people rely on financial services.¹¹⁰ Thus, an effective financial consumer protection framework which includes three complementary aspects is necessary to enhance consumer protection. These aspects include laws and regulations governing relations between service providers and consumers that ensure fairness, transparency, and recourse rights.¹¹¹

The second aspect is an effective enforcement mechanism including dispute resolution mechanism and the third aspect requires the promotion of financial literacy and capability by helping consumers to acquire the necessary knowledge and skills to manage their finances.¹¹²

Thus, this study is built on consumer protection principles which aims at providing a set of rules and regulations that are necessary in enhancing consumer protection in

¹¹⁰ Ardic *et al*, p.2.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

microfinance services. These principles have been elucidated in various international instruments including the General Practices for Financial Consumer Protection.¹¹³ In this study, these principles are considered as variables which set the basis of consumer protection.

It is necessary to note that these principles form a basis of establishing as to whether financial consumer protection in microfinance services is effective or not. It is from these established consumer protection principles the researcher was able to assess the existing legal framework and identify its shortcomings.

2.2.1 Legal, Regulatory and Supervisory framework

In guaranteeing protection to consumers of microfinance services, financial consumer protection must be made an integral part of the legal, regulatory and supervisory framework of the respective jurisdiction.¹¹⁴ This principle entails that specific laws and regulations related to consumer protection that applies to financial institutions supplying different services to consumers, should be put in place to enhance financial consumer protection.¹¹⁵ It is also a requirement that the legal framework should be able to identify legal institutions that are responsible for consumer protection.¹¹⁶ The identified institutions should be coordinated and be able to cooperate for purposes of implementing, overseeing and enforcing rules and regulations on consumer protection.¹¹⁷

Accordingly, OECD¹¹⁸ insists on the need to have an independent oversight body to ensure that the regulatory mandates are fulfilled. This entails that the law should set up institutions that could effectively enforce the protection of consumers by ensuring that

113Chien, J. (2017). *Good Practices for Financial Consumer Protection*, 2nd Ed, International Bank for Reconstruction and Development/the World Bank Group, 1818 H Street NW, Washington DC, p. 27.

¹¹⁴*Ibid.*

¹¹⁵ H. Ahmed & I. Ibrahim. (2017). Financial Consumer Protection Regime in Malaysia: Assessment of the Legal and Regulatory Framework, *Journal of Consumer Policy*, Vol.41 (2) p. 162. Retrieved on 23rd September, 2018 from the World Wide Web: <https://link.springer.com/article/10.1007/s10603-018-9369-0>

¹¹⁶ S.L Rutledge., *Good Practices for financial consumer protection*, 2012, p.10.

¹¹⁷*Ibid.*

¹¹⁸*Ibid*

laws and regulations are applied.¹¹⁹ It is also a requirement that the regulatory body must have a clear mandate with a separate reporting structure to maintain credibility and to avoid conflict of interests.¹²⁰

Another important aspect under this principle is that regulation of microfinance services ought to reflect and be proportionate to the characteristics, type, and variety of financial products and consumers. It is also necessary for the legal framework to provide for rights and responsibilities of consumers.¹²¹ Furthermore, this principle stresses that strong and effective legal and judicial or supervisory mechanisms should be established to protect consumers and sanction against financial frauds and abuses.¹²²

Thus, it is insisted that oversight bodies should be provided with clear and well-defined responsibilities and appropriate governance. It is also insisted that oversight bodies should be provided with operational independence and be accountable for their activities.¹²³

2.2.2 Equitable and fair treatment to consumers

This is another important principle in financial consumer protection. It is argued that the law ought to set a mechanism to ensure financial institutions are acting honestly and in a fair manner.¹²⁴ This principle requires that the legal regime should set a mechanism to make sure that all consumers are treated equitably, honestly and fairly at all stages of their relationship with financial service providers.¹²⁵

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ H.Ahmed & I.R. Ibrahim, *Op.cit.*

¹²⁵ S.L Rutledge, *Op.cit.*

It is also a requirement that a regulatory framework has to explicitly prohibit unfair and deceptive practices by microfinance service providers and there should be a mechanism to punish dishonest service providers.¹²⁶

Additionally, it is urged that other than ensuring financial consumers are treated fairly in the course of dealings, the law should provide a clear provision prohibiting fraudulent practices.¹²⁷ This is necessary because some dishonest service providers will tend to abuse loopholes in the regulatory regime and jeopardise consumers' economic interests.

2.2.3 Disclosure and Transparency

This is another important principle in consumer protection framework. Existence of information asymmetry between the consumers and financial service providers gives the latter the upper hand in dealings and results in the inequality of bargaining powers.¹²⁸ Thus, the law ought to be designed to compel financial service providers to adequately disclose all relevant information to enable consumers of their services to make rational decisions.¹²⁹ The legal regime should also provide a mechanism to make sure that service providers provide accurate, honest, understandable and correct information on their financial products or services.¹³⁰

Best practices call for a regulatory framework to require consumer agreements to contain key terms and conditions such as the regulatory status of the service provider,¹³¹ the rights and responsibilities of the consumer, the rights and responsibilities of the financial service provider, all interest rates, costs, fees and charges that arise or may arise from the agreement when they can be applied and how they are calculated.¹³²

Furthermore, consumer agreements are required to state how and when the terms and conditions may be altered unilaterally by the financial service provider and how and

¹²⁶ H.Ahmed & I.R. Ibrahim, *Op.cit.*

¹²⁷ *Ibid.*

¹²⁸ Binamungu C.S, *Op.cit.*, pp. 26-27.

¹²⁹ *Ibid.*

¹³⁰ S.L Rutledge, *loc. cit.*

¹³¹ Chien, J, *loc.cit.*

¹³² *Ibid.*

when the consumer will be notified about the changes.¹³³ It is also a requirement that a consumer agreement should contain the penalties and any other remedies that a financial service provider may seek to impose in the event of a perceived breach of the agreement by the consumer and how disputes can be resolved.¹³⁴

Additionally, the regulatory framework should require a financial service provider to provide a printed or electronic copy of the final agreement to the consumer at the time of signing.¹³⁵ Also, a financial service provider should be required to explain the key terms and conditions orally to the consumer on request or where necessary based on a customer's circumstances prior to the signing of the agreement.¹³⁶

In addition, a financial service provider should be required to provide specific disclosure in respect of product or service agreement according to the type and or service being contracted.¹³⁷

It is also argued that disclosure may be required at the time of advertising or promoting a service,¹³⁸ at the time of signing contract¹³⁹ and during the period of the contractual relationship.¹⁴⁰ It is further stressed that the type of information to be disclosed depends on the financial product.¹⁴¹ Thus, for credit services, the law has to provide a requirement for service providers to clearly disclose information regarding the interest rates, fees, computation of interest rates and other terms regarding the rights and obligation of consumers.¹⁴²

Additionally, it is argued that the legal framework has to provide a requirement to ensure that information provided to financial consumers is accurate, clear, timely and not

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ This is called pre-sale disclosure.

¹³⁹ During account opening start of the contractual relationship.

¹⁴⁰ Through regular statements when terms of service change.

¹⁴¹ Ardic *et al*, *Op.cit*, p.9.

¹⁴² *Ibid.*

misleading and contravention of such requirement should be punishable under the law by either heavy fines or imprisonment.¹⁴³ Similarly, this principle requires consumers of financial services not to supply false and misleading information to their service providers.¹⁴⁴

2.2.4 Consumer Data Protection and Privacy

Another important aspect of financial consumer protection is the protection of consumer data and privacy. The realisation of this principle can only be possible where there is an effective legal regime that provides for a mechanism requiring financial service providers to keep their consumer's data confidential except where the law provides otherwise. The law should also set a mechanism that defines the purpose of collecting, processing, holding, using and disclosing them to the third parties.¹⁴⁵

Not only that, the law should require microfinance institutions to ensure that they protect the confidentiality and security of personal data of their customers from unauthorised access.¹⁴⁶ Thus, it should be stated very clearly in the law that service providers should keep their customer's data confidential except under certain circumstances permissible by the law or where the customer has consented for the disclosure.¹⁴⁷

Additionally, financial service providers should be required by the law to establish and implement policies and procedures that seek to ensure confidentiality, security, and integrity of all customers' data or information.¹⁴⁸ Also, financial service providers should be made responsible for misuse of consumer data or for any breach in data security that result in loss or harm to the customer and should be required to put in place clear

¹⁴³H.Ahmed & I.R. Ibrahim, *Op.cit.*

¹⁴⁴*Op.cit.*, p.167.

¹⁴⁵ S.L. Rutledge, *Op.cit.*, p.7.

¹⁴⁶ S.L. Rutledge, *Op.cit.*, p. 64.

¹⁴⁷Chien J, *Op.cit.*, p. 46.

¹⁴⁸*Ibid.*

procedures to deal with security breaches, including mechanisms to reimburse or compensate consumers in the event of security breaches.¹⁴⁹

2.2.5 Complaints, Redress and Dispute Settlement Mechanism

This is one of the vital principles of consumer protection. It is urged that a regulatory framework should have a mechanism where consumer complaints and grievances on undesirable services can be channelled and addressed effectively.¹⁵⁰ It should be made clear that consumers have the option of going to ordinary courts but it is not a viable option for them as it is troublesome, costly and burdens are vastly disproportionate.¹⁵¹

Thus, a consumer is unlikely to initiate and go through the ordinary legal process when subjected to unfair treatment due to insufficient resources or understanding.¹⁵² It has been noted that in many cases, consumers have shown reluctance in seeking justice from ordinary courts due to its cumbersome procedures and the burden of costs involved in handling cases in ordinary courts.¹⁵³

Therefore, it is necessary that the law provides for alternative dispute resolution such as tribunals and financial ombudsman as they are considered to be efficient, affordable and less formal than ordinary courts.¹⁵⁴ Literature suggests that for effective dispute settlement mechanism, two avenues should be set for that purpose, the first avenue should be within the institution itself (internal handling of complaints) and the second should be an external independent body.¹⁵⁵

¹⁴⁹ *Ibid.*

¹⁵⁰ G.S. Beltram. (2007). *Microfinance Consumer Protection Guidebook*, the Services Group Inc. U.S.A, p.19.

¹⁵¹ H.Ahmed & I.R. Ibrahim, *Op.cit*, p.163.

¹⁵² Ardic *et al*, *Op.cit*, p.13.

¹⁵³ *Ibid.*

¹⁵⁴ Thomas D & Frizon F. (2012). *Resolving dispute between consumer and financial businesses, fundamental for a financial ombudsman*, Washington D.C., p. 11. This book was retrieved from the following source:

http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Financial_Ombudsmen_Vol1_Fundamentals.pdf on 24th November, 2018 at 19:50 p.m.

¹⁵⁵ H.Ahmed & I.R. Ibrahim, *loc.cit*.

The external dispute settlement mechanism is necessary to accord consumers who are unsatisfied with the decision resulting from the internal complaints handling a right to appeal within a reasonable timeframe.¹⁵⁶ The organ established for that purposes should be entrusted with powers to make binding decisions and should be independent in discharging its functions.¹⁵⁷

To achieve that purpose, the established financial ombudsman should be staffed by well-trained professionals, well structure to ensure adequate and efficient operations, adequately financed, free of charge to the consumer to allow easy accessibility by consumers.¹⁵⁸

Furthermore, it is stated that the law should require a financial institution to have clear procedures for handling consumer complaints and provide access to affordable and efficient public dispute resolution mechanisms that include, a financial ombudsman.¹⁵⁹ Thus, it can be concluded that for effective complaints, redress and dispute settlement mechanism jurisdictions should strive to make sure that their legal framework for financial consumer protection set two avenues for dispute settlement as suggested above.

2.2.6 Financial education and awareness

Considering the complexity of financial transactions, it has been established that regulatory frameworks should provide for a mechanism to promote the provision of financial education and awareness to consumers before engaging them in financial transactions. It is therefore argued that legal frameworks should set a mechanism requiring financial service providers to provide education and awareness to their consumers, especially on their rights and responsibilities so that they can be able to appropriately understand the risks and opportunities involved in the respective

¹⁵⁶Chien J, *Op.cit*, p. 51.

¹⁵⁷*Ibid.*

¹⁵⁸*Ibid.*

¹⁵⁹ Thomas D & Frizon, F, *Loc.cit.*

transaction.¹⁶⁰ This will help consumers to make informed choices and take effective action to improve their financial well-being.¹⁶¹

Thus, consumer protection principles can only be effective and realised if consumers are educated about the products and their rights. It is argued further that an educated consumer is not only less susceptible to risks or adverse effects of undesirable financial practices but is also better able to seek solutions and compensations when he faces mistreatment by a service provider.¹⁶² Therefore, it is necessary for the legal framework to impose a legal requirement for service providers to have financial education and awareness schemes for their customers.

From the discussion above, it can be concluded that consumer protection laws ought to provide clear consumer protection rules and adequate institutional arrangements to ensure the thorough, objective and fair implementation and enforcement of such rules as well as of sanctions that effectively deter violations of these rules.¹⁶³ Thus, it is argued further that there should be a specific law that creates effective consumer protection in microfinance services and there should be established an authority responsible for implementing, overseeing and enforcing consumer protection rules.¹⁶⁴

2.2.7 Guarantee Schemes and Insolvency

Another crucial principle for financial consumer protection is the existence of guarantee schemes and insolvency.¹⁶⁵ This principle seeks to provide protection to depositors in the event of insolvency of financial institutions. Thus, legal frameworks should ensure that the regulator is entrusted with the mandate to take necessary measures to protect

¹⁶⁰ S.L Rutledge, *Op.cit*, p.6.

¹⁶¹ *Ibid.*

¹⁶² G.S Beltran, *Op.cit*, p.14.

¹⁶³ S.L Rutledge, *Op.cit*, pp.55-56.

¹⁶⁴ *Ibid.*

¹⁶⁵ Chien J, *Op.cit*, at p.53.

depositors in the event deposit-taking financial service provider is unable to meet its obligations, including the return of deposits.¹⁶⁶

In case of deposit insurance the law should clearly provide the mandate and powers of the deposit insurer, the scope of deposit insurers who are insured (e.g. natural persons or legal persons), types of financial instruments to be insured, coverage level limits, the mandatory membership of all deposit-taking financial service providers, creation of an ex-ante financed fund for payout purposes and the mechanisms and the timeframe to ensure timely payout to insured depositors.¹⁶⁷

Furthermore, it is urged that legal frameworks should be designed in a manner that depositors are given higher priority than other unsecured creditors in the event of the liquidation process of a financial service provider.¹⁶⁸ Also, the law is required to provide a mechanism to ensure expeditious, cost-effective and equitable provisions to enable the maximum timely refund of deposits to depositors.¹⁶⁹

2.2.8 Consumer Obligations

Apart from those consumer protection principles, it is also stressed that an effective consumer protection legal framework should also include provisions on consumer obligations. These provisions are necessary to ensure that consumers do not contribute to the violation of their rights.

Thus, the legal framework should require consumers of financial services to fulfil their obligations contained in the loan agreement, provide accurate and up to date information, avoid over-indebtedness, take necessary steps to be informed about a product or service including making comparison before subscribing to financial product or service,¹⁷⁰ seek clarification where necessary, ensure that their personal information such as account numbers, personal identification numbers (PIN), access codes,

¹⁶⁶*Ibid.*

¹⁶⁷*Ibid.*

¹⁶⁸Chien J, *Op.cit*, p.55.

¹⁶⁹*Ibid.*

¹⁷⁰*Ibid*

Automated Teller Machine (ATM) cards are safely protected and not shared with third parties including the staff of a financial institution; and take reasonable steps to prevent fraud.¹⁷¹

2.3 Description of Key Concepts used in the Study

This section is dedicated to providing the operational meaning of some key concepts used in this study. In building a better understanding of this study, it is imperative to have a brief discussion or description of some key concepts used in the study. For instance, one may wish to know the meaning of the terms, consumer, microfinance, microfinance service, microfinance institutions, consumer protection, regulation, supervision and other terms or concepts that have been used in this study repeatedly.

2.3.1 A Consumer

Generally, Consumer protection laws are designed to protect and promote consumer interests, thus it is imperative to have a clear understanding of who is a consumer and what the law seeks to protect.¹⁷²

Accordingly, in this study, the term consumer refers to a customer or member of a microfinance service provider who acquires or intends to acquire the services or products of the microfinance service provider and acting primarily for personal, family or household purposes.¹⁷³ In its broader perspective, the term consumer encompasses recipients of financial products, services or credits offered by microfinance service providers.

2.3.2 Consumer Protection

Simply refers to measures or safeguards provided by the law to protect and promote the rights and interests of a consumer by enabling them to make informed choices and

¹⁷¹*Ibid.*

¹⁷² R. Simpson *et al.* (2016). *Manual on Consumer Protection*, United Nations Publication, 2016, Nairobi Kenya, p. 6.

¹⁷³*Ibid.*

protect them from unscrupulous acts that deny them the true value and optimum benefits of microfinance services.¹⁷⁴

In other words, consumer protection entails the rules and regulations made purposely to protect consumers when they are dealing with financial service providers by inspiring confidence, transparency, disclosure, fair treatment and effective recourse to the general public.¹⁷⁵ The term encompasses the regulatory authority established and the enforcement mechanism designed for that purpose.

2.3.3 Microfinance

Pierce M.A¹⁷⁶ in his Article entitled ‘Regulation of Microfinance in the United States: Following a Peruvian Model’ defines microfinance as an emerging market in the financial services industry, seeking to provide small loans to low-income clients or small entrepreneurs who are traditionally overlooked by the mainstream credit markets.¹⁷⁷

On the other hand, the Basel Committee on Banking Supervision defines microfinance as the provision of financial services in limited amounts to low-income persons and small, informal businesses.¹⁷⁸ The term encompasses a variety of services including microcredit, micro savings, and micro-insurance.¹⁷⁹

In its broader sense, the term microfinance means provision of financial services including micro saving, microcredit, micro-insurance, micro leasing, micro-housing, micro pensions, money transfers, financial education, business development and any other services as approved by respective regulatory authority to the low-income population who are systematically excluded from the traditional financial system.¹⁸⁰ But in this study, the meaning of microfinance is narrowed to mean the provision of financial

¹⁷⁴ G.S Beltran, *Op.cit* p.1.

¹⁷⁵ *Op.cit.*

¹⁷⁶ (2013). North Carolina Banking Institute, Vol. 17(1), p.202.

¹⁷⁷ *Ibid.*

¹⁷⁸ (2010). Basel Committee on Banking Supervision, Microfinance Activities and the Core Principles for Effective Banking Supervision, Bank For International Settlements 1.

¹⁷⁹ *Ibid.*

¹⁸⁰ NMP 2017, p. xii.

services including a micro saving and microcredit to the low-income population who are systematically excluded from the traditional financial system.

2.3.4 Microcredit

In this study whenever the term micro-credit appears should refer to small loans provided to low-income earners or financially underserved customers by a microfinance service provider.¹⁸¹

2.3.5 Microfinance service or business

This refers to financial services offered by a microfinance service provider in terms of micro savings, microcredits and other related services offered by a microfinance service provider. This definition encompasses deposit taking and non-deposit taking microfinance business and includes the activities of receiving money as deposits, accepting savings and providing microloans, micro-savings, micro-insurance, micro-leasing, micro-pension, and micro-housing financing, transfer, and payment services including digital microfinance services, commodity loans and provision of financial education. In this study, the terms 'microfinance service' and microfinance business appears have been used interchangeably but they mean and refer to the same intended meaning.

2.3.6 Microfinance institutions

These are institutions established under specific law and specialised in the delivery of microfinance service or product to microfinance customers.¹⁸² It includes credit companies established under the Companies Act,¹⁸³ Savings and Cooperatives Societies (SACCOS) established under the Cooperative Societies Act¹⁸⁴ and other associations formed or incorporated under their respective laws and licensed to engage in the provision of microfinance services.

¹⁸¹ *Op.cit*, p. ix.

¹⁸² In this study termed as consumers.

¹⁸³ CAP 212.

¹⁸⁴ CAP 211.

2.3.7 Microfinance service providers

Unless provided otherwise, in this study the term microfinance service providers refer to a natural person or group of natural persons, or a corporate body established under the respective law and licenced to provide microfinance services or products. It encompasses microcredits companies, microfinance banks, individual money lenders, SACCOS and community microfinance groups.

2.3.8 Financial inclusion

In the context of this study, the term financial inclusion should be understood as the process of ensuring access and regular use of appropriate financial products and services needed by low-income earners through payment system infrastructures at an affordable cost in a fair and transparent manner by mainstream institutional players.¹⁸⁵

2.3.9 Regulation and Supervision

In this study, the term regulation denotes the establishment of binding rules or policies governing the conduct of microfinance service providers and implemented by a specific regulatory authority.¹⁸⁶ It relates to a set of binding rules established to govern microfinance services; while supervision relates to the process of conducting external oversight so as to monitor and enforce compliance of the established standard of practices.¹⁸⁷ Thus, regulation in this study refers to set of established binding rules or principles that seek to ensure consumer protection while supervision refers to monitoring and enforcement mechanism of those rules.

¹⁸⁵ NMP 2017, p. vii.

¹⁸⁶ G.S Beltran, *Op.cit*, p.xii.

¹⁸⁷ R. Rosenberg. (2003). Regulation and Supervision of Microfinance, Donor Brief Paper, No. 12 available at www.microfinancegateway.org.

2.4 Conclusion

This chapter discussed important aspects that are necessary to enhance financial consumer protection in microfinance services. It has been noted that for effective financial consumer protection it requires having in place a robust legal framework including laws, regulations and independent institutions that are assigned the role of regulation and supervision of microfinance services. An effective consumer protection legal framework requires the establishment of a separate and independent regulatory body that is charged specifically with regulation of microfinance services and incorporation and enforcement mechanisms of financial consumer principles. In other words, this chapter has attempted to provide on what an effective financial consumer protection legal framework should be.

The parameters set in this chapter helped the researcher to assess the extent to which the current financial consumer legal framework in microfinance services provides protection to consumers of microfinance services and come up with necessary recommendations for improvements. The following chapter discussed the legal and regulatory framework for consumer protection in microfinance services in Mainland Tanzania.

CHAPTER THREE

LEGAL AND REGULATORY FRAMEWORK FOR CONSUMER PROTECTION IN MICROFINANCE SERVICES IN MAINLAND TANZANIA

3.1 Introduction

This Chapter examines the existing legal and regulatory framework governing the operations of microfinance services in Mainland Tanzania in relation to consumer protection in microfinance services. The researcher made a critical analysis of the relevant laws, both principal and subsidiary legislation and the policy in relation to the research problem. In the course of analysis, the researcher examined the provisions of the relevant legislation with a view to ascertaining how the legal and regulatory frameworks are designed to provide effective protection to consumers of microfinance services.

The Chapter is organised into the following parts: the introductory part, legal framework prior to the enactment of the Microfinance Act,¹⁸⁸ the present legal framework in relation to regulation and supervision of microfinance services in Mainland Tanzania.

3.2 Legal Framework for consumer protection in microfinance services prior to the Enactment of the Microfinance Act.

Prior to the enactment of the Microfinance Act, the legal framework for consumer protection in microfinance services in Tanzania was a multifaceted, involving different legislations and agencies with limited enforcement powers.¹⁸⁹ The complexity was due to the existence of microfinance institutions in different shapes and forms such as deposit-taking microfinance institutions, non-deposit taking microfinance institutions (credit only), Savings and Credit Cooperatives Societies (SACCOS) and community microfinance groups all of which were under different regulatory authorities depending

¹⁸⁸ *Ibid.*

¹⁸⁹ Brown, A. *et al.* (2015). Financial Inclusion and Microfinance in Tanzania, Inclusive Growth: Tanzania Country Report, University of Dar es Salaam, Tanzania., p. 2.

on the purpose and the nature of activities undertaken by the respective microfinance institution.¹⁹⁰

3.2.1 Deposit-taking Microfinance Institutions

Prior to the enactment of the Microfinance Act the entry, conduct and operations of deposit microfinance business in Tanzania was governed by different legislations including the Companies Act,¹⁹¹ the Banking and Financial Institutions Act,¹⁹² the Banking and Financial Institutions (Microcredit Activities) Regulations¹⁹³ and the Banking and Financial Institutions (Disclosure) Regulations.¹⁹⁴

(a) The Companies Act

The Companies Act was enacted in 2002 to provide for comprehensive provisions on matters relating to regulation, control, management and administration of companies. The Act also provides for the mode of forming companies, membership to a company, protection of the interests of members of the company and third parties dealing with the company and other related matters including powers, liabilities and decision-making mechanism of the company.

In this study, the Companies Act became relevant due to the requirement that the provision of deposit-taking microfinance services is restricted to companies registered under the Companies Act.¹⁹⁵ Thus, the person(s) seeking to operate as a bank or a deposit-taking financial institution must form a company under the Companies Act.¹⁹⁶ This entails that it is a mandatory requirement for individuals seeking to establish deposit-taking microfinance business in Tanzania to firstly form a limited company and proceed to apply for a licence to the Bank of Tanzania (BoT) in accordance with the

¹⁹⁰ *Ibid.*

¹⁹¹ CAP. 212.

¹⁹² CAP. 342.

¹⁹³ GN. 298 of 2014.

¹⁹⁴ GN No. 289 of 2014.

¹⁹⁵ *Op.cit.*

¹⁹⁶ See sections 4 and 8 of the Banking Act.

provisions of the Banking Act,¹⁹⁷ the Banking and Financial Institutions (Microfinance Activities) Regulations¹⁹⁸ and the Banking and Financial Institutions (Disclosure) Regulations.¹⁹⁹

(b) The Bank of Tanzania Act

This Act establishes the Bank of Tanzania (BoT).²⁰⁰ It also provides for the functions of the BoT which are to formulate, implement and be responsible for monetary policy, exchange rate policy, to issue currency, to regulate and supervise banks and financial institutions including mortgage financing, to develop financing, leasing financing and revocation of licences and to deal, hold and manage gold and foreign exchange reserves of Tanzania.²⁰¹ From this provision, it can be deduced that BoT is an important institution charged with the general mandate of regulating and supervising banks and financial institutions in Tanzania under the BoT Act and the Banking Act. Moreover, the BoT Act has an overriding effect in the event of a conflict arising from its provisions and other Act relating to the exercise of power and performance of functions of the BoT.²⁰²

Additionally, the BoT is charged with the mandate to create a credit reference system designed to collect and provide information on the payment record of the clients from all banks and financial institutions, savings and credit schemes and other entities engaged in the provision of credit services in the country.²⁰³ This is one of the important aspects in relation to consumer protection because it helps in controlling over-indebtedness to consumers of microfinance services but also in avoiding bad debts on the part of a credit institution.

¹⁹⁷ Section 8 of the BoT Act.

¹⁹⁸ See regulations 21 and 28 of GN No. 298 of 2014.

¹⁹⁹ GN No. 289 of 2014.

²⁰⁰ See section 4 of the BoT Act.

²⁰¹ See section 5(1) of the BoT Act.

²⁰² See section 68 of the BoT Act.

²⁰³ See Section 48 of the BoT Act.

Another important aspect in relation to consumer protection is that the BoT is entrusted with powers to conduct examinations in respect of any oral and documented information, including information in computers, books, minutes, accounts, cash securities, documents, vouchers and anything in the possession or custody of a bank or a financial institution.²⁰⁴ This aspect is very important as it helps to ensure that banks and financial institutions are in compliance with the required business standards including the adherence to consumer protection principles as provided by the law.

(c) The Banking and Financial Institutions Act

The primary objectives of the Banking Act are to provide supervision and regulation of banks and financial institutions. Also, the Banking Act seeks to maintain the stability, safety, and soundness of the financial system and to reduce the risk of loss to depositors.²⁰⁵

To achieve those objectives, the Act provides powers to the BoT relating to the licensing, regulation and supervision of all banks and financial institutions including the deposit-taking microfinance institutions.²⁰⁶ As pointed out earlier, a company desiring to conduct deposit-taking microfinance services in Tanzania must apply and obtain a licence in accordance with the provisions of the Banking Act. Thus, the business conduct of financial institutions dealing with deposit-taking is subject to regulation by the BoT.

Banking Act provides protection to consumers of deposit-taking financial institutions. The following are some provisions which provide protection to consumers of financial services in deposit-taking financial institutions in Tanzania.

The Banking Act imposes a duty to every bank or a financial institution including deposit-taking microfinance not to divulge any information relating to its customers except in circumstances in which the law or practices and usages customary among

²⁰⁴ See section 47 of the BoT Act.

²⁰⁵ See section 5 of the Banking Act.

²⁰⁶ See section 4 of the Banking Act

bankers renders it necessary to divulge such information.²⁰⁷ Accordingly, the law requires deposit-taking microfinance institutions to handle with care and keep the secrecy of their customer's information except where the customer permits to divulge that information or where the law permits to do so.²⁰⁸

It is further provided that any person who divulges customer's information under the circumstances not permissible by the law shall be deemed to have committed an offence and shall on conviction be liable to fine not exceeding twenty million shillings or to imprisonment for a term not exceeding three years or to both.²⁰⁹ This is an important provision in ensuring compliance with the requirement of keeping the secrecy of customer's information or data.

The Banking Act²¹⁰ insists on fair lending and collection practices. Thus, financial institutions are prohibited to introduce any unilateral modifications relating to interest rates or other loan conditions including loan recovery procedures. It is further provided that any act purportedly done to that effect shall be rendered null and void.²¹¹ Moreover, the law insists that any indexed interest rate should be designed in line with a reference rate published by the Bank.²¹²

Also, the Bank²¹³ is entrusted with powers to conduct examinations of banks and financial institutions.²¹⁴ Through this power, the Bank can access any oral or documented information, including information in the computers, books, minutes, accounts, securities, documents, vouchers or anything in the possession or custody or under the control of a bank or a financial institution or its affiliate which relate to the business of a bank or a financial institution.²¹⁵ This provision is necessary for consumer

²⁰⁷ See section 48 of the Banking Act.

²⁰⁸ *Ibid.*

²⁰⁹ See section 48(6) of the Banking Act.

²¹⁰ See section 49(3) of the Banking Act.

²¹¹ *Ibid.*

²¹² See Section 49(4) of the Banking Act.

²¹³ Refers to BoT.

²¹⁴ See section 31(1) of the BoT Act.

²¹⁵ *Ibid.*

protection as it helps to ensure compliance with disclosure and transparency requirements on the part of a bank or a financial institution conducting microfinance business.

**(d) The Banking and Financial Institutions (Microcredit Activities) Regulations,
GN No. 298 of 2014**

The Microcredit Activities Regulations are made under the Banking Act for purposes of providing some regulatory matters pertaining to the conduct of microfinance activities.²¹⁶ In this case, the term microfinance activities mean a business involving accepting deposits from the public, employing deposits in lending or extending credits at the risk of the person accepting the deposits including the provision of short term loans to small or micro enterprises and low income households using collateral substitutes such as group guarantees or compulsory savings.²¹⁷ The Microcredit Activities Regulations form part of the legal framework for consumer protection in deposit-taking microfinance institutions as it contains some provisions on consumer protection principles.

One of the principles of consumer protection provided under this Regulation is the disclosure requirement. Under this, the Regulations impose a condition that requires an applicant seeking to conduct microfinance activities to disclose her intended products and services.²¹⁸ The rationale for this requirement is to ascertain the suitability and economic viability of the intended product or service. It is also to ascertain if the product or services are not detrimental to consumers.

Apart from that the Regulations²¹⁹ elaborate on the disclosure principle by insisting on fair lending practices. It is provided that a contract between an institution engaged in

²¹⁶ See regulation 2 of GN No. 298 of 2014.

²¹⁷ See regulation 3, *ibid*, on the interpretation of the term ‘microfinance activities.’

²¹⁸ See Regulation 15, *ibid*.

²¹⁹ See regulation 66 of the Disclosure Regulations.

microfinance activities and the borrower, has to state the interest rate, commissions, and fees, either in an annual or monthly basis.²²⁰

(e) The Banking and Financial Institutions (Disclosure) Regulations, GN. No. 289 of 2014

The Banking and Financial Institutions (Disclosure) Regulations (hereinafter referred to as the Disclosure Regulations) were made to ensure that banks and financial institutions maintain a level of transparency adequate to enable depositors, creditors and the public at large to make informed decisions when dealing with it.²²¹ Also, these regulations were made to promote and maintain public confidence and enhance market discipline by requiring banks and financial institutions to provide financial information to various stakeholders especially their customers.²²²

Furthermore, these Regulations provides for the disclosure and complaint handling and redress mechanism in financial services. It is a mandatory requirement for every bank or a financial institution to publish at least quarterly in at least one Kiswahili newspaper and one English newspaper of wide circulation in Tanzania information on lending rates, deposit rates for all type of deposits, fees or charges on all banking products or services.²²³ It is further provided that, that information should be displayed in a conspicuous position in a public part of its principal place of business and in its branches, ATM cubicles, and websites and at its agencies.²²⁴ This provision is very crucial as it helps to inform the consumers of the microfinance services on the terms and conditions of the products or services provided by the respective institution in both Kiswahili and English. Yet the Regulations do not provide in detail as what should be disclosed by a financial service provider.

²²⁰*Ibid.*

²²¹ See Regulation 4 of the Disclosure Regulations.

²²² *Ibid.*

²²³ See Regulation 11 the Disclosure Regulations.

²²⁴ *Ibid.*

It is also a requirement for every bank and financial institution to ensure that consumer complaints and redress mechanism are put in place and widely publicised using appropriate communication channels.²²⁵ Additionally, the information about complaint and redress mechanism must be displayed in a conspicuous position in a public part of its principal place of business and in its branches and agencies.²²⁶

Moreover, it is provided that any bank or financial institution that fails to comply with the requirements of these Regulations shall suffer any of the sanctions provided for under regulation²²⁷ including revocation of license or suspension from conducting banking business for a prescribed period.²²⁸

3.2.2 Non-Deposit Taking Microfinance Institutions

Prior to the enactment of the Microfinance Act, non-deposit taking microfinance institutions were governed by the Companies Act^{and} the Business Licensing Act.²²⁹ The practice shows that only companies incorporated under the Companies Act were eligible to apply for licence for the provision of microcredits in Mainland Tanzania under the Business Licensing Act.²³⁰ The licensing mandate for non-deposit taking microfinance institutions was vested with BRELA established under the Government Executive Agencies Act.²³¹

Thus, microcredits companies such as FAIDIKA, BLUE Financial Services Ltd, PRIDE Tanzania, BAYPORT Financial Services Ltd, and SELF Microfinance operated without being regulated and supervised by any financial regulator. Since neither the Companies Act nor the Business Licensing Act provided for financial consumer protection principles and other related matters that were necessary for the growth and sustainability of microcredits institutions. This mischief resulted in business misconducts such as

²²⁵ See regulation 12 (1) the Disclosure Regulations.

²²⁶ See regulation 12 (2) the Disclosure Regulations.

²²⁷ See regulation 19 the Disclosure Regulations.

²²⁸ *Ibid.*

²²⁹ CAP. 208.

²³⁰ *Ibid.*

²³¹ CAP. 245.

charging of high interest rates, over indebtedness to consumers, coercive and brutal recovery mechanism to consumers of microcredits services.

3.2.3 Savings and Credit Cooperatives Societies (SACCOS)

Financial SACCOS play a crucial role in the provision of microfinance services in Mainland Tanzania. It is reported that by March 2013 of the national total of 9,700 registered cooperatives, 5,559 were financial SACCOS, with 45% in urban areas representing about 25% of clients in the financial sector (both formal and semi-formal organisations).²³² Cooperative societies operate under the following legal and regulatory framework.

(a) The Cooperative Societies Act

The Cooperative Societies Act²³³ provides for the establishment of the Tanzania Cooperative Development Commission (herein referred to as TCDC)²³⁴ which is charged with functions of registering, regulating and supervising cooperative societies in Mainland Tanzania. The Act also provides for the formation,²³⁵ constitution, registration, operation and promotion of cooperative societies development.

Literally, the regulation and supervision of cooperatives fall under the Registrar of cooperatives assisted by Assistant Registrars both being appointed by the President of the United Republic of Tanzania²³⁶ For better carrying out the objectives of the law, sectoral ministry, regional secretariat and local government authorities are required to facilitate the establishment of a cooperative development office in their respective areas and ensure that such offices are allocated with necessary resources.²³⁷

²³² Brown A, p.9.

²³³ CAP.211.

²³⁴ See section 6 of the Cooperative Act.

²³⁵ See section 20(1) (b) of the Cooperative Act which provides that for saving and credit cooperative society to be formed it must have twenty or more members.

²³⁶ In accordance with section 10 and 11 of the Cooperative Act.

²³⁷ See section 14 of the Cooperative Act.

The TCDC is vested with powers to determine disputes and complaints arising from cooperative societies.²³⁸ This provision is relevant in ensuring that consumers of microfinance services are well protected as it avails an avenue to members of cooperative societies to file and lodge complaints arising from the cooperative societies transactions. Procedures for handling disputes and complaints by the TCDC²³⁹ are provided in the Regulations.²⁴⁰

Also, in discharging its supervisory powers, the TCDC is vested with powers to call for any information from any person conducting any activity affecting or relating to cooperative matters for investigation or compliance purposes.²⁴¹ Failure to furnish the required information is offence punishable under the Act.²⁴² This provision is also necessary for ensuring compliance to disclosure and transparency requirements which seeks to enforce compliance to the standards of business practice.

The Cooperative Act also provides for the requirement of the provision of public education and awareness on matters relating to rights, obligations and liabilities of members of cooperative societies.²⁴³ This duty is imposed on cooperative promotion officers.²⁴⁴ Procedures for provision of such education have to be provided for in the Regulations.²⁴⁵ This would help consumers of microfinance services provided by SACCOS to be informed on the decision prior to joining or engaging in respective cooperative societies activities.

(b) The Savings and Credit Cooperative Societies Regulations

These are Regulations made under section 141 of the Cooperative Societies Act²⁴⁶ to provide for matters in relation to formation, registration and de-registration of

²³⁸ See section 8(2) (v)

²³⁹ TCDC.

²⁴⁰ Cooperative Regulations.

²⁴¹ Section 16(1), *Op.cit.*

²⁴² subsection (2) of the Cooperative Act.

²⁴³ Section 50 of the Cooperative Act.

²⁴⁴ *Ibid.*

²⁴⁵ GN No.115 of 2016.

²⁴⁶ *Op.cit.*

SACCOS,²⁴⁷ licensing,²⁴⁸ governance,²⁴⁹ capital adequacy,²⁵⁰ shares and savings,²⁵¹ lending requirements,²⁵² loan delinquency and provisioning,²⁵³ liquidity and asset liability management,²⁵⁴ investment,²⁵⁵ inspection and suspension²⁵⁶ and consumer protection.²⁵⁷ However, the analysis under this segment focused on the provisions relating to consumer protection in SACCOS activities.

The provision of regulation 46²⁵⁸ prohibits disclosure of consumers' information to third parties. Officers and employees of the SACCOS are prohibited disclosing or permitting to be disclosed any information in relation to an account or transaction of a member with the SACCOS.²⁵⁹ Additionally, it requires any information obtained in the course of inspecting and supervising SACCOS to be treated as confidential and used solely for regulatory purposes. Contravention of this requirement is punishable under regulation 135²⁶⁰ to a fine of not less than five million shillings but not exceeding ten million shillings or to imprisonment for a term of not exceeding three years or to both.²⁶¹

It is provided that, each SACCOS is obliged to have a written loan collection policy that establishes a period at which loan collections are to be activated, a description of the various stages of collection procedures, the criteria and procedures, including approval procedures and authorization required for extending or restructuring of loans and for

²⁴⁷ Provided under part II of the Cooperative Regulations.

²⁴⁸ Provided under part III of the Cooperative Regulations.

²⁴⁹ Provided under part IV of the Cooperative Regulations.

²⁵⁰ Provided under part V of the Cooperative Regulations.

²⁵¹ Provided under part VI of the Cooperative Regulations.

²⁵² Provided under part VII of the Cooperative Regulations.

²⁵³ Provided under part VIII of the Cooperative Regulations.

²⁵⁴ Provided under part IX of the Cooperative Regulations.

²⁵⁵ Provided under part X of the Cooperative Regulations.

²⁵⁶ Provided under part XIV of the Cooperative Regulations.

²⁵⁷ Provided under part XV of the Cooperative Regulations. Emphasis is added.

²⁵⁸ Of GN. No.115 of 2016.

²⁵⁹ See regulation 46 of the Cooperative Regulations.

²⁶⁰ See regulation 46 of the Cooperative Regulations.

²⁶¹ See regulation 46 of the Cooperative Regulations.

transferring member's voluntary shares and the criteria and procedures for approval and authorization required writing off non-performing loans.²⁶²

Moreover, debt collectors are prohibited to harass, abuse, or oppress any person in connection with the collection of a debt or engage in any conduct such as the use of, or threat of use of violence or other criminal means to harm a physical person, reputation or property of any person.²⁶³ Debt collectors are also prohibited to use obscene or profane language or engage any person in conversation or in person with the intent to annoy, abuse, or harass until they repay the debt.²⁶⁴

On the other hand, the Cooperative Regulations²⁶⁵ provides for disclosure requirements. Every SACCOS is required to disclose to its members or potential members, information relating to the terms and conditions for each share, savings and time deposit.²⁶⁶ SACCOS are also obliged to disclose the current interest rate and annual percentage established by the Board members not only that but also to disclose the method used to calculate the applicable interest rate.²⁶⁷ It is further provided that such disclosure should clearly state whether the account has a fixed or variable interest rate.²⁶⁸

In addition, SACCOS is also under the obligation to provide disclosure on the frequency of the dividend or interest calculation and the time when the dividends or interest are paid or credited to an account. Also, the disclosure should state the minimum balance requirements for opening an account and limitations on withdraws.²⁶⁹

Another important aspect of financial consumer protection is that relating the inspection and supervision of SACCOS. It is provided that the Registrar through the cooperative inspectors²⁷⁰ should conduct routine inspections on the by-laws, activities and financial

²⁶² See regulation 71 of the Cooperative Regulations.

²⁶³ See regulation 124 of the Cooperative Regulations.

²⁶⁴ See regulation 124 of the Cooperative Regulations.

²⁶⁵ GN. No. 115 of 2016.

²⁶⁶ See regulation 115 of the Cooperative Regulations.

²⁶⁷ *Ibid.*

²⁶⁸ See regulation 116 of the Cooperative Regulations.

²⁶⁹ See regulation 117 of the Cooperative Regulations.

²⁷⁰ Appointed under section 93 of the Cooperative Act.

activities of a registered society²⁷¹ and that it is a criminal offence to obstruct or hinder a cooperative inspector to conduct the inspection and such offence is punishable under the law.²⁷² The essence of such inspection is to ascertain whether a registered SACCOS complies with the provisions of the law, its by-laws and policies in carrying out its operations.²⁷³ Again, this provision is necessary for ensuring the provisions on consumer protection in SACCOS activities are effectively enforced.

Furthermore, the Regulations provides for dispute and complaints settlement procedures which is a crucial aspect in financial consumer protection. It is provided that any dispute concerning the business of SACCOS between the members and the Board or any officer of the SACCOS should be settled amicably through negotiation or reconciliation.²⁷⁴

In the event negotiation or reconciliation of such dispute fails, it shall be referred to the Registrar for arbitration.²⁷⁵ In resolving the dispute referred to him, the Registrar may appoint a committee of experts or persons conversant with cooperative matters and law to assist him in reaching an appropriate decision and where necessary, he may refer the matter to an independent arbitrator nominated in consultation with respective parties.

It is further provided that a person aggrieved by the decision of the Registrar may appeal to the Minister responsible for matters relating to SACCOS whose decision is final.²⁷⁶ In deciding the appeal the minister is not confined to the legal procedures or technicalities.²⁷⁷

3.2.4 Community Microfinance Groups

These are groups collectively formed by members to undertake microfinance business including mobilization of savings from its members and provision of loans to its

²⁷¹ See section 93 of the Cooperative Act.

²⁷² See regulation 102(5) of the Cooperative Regulations.

²⁷³ See regulation 102(1) (a) of the Cooperative Regulations.

²⁷⁴ See regulation 130(1) of the Cooperative Regulations.

²⁷⁵ See regulation 130(2) of the Cooperative Regulations.

²⁷⁶ regulation 130(9) of the Cooperative Regulations.

²⁷⁷ See regulation 130(10) of the Cooperative Regulations

members.²⁷⁸ This meaning does not encompass community self-help groups formed for safety-net purposes and socio-economic welfare, special interest groups such as clubs and associations involved in the collection of financial contributions from members or receiving charity donations and groups occasionally formed for the purpose of receiving donations or fundraising for religious purposes or social events including marriages and other family related affairs.²⁷⁹ The study conducted by the World Bank in 2013 revealed that these kinds of institutions are self-regulated and do not fall under any regulatory authority.²⁸⁰

From the analysis above, it has been found that provision of microfinance services in Mainland Tanzania existed in a very complex legal and regulatory framework involving different laws and agencies with limited enforcement powers. Also, it has been noted that up to November 2018 Tanzania had no specific coordinating body overseeing microfinance provision. This means there is a multiplicity of the regulatory framework to microfinance. A summary of the regulatory status of microfinance existed prior to the enactment of the Microfinance Act is given in the table below.

²⁷⁸NMP 2017, p. ix.

²⁷⁹NMP 2017, p. ix.

²⁸⁰ Brown A.*et al*, *Op.cit*.

Table Summary of Regulatory Framework for MFIs prior to 2018

Type of Institution	Permitted Activities	Registration & Licensing	Responsible Authority
Formal Institution			
Banks providing microfinance services	Deposit-taking	License, regulation & supervision	BoT under Cap.197.
Microfinance companies	Deposit-taking		
FICOs(financial Cooperatives)	Member savings Deposits Loans	License, regulation & supervision	BoT
Semi-formal			
SACCOS	Member savings loans	Registration, regulation & supervision	TCDC under Cap.211.
Credit only MFIs	Loans	Registration and licensing	Ministry of Industry and Trade-BRELA under the Companies Act, Cap. 212 and Cap. 208.
Financial NGOs	Compulsory savings as loan collateral loans	Registration	Ministry of Home Affairs under Cap. 337. Ministry of Community Development, Gender, and Children under Cap.58. Registration, Insolvency and Trusteeship Agency-RITA under Cap. 375.
Informal Institutions			
SACAs Village Community Banks (VICOBAs) Village Savings & Loans Associations (VSLAs) Rotating Savings and Credit Associations (ROSCAs) Self-Help Groups (SHGs)	Member savings loans	Self-regulated	None

3.3 Other Legislations governing provision of Microfinance Services in Tanzania

This subpart provides a brief analysis of other legislation relating to the provision of microfinance services in Mainland Tanzania. The discussion is limited to the following legislation, the Social Security Regulatory Act,²⁸¹ the Societies Act,²⁸² the Trustees'

²⁸¹CAP.135.

²⁸²CAP.337.

Incorporation Act,²⁸³ the Non-Governmental Organisations Act²⁸⁴ and the Insurance Act.²⁸⁵

(a) The Social Security Regulatory Authority Act (the SSRA Act)

Provides for the powers of the Bank of Tanzania to regulate and supervise the social security funds in relation to matters of investments.²⁸⁶ It is stated that the powers relating to regulation and supervision of financial matters shall be vested with the Bank of Tanzania.²⁸⁷ The reason why BoT is involved in the regulation of pension funds is that the law allows pension funds to invest in various businesses including the provision of credits to individuals and wholesale lending to Microfinance Institutions.

(b) The Societies Act

The Societies Act provides for the matters relating to registration of societies. The Act provides powers to the Registrar of Societies to register societies and groups that fall under its authority. The societies and institutions registered under this Act include churches, Mosques and other institutions formed to undertake social services activities. The institutions registered under this Act have been involving themselves in microfinance activities without being licensed and supervised hence increasing the risk to their members and financial instability in the country.

(c) The Trustee's Incorporation Act (the Trustees Act)

The Trustees Act provides for matters relating to the incorporation of trustees. It gives powers to the Registrar General to register and deregister any registered trustee. Registrar General is also given the mandate to order by notice any trustee or trustees to furnish him with audited accounts. Some trustees have been engaging in the provision of microfinance activities without being supervised and regulated by neither the Registrar

²⁸³CAP.318.

²⁸⁴CAP.56.

²⁸⁵CAP.394.

²⁸⁶See sections 47 and 48 of the SSRA Act.

²⁸⁷See section 47(2) of the SSRA Act.

General nor any other authority at the expense of consumers of their microfinance services.

(d) The Non-Governmental Organisations Act (The NGOs Act)

The NGOs Act was enacted to provide for the registration of non-governmental organisations (NGOs) with a view to coordinate and regulate their activities. The Act further provides for the powers and functions of the Director which include to register NGOs, ensure that operations of the NGOs are available for the government and public consumption and other functions provided for in the Act.²⁸⁸

Furthermore, the NGOs Act establishes the Board²⁸⁹ and vests it with a number of functions including approving and coordinating the registration of NGOs, facilitate the implementation of the NGOs policy, to examine annual reports of the NGOs, to ensure NGOs adhere to their constitutions and to direct suspension or cancellation of any NGO.²⁹⁰ Also, the law requires NGOs to prepare and submit reports on their activities and annual audited reports to the Council and the Board for examination purposes.²⁹¹

Yet, the law allows NGO to engage in any activity prescribed in its registered constitution without putting any provision providing regulation and supervision especially to those engaging in microfinance activities. In the circumstances, members of NGOs or consumers of NGOs microfinance services are left without any legal protection.

(e) The Insurance Act

The Insurance Act was enacted to provide for the establishment of the Tanzania Insurance Regulatory Authority (TIRA)²⁹² charged with functions of regulating and supervising the conduct of insurance business in Tanzania. The Authority is responsible

²⁸⁸See section 4 of the NGOs Act.

²⁸⁹See section 6 of the NGOs Act.

²⁹⁰See section 7 of the NGOs Act.

²⁹¹See section 29 of the NGOs Act.

²⁹²See section 5 of the Insurance Act.

for formulation of standards in the conduct of the business of insurance which shall be observed by insurers, brokers and agents.²⁹³ Also, TIRA is responsible for ensuring proper observance of the code of ethics and practice by insurers, brokers, and agents and protect the interests of policyholders.²⁹⁴

The Act also provides for the establishment of the Ombudsman services and Tribunal for dispute settlement.²⁹⁵ Section 122²⁹⁶ establishes an Ombudsman Services for purposes of resolving disputes arising between insurance consumers and insurance registrants business in Tanzania. The Ombudsman Services shall consist of an Ombudsman appointed by the Minister and other employees employed by TIRA.²⁹⁷ Furthermore, the Ombudsman Service is entrusted with powers to grant an award to the complainant for the losses and damage suffered by the complainant up to a maximum of fifteen million shillings.²⁹⁸

In addition, the law provides for the establishment of a Tribunal²⁹⁹ which shall be an *ad hoc* forum consisting of three persons appointed by the Minister, one of whom shall be a lawyer with adequate experience.³⁰⁰ One of the members shall be appointed to act as a chairman to the tribunal.³⁰¹ The Tribunal is entrusted with powers to hear and determine appeals emanating from the decisions of the Commissioner of Insurance and before determining an appeal, the Tribunal shall accord an opportunity to the appellant to appear before it.³⁰²

²⁹³See section 6 of the Insurance Act.

²⁹⁴*Ibid.*

²⁹⁵See Part IX of the Insurance Act.

²⁹⁶Of the Insurance Act.

²⁹⁷See sub-section (2) of the Insurance Act

²⁹⁸See section 124(1) of the Insurance Act

²⁹⁹See section 126(1) of the Insurance Act

³⁰⁰See section 126(2) of the Insurance Act.

³⁰¹See section 126(3) of the Insurance Act.

³⁰²See section 126(5) of the Insurance Act.

3.4 The National Microfinance Policy of 2017

Prior to the National Microfinance Policy of 2017 (NMP 2017)³⁰³ there existed the first National Microfinance Policy of 2000 (NMP 2000)³⁰⁴ which recognised the role of microfinance sub-sector in poverty reduction and economic growth. This Policy provided some directives and guidance which enabled the participation of different stakeholders in the microfinance industry including microfinance service providers, investors, government funds, programmes and development partners.³⁰⁵

But complexities and challenges brought in due to new developments in the microfinance sub-sector in terms of entry of Non-Financial Institutions (NFIs) with new innovations and technologies, improvement in products and services and delivery mechanisms a need arose to revisit and revise the NMP 2000 so as to accommodate the new developments, limitations, and challenges in the sub-sector.³⁰⁶ The NMP 2017 seeks to achieve the following objectives:

(a) Regulating Microfinance Service Provision

The NMP 2017 seeks to create an effective legal and regulatory framework to government delivery of microfinance services.³⁰⁷ In so doing the government in collaboration with the stakeholders are required to enhance legal, regulatory and supervisory oversight in the microfinance sub-sector; enforce consumer protection in the microfinance sub-sector³⁰⁸ and enhance information sharing infrastructure among the regulators in the microfinance sub-sector.³⁰⁹

³⁰³NMP 2017.

³⁰⁴ NMP 2000.

³⁰⁵ NMP 2017, p.xvi.

³⁰⁶.NMP 2017, p.xvi.

³⁰⁷See NMP 2017, p.31.

³⁰⁸ Emphasis is mine.

³⁰⁹NMP 2017, p.31.

(b) Financial Inclusion

Moreover, the NMP 2017 is there to promote the development of a robust, inclusive financial sector³¹⁰ by encouraging the use of technology and availability of innovative financial products and services to meet the needs of low-income earners, enhancing financial education and public awareness on microfinance products and services and ensuring access to appropriate microfinance products and services at an affordable expense and in a fair and transparent manner. Low-income earners could now be able to access financial services which would otherwise be impossible due to inadequate supporting infrastructure and lack of land title deeds and other properties as collaterals to access loans.³¹¹

(c) Sustainability of Financial Service Providers

Furthermore, the NMP 2017 aims at achieving sustainability of microfinance service providers through the promotion of financial market and development, capacity building and encouragement of mainstreaming of community financial groups into the financial system.³¹² This objective is necessary as it aims at overcoming the challenges facing most of the MFIs such as inadequate liquidity and capital growth, overdependence on external sources of fund, the inadequacy of qualified personnel, poor record keeping and weak institutional capacity.³¹³

(d) Research, Innovation and Product Development in Microfinance sub-sector

Furthermore, the NMP 2017 seeks to promote research, innovation and product development in microfinance sub-sector by enhancing capacity in conducting research, promoting innovation and product development and encourage sharing of research information in the microfinance sub-sector.³¹⁴ This could help the microfinance service

³¹⁰NMP 2017, pp. 27-29.

³¹¹NMP 2017, p.28.

³¹²NMP2017,p. 29.

³¹³NMP 2017, p. 29.

³¹⁴NMP 2017, p. 32.

providers to focus on the real needs of low-income earners instead of providing products or services that do not suit their needs.³¹⁵

(e) Good governance in microfinance sub-sector

Another objective of the NMP 2017 is to encourage adherence to principles of good governance in microfinance sub-sector by encouraging adherence to the principles of good governance within MFIs and ensuring MFIs disclose the source of funds in accordance with the respective laws such as the Anti-Money Laundering laws.³¹⁶ This is considered as the key factor in delivering quality services and developing a vibrant microfinance sub-sector.³¹⁷

(f) Mainstreaming of Disadvantaged Groups, Gender, and Youth

The NMP 2017 also seeks to promote equal access to microfinance products and services and expand the range of those services to meet the distinct needs of disadvantaged groups, gender, and youth.³¹⁸ Availability of affordable microfinance services will lead to a reduction of marginalization level to those groups.³¹⁹

The NMP 2017 identifies the weaknesses of the existing legal and regulatory frameworks and suggests creating an appropriate, vibrant and effective legal and regulatory framework to enhance rapid growth and sustainable development of the microfinance subsector that will take into account consumer protection concerns.³²⁰ Thus, the NMP 2017 is dedicated to addressing the identified legal weaknesses including lack of a specific legal and regulatory framework for non-deposit taking microfinance, community financial groups, such as Rotating Savings and Credit Associations

³¹⁵NMP 2017, p. 32.

³¹⁶NMP 2017, p. 34.

³¹⁷NMP 2017, p. 34.

³¹⁸NMP 2017, p. 36.

³¹⁹NMP 2017, p. 36.

³²⁰NMP 2017, p. 37.

(ROSCAs) Accumulated Savings and Credit Associations (ASCAs), Village Savings and Credit Associations (SACAS) and money lenders.³²¹

To address the identified limitations within the existing legal and regulatory framework, the NMP 2017 directed for the enactment of specific legislation that will provide regulation and supervision to microfinance institutions in a tiered structure.³²² Additionally, the legislation shall also provide a mechanism for a smooth transformation from one tier to another so as to safeguard the interests of borrowers and financial sector stability.³²³

Furthermore, the NMP 2017 provides for an institutional framework for regulation and supervision of microfinance institutions where the ministry responsible for finance is charged with the overall responsibility of coordinating the implementation of the NMP 2017 including the legislation enacted to execute the Policy.³²⁴ In addition, the Ministry responsible for finance is also charged with the responsibility of licensing, regulating and supervising non-deposit taking MFIs. This responsibility is assigned to the Microfinance Unit within the Ministry.³²⁵

Another institution responsible for regulation and supervision of microfinance institutions is the BoT. The BoT is charged with licensing, regulation and supervision of deposit-taking MFIs.³²⁶ In addition, BoT is responsible for enhancing the enabling environment for banks and financial institutions to support microfinance sub-sector.³²⁷

Tanzania Cooperative Development Commission (TCDC) is another institution charged with the registration, regulation, supervision and licensing of SACCOS financial

³²¹NMP 2017, p. 38.

³²²NMP 2017, p.38.

³²³NMP 2017, p.38.

³²⁴ NMP 2017, p. 40.

³²⁵NMP 2017,p. 41.

³²⁶NMP 2017 p. 45.

³²⁷NMP 2017 p. 45.

cooperative societies.³²⁸ This institution is also charged with the promotion and development of SACCOS.³²⁹

Moreover, the NMP 2017 directs that Local government authorities shall be responsible for registration and regulation of community financial groups.³³⁰ Additionally, local government authorities are required to promote the formation of community financial groups through various initiatives.³³¹

Furthermore, the NMP 2017 provides for establishment of the Microfinance Regulators' Forum which will be responsible to build consensus on issues of common interest in the microfinance sub-sector, create enabling environment to facilitate smooth transformation of different MFIs from one tier to the other, harmonise legal and regulatory framework and monitor emerging issues in the microfinance sub-sector, including new products to facilitate timely review of existing regulatory frameworks.³³² Thus, this is an important aspect to be included in the legal framework as it will provide a platform for regulators to share their experiences on how best they can do to improve the provision of microfinance services in Mainland Tanzania.

3.5 The Microfinance Act

The Microfinance Act was enacted by the Parliament on the 16th day of November 2018 to provide for the licensing, regulation and supervision of the microfinance business in Mainland Tanzania. It provides for different tiers of microfinance institutions, their regulation and they can be transformed from tier to another. It also vests the BoT with the mandate to oversee the microfinance sub-sector and powers to delegate certain powers to other government institutions.

The Microfinance Act also provides for consumer protection principles including vetting of standard contracts, disclosure of relevant information on products and services,

³²⁸NMP 2017, p.46.

³²⁹NMP 2017 p. 46

³³⁰NMP 2017, p. 44.

³³¹NMP 2017, p. 44

³³²NMP 2017, p.42.

transparency on interest rates and other charges, methods for debt collection, recovery and attachment of debtor's property. The Act shall come into force on such date as the Minister may appoint.³³³ At the time of completing this study³³⁴ the Microfinance Act was yet to come into force.

3.5.1 Scope of Application of the Microfinance Act

The Microfinance Act applies to Mainland Tanzania³³⁵ in respect of microfinance business undertaken by microfinance service providers established under their respective laws and those established and recognised under the Microfinance Act. Microfinance business which falls under the Microfinance Act include receiving money by way of deposits or interest on deposits or borrowing, accepting savings and providing loans or other credit facilities to micro enterprises, low-income households or individuals, providing microcredit, micro savings, micro-insurance, micro-leasing, micro-pension and micro-housing finance, transfer and payment services including digital microfinance services, commodity loans, and financial education.³³⁶

3.5.2 Categorisation of Microfinance Service Providers

Microfinance service providers which are subject to the Regulation under the Microfinance Act are categorised into four tiers.³³⁷ Tier 1 comprises deposit-taking microfinance service institutions.³³⁸ Tier 2 comprises non-deposit taking microfinance service providers such as credit companies and individual money lenders.³³⁹ Tier 3 comprises Savings and Credit Cooperative Societies (SACCOS) and Tier 4 comprises community microfinance groups. It is further provided that deposit taking microfinance

³³³See section 1 of the Microfinance Act.

³³⁴ This study was completed and submitted on the 31st day of May 2019.

³³⁵ see Section 2 of the Microfinance Act.

³³⁶ See section 4(2) of the Microfinance Act.

³³⁷ See section 5(1) of the Microfinance Act.

³³⁸ See section 5(1) of the Microfinance Act.

³³⁹ See section 5(1) of the Microfinance Act.

institutions shall be regulated in accordance with the Banking and Financial Institutions Act.³⁴⁰

3.5.3 Governance of Microfinance Service Providers

It is provided that microfinance service providers shall be governed in accordance with their establishing laws and their constitutions.³⁴¹ Nevertheless, both the BoT and Delegated Authorities are given the mandate to issue general or specific directives to the microfinance service provider regarding their operations and such directives shall be complied with.³⁴²

3.5.4 Institutional Framework for Microfinance Services

The following are institutions vested with powers to administer the provisions of the Microfinance Act.

(a) The Minister

The Minister responsible for finance is charged with the general administration of the provisions of the Microfinance Act by ensuring conducive policy environment for the microfinance business, formulating policy and supervising the implementation of the microfinance policy.³⁴³

Additionally, the Minister is also responsible for enhancing enabling environment to support microfinance business, ensure the sustainability of microfinance business, issue directives to the BoT on the implementation of the policy relating to microfinance business and ensure the promotion of microfinance business, transparency, and accountability.³⁴⁴

³⁴⁰ See section 5(2) of the Microfinance Act.

³⁴¹ See section 7(1) of the Microfinance Act.

³⁴² See section 7(2) of the Microfinance Act.

³⁴³ See section 15(1) of the Microfinance Act.

³⁴⁴ See section 15(2) of the Microfinance Act.

In performing his roles, the Minister is required to make consultations with relevant Ministers including the Minister responsible for local government authorities and the Minister responsible cooperative societies.³⁴⁵

(b) The Bank of Tanzania

The Bank of Tanzania is a corporation established under the BoT Act³⁴⁶ and charged to discharge the principal functions³⁴⁷ as explained in hereinabove. This part is dedicated to providing for the functions and powers of the BoT in respect to the regulation and supervision of microfinance business in Mainland Tanzania as per the Microfinance Act.

Generally, the BoT is charged with responsibilities to oversee and monitor microfinance service providers operating or undertaking microfinance business in terms of the provisions of the Microfinance Act.³⁴⁸ It is further provided that the BoT is also responsible for regulating and supervising the operations of microfinance business in accordance with the provisions of the Microfinance Act and other relevant laws.³⁴⁹

In discharging those functions the BoT is responsible to do the following specific functions: issue licence to qualified microfinance service providers,³⁵⁰ advise and report to the Minister on matters relating to microfinance business,³⁵¹ develop and manage database for microfinance service providers,³⁵² inspect, monitor and evaluate the performance of microfinance business.³⁵³

Moreover, the BoT is required to issue circulars and guidelines for microfinance service providers,³⁵⁴ assess and issue approvals for the transformation of microfinance service

³⁴⁵ See section 15(3) and (4) of the Microfinance Act.

³⁴⁶ See section 4 of the BoT Act.

³⁴⁷ Section 5 of the BoT Act.

³⁴⁸ See section 12(1) of the Microfinance Act.

³⁴⁹ See section 12(2) of the Microfinance Act.

³⁵⁰ See section 12(3) (a) of the Microfinance Act.

³⁵¹ See Section 12(3) (b) of the Microfinance Act.

³⁵² See section 12(3) (c) of the Microfinance Act.

³⁵³ Section 12(3) (d) of the Microfinance Act.

³⁵⁴ Section 12(3) (e) of the Microfinance Act.

providers,³⁵⁵ ensure proper management of complaints relating to microfinance business,³⁵⁶ ensure the protection of consumers of microfinance service providers including sanctioning usurious lending practices³⁵⁷ and ensure that credit information relating to microfinance business is collected, disseminated and shared.³⁵⁸

Apart from that in ensuring proper and effective performance of the functions of the BoT with respect to the regulation and supervision of microfinance business, the BoT is entrusted with the powers to investigate or inquire into the operations of microfinance service providers,³⁵⁹ inspect and examine books of accounts, records, returns and any other document of microfinance service providers³⁶⁰ and demand information related to the activities of microfinance service providers.³⁶¹

Also, the BoT has the power to instruct on the proper management of the microfinance service providers,³⁶² enter at any reasonable time, into any premises of a microfinance service providers or any premises in which it is believed that books of accounts, records or documents relating to the microfinance service provider are kept,³⁶³ open or cause to be opened any strong room, safe or other containers in which it is suspected that there are any securities, books of accounts, records or documents of a microfinance service provider³⁶⁴ and may require any officer, employee or agent of a microfinance service provider to explain or furnish information or documents concerning the microfinance service provider's management or activities.³⁶⁵

Apart from the general functions and powers discussed hereinabove, BoT is also entrusted with the mandate of licensing, regulation and supervision of deposit-taking,

³⁵⁵ See section 12(3) (f) of the Microfinance Act.

³⁵⁶ See section 12(3) (g) of the Microfinance Act.

³⁵⁷ section 12(3) (h) of the Microfinance Act.

³⁵⁸ See section 12(3) (i) of the Microfinance Act.

³⁵⁹ See section 13(a) of the Microfinance Act.

³⁶⁰ See. Section 13(b) of the Microfinance Act.

³⁶¹ See. Section 13(c) of the Microfinance Act.

³⁶² See. Section 13(d) of the Microfinance Act.

³⁶³ See. Section 13(e) of the Microfinance Act.

³⁶⁴ See. Section 13(f) of the Microfinance Act.

³⁶⁵ See. Section 13(g) of the Microfinance Act.

non-deposit taking microfinance institutions and Individual money lenders.³⁶⁶ The powers of licensing, regulation and supervision of deposit-taking microfinance institutions shall be exercised in accordance with the provisions of the Banking and Financial Institutions Act. This implies that deposit-taking microfinance institutions are subjected to direct regulation and supervision by the BoT.

On the other hand, it is provided that non-deposit taking microfinance institutions and individual money lenders shall be licensed, regulated and supervised by the BoT in accordance with the provisions of the Microfinance Act³⁶⁷ and the regulations made under that Act.³⁶⁸ It is further provided that the BoT shall not delegate its functions and powers relating to regulation and supervision of microfinance service providers in Tier 2.³⁶⁹

3.5.5 Regulation, Supervision, and Licensing of Savings and Credit Cooperative Societies (Tier 3 and Community Microfinance Groups (Tier 4)).

The Microfinance Act also provides for the regulation, supervision and licensing of savings and credit cooperative societies categorised as Tier 3 and community microfinance groups categorised as Tier 4 as discussed hereunder.

(a) Regulation and Supervision of Tier 3 and Tier 4 Microfinance Service Providers

Despite the BoT being the overall regulator and supervisor of all microfinance service providers,³⁷⁰ the law has put a mechanism requiring the BoT to delegate its functions in relation to the regulation and supervision of microfinance service providers under Tier 3

³⁶⁶ See section 5(2) and section 17 respectively of the Microfinance Act.

³⁶⁷ See section 17 of the Microfinance Act.

³⁶⁸ See section 17(4) and section 60(1) (a) and (p) of the Microfinance Act.

³⁶⁹ See section 14(5) of the Microfinance Act.

³⁷⁰ See section 12, 13 and 14(4) of the Microfinance Act.

to the Tanzania Cooperative Development Commission (TCDC)³⁷¹ and in the case of Tier 4 to the local government authorities.³⁷²

(b) Licensing of Tier 3 and Tier 4 Microfinance Service Providers

A person who intends to undertake microfinance business under Tier 3 is required to apply to the BoT or the TCDC for a licence in a manner as prescribed in the regulations.³⁷³

The application should be accompanied by a certified copy of registration issued in terms of the Cooperative Societies Act³⁷⁴ proof of payment of a prescribed non-refundable application fee³⁷⁵ and such other information or documents as they may be required by the BoT or the TCDC.³⁷⁶

On the other hand, a person who intends to undertake microfinance business under Tier 4 is required to apply for registration to the BoT or local government authorities in the manner as may be prescribed in the regulations. The application for registration should be accompanied with: two copies of the constitution duly signed by all members of the applicant,³⁷⁷ members' resolution to form and register a microfinance entity duly signed by all members,³⁷⁸ the proposed organisation structure and names of proposed leaders of the applicant,³⁷⁹ a letter of reference from the ward or village authority introducing the applicant³⁸⁰ and any other documents or information as the BoT or local government authority may require.³⁸¹

³⁷¹See section 14(1) (a) of the Microfinance Act.

³⁷²See section 14(1) (b) of the Microfinance Act.

³⁷³See section 18(1) of the Microfinance Act.

³⁷⁴See section 18(2) (a) of the Microfinance Act.

³⁷⁵See section 18(2) (b) of the Microfinance Act.

³⁷⁶See section 18(2) (c) of the Microfinance Act.

³⁷⁷See section 28(2) (a) of the Microfinance Act.

³⁷⁸See section 28(2) (b) of the Microfinance Act.

³⁷⁹See section 28(2) (c) of the Microfinance Act.

³⁸⁰See section 28(2) (d) of the Microfinance Act.

³⁸¹See section 28(2) (e) of the Microfinance Act.

The BoT or a respective local government authority upon satisfying itself on the above-mentioned requirements has to issue the applicant with a certificate of registration³⁸² containing the name and address of the microfinance service provider, the date and validity of the registration, the area of operation or place of the microfinance service provider and such terms and conditions as may be required.³⁸³

A certificate of registration issued to a microfinance service provider shall be conclusive evidence of the microfinance service provider to operate or undertake microfinance business in terms of its constitutions and the Microfinance Act.³⁸⁴ This implies that a certificate of registration is deemed as licence to undertake microfinance business under Tier.

It is further provided to the effect that a registered microfinance service provider shall by virtue of its registration be a body corporate capable in its own name of suing and being sued, acquiring and disposing any property, entering into contracts and performing all acts which can be done by a body corporate and which are necessary the proper performance of its duties.³⁸⁵

(c) Licensing of foreign microfinance Service providers

The Bank of Tanzania is also entrusted with powers to licence foreign microfinance service providers. It is provided that a foreign-owned microfinance service provider which desires to undertake microfinance business in Mainland Tanzania has to submit an application for a license to the BoT under the procedures and requirements prescribed in the regulations.³⁸⁶ Additionally, a foreign-owned microfinance is required to comply with applicable laws in local content including employment and training of Tanzanians.³⁸⁷

³⁸²See section 30(1) of the Microfinance Act.

³⁸³See section 30(2) of the Microfinance Act.

³⁸⁴See section 31(1) of the Microfinance Act.

³⁸⁵See section 31(2) of the Microfinance Act.

³⁸⁶See section 19(1)of the Microfinance Act.

³⁸⁷See section 19(2)of the Microfinance Act.

From the analysis of the institutional framework of microfinance business, it can be concluded that the BoT is primarily involved in the regulation, supervision and licensing of all categories of microfinance service providers in a direct and indirect manner. It has been observed further that in the case of deposit and non-deposit taking microfinance business the BoT is directly involved in the regulation, supervision and licensing of microfinance service providers.

While in the case of microfinance service providers in Tier 3 and Tier 4 the BoT is still directly involved in the regulation, supervision and licensing only that allows Delegated Authorities such as the TCDC and the local government authorities to undertake such functions in a similar manner.

3.6 Requirements Relating to Consumer Protection in Microfinance Services

The essence of this subpart is to identify the relevant provisions relating to consumer protection while commenting on the weaknesses of those provisions in providing the required standard of protection to consumers of microfinance services.

The standard of consumer protection requires microfinance institutions to adhere to consumer protection principles such as disclosure and transparency about their interests, fees, charges and other contractual terms, confidentiality and security of consumers' data, complaints and dispute settlement system, information sharing system to avoid over-indebtedness to consumers, consumer obligations, provision of education and public awareness about microfinance services products and equitable and fair treatment of consumers. The following is a discussion on the relevant provisions relating to consumer protection in microfinance services.

3.6.1 Consumer Protection Principles

Consumer protection in microfinance services lies on the standard principles established in the respective laws and international instruments. The Microfinance Act has defined the term by including the principles intended to ensure transparency of the products and services of the microfinance service provider, fair treatment and safeguard of the

interests and rights of consumers and fair complaints handling and dispute settlement mechanism.³⁸⁸

The Microfinance Act further stipulates for consumer protection principles including the requirement on disclosure and transparency on terms and conditions of the credit or related services. Additionally, the terms and conditions of the microfinance service need to be fair and legible.³⁸⁹

Also, the Microfinance Act provides for the requirement of having a dedicated complaint handling and dispute settlement mechanism,³⁹⁰ full disclosure of relevant information on the products and services provided by an MFI,³⁹¹ the requirement for the vetting of the standard credit contracts or agreements,³⁹² provision of financial education to the consumers³⁹³ and transparency on interest rates, fees or penalties.³⁹⁴

It is further stated that any term or condition stipulated in a contract or any relevant document purporting to grant to a microfinance service provider authority to unilaterally introduce or modify interest rate or any other loan condition shall be null and void.³⁹⁵

In ensuring compliance with consumer protection principles by MFI, the Microfinance Act gives the mandate to the BoT or Delegated Authority³⁹⁶ to take appropriate measures to any MFI which fails to comply with consumer protection requirements.³⁹⁷

3.6.2 Other Requirements Related to Consumer Protection in Microfinance Services.

The Microfinance Act provides for other requirements related to consumer protection in microfinance services as discussed hereunder.

³⁸⁸See section 50(3) of the Microfinance Act.

³⁸⁹See section 50(2) (a) of the Microfinance Act.

³⁹⁰See section 50(2) (b) of the Microfinance Act.

³⁹¹See section 50(2) (c) of the Microfinance Act.

³⁹²See section 50(2) (d) of the Microfinance Act.

³⁹³See section 50(2) (e) of the Microfinance Act.

³⁹⁴See section 50(2) (f) of the Microfinance Act.

³⁹⁵See section 50(4) of the Microfinance Act.

³⁹⁶Refers to TCDC or respective local government authority.

³⁹⁷See section 50(5) of the Microfinance Act.

(a) Debt Collection and Recovery Measures

The Microfinance Act has also provided for the manner of debts collection and recovery.³⁹⁸ The law is meant to ensure that a debt collection measure is initiated by the issuance of sufficient written notice to the debtor.³⁹⁹ Also, the attachment of a debtor's property or collateral security for purposes of sale to the discharge debt is applied as last resort.⁴⁰⁰ Additionally, a reasonable period is required and should be prescribed in the notice prior to the sale or disposal of a debtor's attached property.⁴⁰¹

(b) Payment of dividends to members or shareholders of a microfinance service provider

The Microfinance Act has also provided some protection to members or shareholders of microfinance service providers in terms of payment of dividends or interests. The law treats this as an obligation⁴⁰² to a microfinance service provider as it mandatorily requires microfinance service providers to pay dividends on its shares to its members or shareholders in the manner prescribed in the constitution or other documents of the microfinance service provider.⁴⁰³ However, the law does not provide an explicit mechanism designed to ensure compliance with the requirement of payment of dividends or interests by MFIs.

(c) Disclosure of financial statements of a microfinance service provider

The law also provides for disclosure of financial statements by MFIs. It is a mandatory requirement for a microfinance service provider to disclose its financial statements to the

³⁹⁸See section 51(1) of the Microfinance Act.

³⁹⁹See section 51(2) (a) of the Microfinance Act.

⁴⁰⁰See section 51(2) (b) of the Microfinance Act.

⁴⁰¹See section 51(2) (c) of the Microfinance Act.

⁴⁰²See section 37(1) of the Microfinance Act.

⁴⁰³See section 37(2) of the Microfinance Act.

BoT, Delegated Authority or other stakeholders.⁴⁰⁴ The manner of such disclosure has to be prescribed in the regulations.⁴⁰⁵

Additionally, a microfinance service provider is required to display in a conspicuous place in its place of business, a copy of its current audited financial statements, a copy of a balance sheet and profit and loss account.

However, this requirement applies only to microfinance service providers in Tier 2 and Tier 3. The manner in which the microfinance service providers in Tier 4 have to disclose their financial information will be prescribed in the regulations.

This requirement is necessary for two main reasons: control of financial stability of the institution and the nation at large but also to protect the existing consumers and prevent the prospective consumers in case the statement indicates poor performance of a microfinance service provider.

Failure to comply with disclosure of financial statements attracts the BoT or a Delegated Authority to take appropriate measure to ensure compliance.⁴⁰⁶ Yet, the term appropriate measure is not defined by the law. Seemingly the same could be explained or defined in the regulations.

(d) Sharing of Credit Information

Sharing of information is another requirement seeking to enhance consumer protection in microfinance services by reducing or avoiding over-indebtedness to consumers of microfinance services. Not only that but also sharing of credit information helps microfinance service providers from incurring losses by non-performing loans from over-indebtedness consumers.

With this requirement, microfinance service providers are obliged to share information including personal information and credit history of borrowers or any other information

⁴⁰⁴See section 42(1) of the Microfinance Act.

⁴⁰⁵See section 42(1) of the Microfinance Act.

⁴⁰⁶See section 42(4) of the Microfinance Act.

such as paying, outstanding debts, tax obligations and any other business details of a borrower or a prospective borrower.⁴⁰⁷

In achieving this purpose, the law requires microfinance service providers in Tier 2, Tier 3 and Tier 4 to submit credit information to a credit reference bureau⁴⁰⁸ which may be accessed and used by other microfinance service providers in a manner provided in the regulations.⁴⁰⁹ It is important to note that the regulation of credit reference information has to be conducted in accordance with the BoT Act.

It is further provided that where a microfinance service provider without reasonable cause, fails to comply with the requirement of sharing of credit information, such microfinance service provider shall be subjected to a measure by the BoT or Delegated Authority seeking to ensure compliance.⁴¹⁰

(e) Submission of periodic reports

Microfinance service providers are also required to submit to the Regulatory authority, periodic reports of their business operations in the manner prescribed in the regulation.⁴¹¹ Failure to submit such reports is punishable under the law where the regulator is mandated to take appropriate measures to ensure compliance.⁴¹² This requirement is necessary as it seeks to ensure disclosure and transparency on the part of microfinance service providers.

(f) Confidentiality of Consumer information

Microfinance service providers are required to treat consumer information or data as confidential and not to disclose such information to any person⁴¹³ except where it is permissible under the law.⁴¹⁴

⁴⁰⁷See section 43(1) & (2) of the Microfinance Act.

⁴⁰⁸See section 43(3) of the Microfinance Act.

⁴⁰⁹See section 43(4) of the Microfinance Act.

⁴¹⁰See section 43(6) of the Microfinance Act.

⁴¹¹See section 44(1) of the Microfinance Act.

⁴¹²See section 43(2) of the Microfinance Act.

⁴¹³See section 46(1) of the Microfinance Act.

(g) Inspection and monitoring of microfinance business

Regulators are mandated to conduct inspection and monitoring on microfinance service providers for purposes of ensuring compliance.⁴¹⁵ However, the question remains on the capacity of the Regulatory Authority to effectively discharge that obligation considering the geographical area of the country, the number of microfinance service providers and the number of skilled personnel and equipment.

3.5 Conclusion

This Chapter has attempted to analyse the legal and regulatory framework for consumer protection in microfinance services in Mainland Tanzania. The analysis has revealed that despite the fact that the existing legal and regulatory framework for consumer protection in microfinance service has thrived to accommodate the core principles; there are a number of challenges that have been left unattended. These challenges are discussed in Chapter Four.

⁴¹⁴See section 46(2) of the Microfinance Act.

⁴¹⁵See sections 47 and 48 of the Microfinance Act.

CHAPTER FOUR

ANALYSIS AND DISCUSSION OF FINDINGS

4.1 Introduction

This Chapter makes a critical analysis of the law relating to the conduct of microfinance business in Mainland Tanzania. The Chapter sought to uncover the extent to which consumers of microfinance services are protected under the existing legal framework. While it might be seemingly early for this question to be answered, taking into account the infancy of the Microfinance Act, there are, however, notable and obvious elements that may assist to draw an inference in relation to that research question.

Thus, the Chapter makes a critical appraisal of the legislative provisions to that effect. In so doing, the researcher used a comparative approach whereby the provisions relating to consumer protection enshrined in the Microfinance Act, are analysed within the context of the basic principles underlying microfinance consumer protection.

Generally, the microfinance consumer protection regime is measured according to its compliance with certain principles governing microfinance practices. These principles are highlighted in the Good Practices for Financial Consumer Protection. The Good Practices (GP) complements, consolidates and expands other international principles and guidelines, including the BCBS and the Group of Twenty (G20) High-Level Principles on Financial Consumer Protection and Accompanying Effective Approach to Support Implementation.

The GP has prescribed the basic principles that define a strong microfinance consumer protection regime. The stronger regime enables microfinance consumers to make well-informed decisions on how best to use microfinance services, building public trust within the subsector and promoting fair competition among providers. These principles include legal and supervisory framework, disclosure and transparency, fair treatment and

business conduct, data protection and privacy, dispute resolution mechanisms and guarantee schemes and insolvency.

The principles outlined by the GP have been partially reflected under section 50 of the Microfinance Act.

4.2 Reflection and Adequacy of the Consumer Protection Principles under the Existing Legal Framework

Despite the fact that the Microfinance Act, has thrived to accommodate the microfinance consumer protection principles, the researcher has observed several key flaws in the articulation of the provisions relating to such principles. These areas of concern are elaborated viz-a-vis each consumer protection principles as prescribed hereinbelow:

4.2.1 Legal and Supervisory Framework

The supervisory framework is one of the key principles that assist in determining the adequacy or not of the legal regime governing microfinance service consumer protection. It seeks to ensure that the supervision of microfinance service providers is undertaken in such a way that guarantees the protection of ultimate consumers of such services. In determining whether or not the supervisory framework is robust and comprehensive, important aspects and components have to be carefully demarcated. These include enforcement mechanisms as well as the interaction between the regulators and other relevant stakeholders.

(a) Inconsistency between the Microfinance Act and the NMP 2017 on Supervisory Framework

It has been revealed that the supervisory frameworks for regulating microfinance service providers in Mainland Tanzania have left much to be desired. The institutional arrangement envisaged through the NMP 2017 does not tally with the Microfinance. Review of the NMP 2017 and the Microfinance Act, revealed a number of

inconsistencies between the NMP 2017 and the Microfinance Act, as well as inconsistencies between the Microfinance Act and other legislation.

It is a cardinal principle that any legislation is an outcome of certain government policy. To put it simply, legislation is a translation of public policy. This means that any legislation must have a bearing to certain government policy. Like any other legislation, the Microfinance Act is a by-product of the NMP 2017. According to the NMP 2017, one of the things that the Policy sought to cure is the absence of consumer protection mechanism in the microfinance sub-sector.⁴¹⁶ This implies that one of the main objectives of the policy and subsequently the Act was to protect microfinance consumers.

However, looking into both the policy and the Microfinance Act, one can rightly argue that the two instruments are not in harmony. The spirit and tenor of the Act are appallingly incompatible with the spirit and tenor of the NMP 2017. For instance, while under the policy, it was envisaged to establish a microfinance unit within the Ministry responsible for finance⁴¹⁷, the Microfinance Act has designated BoT to be the regulator of the sub-sector. Likewise, while the policy intended to have regulators forum⁴¹⁸ (meaning that each tier would have its regulator), the Act has been couched to reflect a “one-man show” regulatory mechanism.

Moreover, the policy envisaged ensuring that the Tanzania Cooperative Development Commission (TCDC) becomes the regulator of tier 3,⁴¹⁹ the Act has made the BoT the regulator who has powers to delegate, at its discretion, the mandate to the TCDC. On top of that while the policy envisaged that BoT will manage, supervise and regulate only tier 1 microfinance service providers,⁴²⁰ the Act has given it all to the BoT. The policy further envisaged equipping local government authorities to oversee the activities of

⁴¹⁶NMP 2017, p. 2.

⁴¹⁷NMP 2017, p. 41.

⁴¹⁸NMP 2017, p. 42.

⁴¹⁹ NMP 2017, p. 46.

⁴²⁰ NMP 2017, p. 45.

community microfinance service providers under tier 4,⁴²¹ the Act has given it to BoT subject to its power to delegate.

These inconsistencies between law and policy are a clear signal that the making of the Microfinance Act was rushed. This put in jeopardy the interests of microfinance consumers.

(b) Enforcement of the Consumer Protection Principles

From the review, it was revealed that one of the notable weaknesses of Tanzania's Microfinance Act is the lack of clear cut safeguards for enforcement of its provisions. Section 50(2) of the Microfinance Act provides the basic principles which must be adhered to by all microfinance service providers. Apart from the explicitly enumerated principles, the said subsection has left a room for other principles the thrust of which has bearing to fair treatment. A close look at these basic principles raises some few issues. How will consumer enforce these principles if the service provider fails to comply and as a result, thereof the consumer suffers damages?

Again, even enforcement to regulators leaves many stones unturned. Under section 50(5) of the Microfinance Act, it is either the BoT or Delegated Authority who may take up actions against a microfinance service provider who fails to comply with the required principle. But is it a non-compliance of the principles or non-compliance of specific duty or function? The Microfinance Act ought to have been drafted in such a manner which cast a duty or function to a microfinance service provider.

Furthermore, the Microfinance Act gives powers to any of the regulators to take appropriate measures to ensure compliance but what amounts to appropriate measures is not defined. Again, it is not in all cases that the measures must aim at compliance. Sometimes measures must intend to offer redress to a consumer who has suffered a loss due to the non-compliance by the microfinance service provider.

⁴²¹ NMP 2017, p. 44.

On the other hand, review of the Microfinance Act found that the categorisation of microfinance service providers has left some of the microfinance business including micro-insurance, micro-leasing, micro-pension, micro-housing, digital microfinance services, commodity microfinance business and provision of financial education. This oversight is likely to pose a challenge in regulating those kinds of microfinance business because it is neither clear nor certain as to which authority is responsible to regulate them.

(c) Far-reaching supervisory mandate and overarching coverage of the BoT

A careful glance at the provisions of sections 5(1), 14 and 17 of the Microfinance Act clearly entails that the BoT is the regulator of all 4 microfinance tiers in Mainland Tanzania. Despite the fact that BoT is empowered to delegate some of its functions to either the TCDC or to local government authorities, the original mandate remains to it.

Statistically, up to December 2013, there were about 53 commercial banks and financial institutions,⁴²² 133, 134 Savings and Credit Cooperative Societies (SACCOS), over 292 Financial NGOs, 7 Social Security Funds, 5 collective investment funds, and 23,000 community microfinance groups.⁴²³ Also, there were more than 811 microcredit companies operating in Mainland Tanzania.⁴²⁴ Yet, there is a likelihood that these statistics have changed at this moment. This makes it so difficult for BoT to exercise fully its regulatory role over all these institutions.

Again, the researcher found the rights of microfinance consumers will not be adequately protected under the Microfinance Act, due to the fact that though the law intends to ensure that all microfinance activities and entities are regulated, the way the law itself is drafted makes it very difficult to implement. Over the years, the BoT has been the sole regulator of the financial sector in Mainland Tanzania. In so doing, BoT has been relying much on prudential regulations with a view to not only ensuring financial

⁴²² Brown, A. *et al, loc.cit*, p.2.

⁴²³ NMP 2017, pp. 7-12.

⁴²⁴ Information obtained from Mr. Tawi Kilumile a Senior Economist at BRELA responsible for business licensing including licensing of microcredit companies.

stability but also the protection of financial consumers. However, review of a study conducted by the World Bank reveals that BoT and other financial regulators such as the TCDC and SSRA which are responsible for enforcing compliance to consumer protection principles are under-resourced in terms of trained personnel and financial resources.⁴²⁵ Thus, taking the nature of microfinance activities and the broad functions of the BoT, may not be in a good position to effectively enforce consumer protection principles up to the required standards.

On the other hand, the analysis further reveals the exclusion of applicability of some of Microfinance Act provisions to some activities.⁴²⁶ This means that microfinance service providers in tier 4 will not be subjected to stringent oversight rules that are applicable to other tiers. In this regard, the interest of microfinance consumers in tier 4 may be jeopardized by undesirable practices.

(d) Lack of legal mechanisms for interaction between the BoT and Consumers Associations

It is an obvious fact that the way the Microfinance Act, has been drafted, there are activities which are regulated and therefore subjected to prudential regulations and there are those activities which are unregulated (tier 4 microfinance service providers). Thus, since the providers under tier 4 are not subjected to prudential regulations, the Microfinance Act ought to have come up with clear cut mechanisms to enable interaction between the BoT or Delegated Authority (as the case may be) and the microfinance consumers associations. This would help the BoT or Delegated Authority to issue non-binding "guidelines" or liaise with the microfinance consumer associations with a view to using moral suasion as a means of implementing standards similar to those applicable to the regulated microfinance service providers.

⁴²⁵ The World Bank, Tanzania Diagnostic review of consumer protection and financial literacy, Vol.1. Key Findings and recommendations, Washington D.C: World Bank, Financial Inclusion and Infrastructure Practice, Financial Inclusion and Consumer Protection Service Line, Africa Region, November, 2013, p.2.

⁴²⁶ Refer activities in tier 4.

The interaction between regulators and consumers associations was even envisaged in the NMP 2017. For instance, the NMP 2017 highlights the lack of National Microfinance Umbrella Association as one of the weaknesses of the NMP 2000. The NMP 2017 further recognizes the presence of a number of microfinance consumers associations including Tanzania Association of Microfinance Institutions (TAMFI), Networks of Cooperatives such as the Tanzania Federation of Cooperatives (TFC), Tanzania Informal Microfinance Association of Practitioners, to mention but few.⁴²⁷ Similarly, the NMP 2017 recognizes the Microfinance Apex body which will be an umbrella association of all microfinance service providers.⁴²⁸ The apex body was envisaged to perform, among other things, the function of encouraging adherence to the legal and regulatory framework for microfinance sub-sector and other related legislation.⁴²⁹

Thus, the absence of the clear cut legal mechanisms for interaction between microfinance regulators and microfinance consumer associations means that the law intended to allow the BoT to perform oversight function without collaborating with other important stakeholders.

(e) Lack of intra-authority and inter-authority coordination

Microfinance service providers are formed and regulated by various regulatory authorities, apart from the BoT. For instance, Mobile Network Operators (MNO), despite the fact that they engage in financial services, they are governed and regulated by a separate regulator and the legal framework. The same applies to micro insurance service providers who are governed and regulated by the Tanzania Insurance Regulatory Authority (TIRA) and others. In this regard, and for the effective protection of microfinance consumers, the Microfinance Act ought to set up a coordination mechanism between these regulators.

⁴²⁷NMP 2017, pp.20-21.

⁴²⁸NMP 2017, p. 47.

⁴²⁹NMP 2017, p. 47.

Though the NMP 2017 envisaged this coordination arrangement by setting up what is known as the Regulators Forum, the Microfinance Act omitted such an important aspect which would have a huge impact on consumer protection. Under the NMP 2017, among the core functions expected to be performed by Regulators Forum was to build consensus on issues of common interest in the microfinance sub-sector as well as monitoring emerging issues in the microfinance sub-sector.⁴³⁰

The only coordination arrangement prescribed in the Microfinance Act involves the BoT and the National Economic Empowerment Council under section 33 of the Microfinance Act. However, the collaboration is restricted only in relation to tier 4 microfinance service providers.

(f) Obscured interpretation of consumer protection principles

Reading between the lines of section 50(1) of the Microfinance Act, the spirit and tenor behind the provisions of that section is obvious, that is to say, to provide for basic principles underlying the precept of consumer protection. Even so, the construction of sub-section (1) of section 50 of the Microfinance Act is marred by a number of obscurities. Firstly, the law imposes an obligation to financial service providers to comply with consumer protection principles provided for in the "applicable laws" and regulations made under the Microfinance Act.

However, the Microfinance Act has not provided a clear interpretation of "applicable laws". Secondly, apart from the principles to be provided for in the applicable laws, the Act clearly states that other principles will be provided for in the regulations that the principles relating to consumer protection will be provided for in both the applicable laws and the regulations made under the Microfinance Act.

Subsection (2) of the Microfinance Act goes on to enumerate the basic five principles to be provided in the regulations the contravention of which attracts sanctions under subsection (5). This means the principles and sanctions under the applicable laws are not

⁴³⁰NMP 2017, p. 42.

covered under the Microfinance Act while the title to that part talks about consumer protection principles. This is likely to cause difficulties in enforcing consumer protection principles at the expense of consumers of microfinance services.

4.2.2 Disclosure and Transparency.

Disclosure and transparency is yet another basic principle of microfinance consumer protection enshrined in the GP. This principle has six key components. The first component requires microfinance service providers to provide complete and accurate information in advertisements and marketing of microfinance products in a simple, plain, comprehensible and understandable language.

Moreover, where microfinance service entails the execution of an agreement between the provider and consumer, such agreement must provide for key terms and conditions including rights and responsibilities of consumers as well as rights and responsibilities of microfinance service providers.

The third component relates to advertisements and sales materials whereby such materials and advertisements should not contain misleading or false statement. Other key components under this principle include key facts statements, accounts statements as well as the notification of changes in rates, terms, and conditions.

The principle of disclosure and transparency has been slightly accommodated under section 50 of the Microfinance Act. Subsection (2)(a) of section 50 of the Microfinance Act requires microfinance service providers to ensure that terms and conditions of the credit or related services are transparent, fair, legible and protect the rights and interests of microfinance consumers or members. This means that of the six key components of the principle, one component has been captured leaving out five other key components.

Apart from that it has also been revealed that the Banking Act and its Disclosure and Microcredit Activities Regulations⁴³¹ lacks explicit provisions relating to consumer complaint handling mechanism and dispute settlement mechanism. For instance, it has

⁴³¹Refer to GN.No 289 and 298 of 2014 respectively.

been noted that the disclosure required under the Microcredit Activities Regulations is merely a prerequisite to establishing microfinance services. No oversight mechanism is put in place to ensure such disclosure is provided up to the required standard and that no room is left for microfinance service providers to conceal some of their information.

4.2.3 Fair Treatment and Business Conduct

The main thrust underlying this principle is that microfinance service providers must be obliged not to use unfair terms and conditions in their services or products. On top of that the principle requires particular legislation to provide safeguards against unfair practices, fraud, and misuse of consumer assets.

The Microfinance Act has only mentioned about unfair terms and conditions in section 50(2) (a) of the Microfinance Act. However, the Act has not gone any further, apart from directing the elaboration of this principle in the regulations. Up to the time the researcher completes this research, the regulations on unfair terms were not yet made.

On the issue of unfair practices, section 36 of the Microfinance Act prohibits microfinance service providers to engage in prohibited activities. Ironically, what amounts to prohibited activity is neither defined nor further elaborated in the Act. Instead, the Microfinance Act has simply given the mandate to the Minister to make regulations prescribing in detail what are permissible activities and what are prohibited activities.

4.2.4 Data Protection and Privacy

Section 48 of the Banking Act has obliged every bank or financial institution to observe, except as otherwise required by law, the practices and usages customary among bankers, and in particular, not to divulge any information relating to its customers or their affairs except in circumstances in which, in accordance with the law or practices and usages customary among bankers, it is necessary or appropriate for the bank or financial institution to divulge such information. Similarly, sections 43 and 45 of the Microfinance Act, provides different mechanisms for accessing information relating to

consumers of microfinance services as well as the sharing of such information to credit reference bureau. In addition, section 46 of the Microfinance Act, provides for matters relating to the confidentiality of information acquired.

Despite these encouraging attempts by both section 48 of the Banking Act and section 46 of the Microfinance Act, the implementation, as well as enforcement of such provisions, is not possible. For instance, the rights and obligations of data subjects (microfinance consumers) are not well articulated. Similarly, the rights and obligations of data collectors (microfinance service providers) are also not clearly elucidated. Both the Banking Act and the Microfinance Act have failed to set up mechanisms for handling complaints relating to misuse and abuse of data collected from microfinance consumers.

Moreover, matters relating to the security of data, offences, and penalties for misuse of consumer data as well as the appeal procedures are not well elaborated in both Acts.

Worse still, since Tanzania has no comprehensive legal framework for data protection, it can be argued that the interests of microfinance consumers' data are not adequately safeguarded.

4.2.5 Dispute Resolution Mechanisms

The Microfinance Act does not establish a robust framework for handling complaints arising out of microfinance activities. Instead, section 50(2) (b) of the Microfinance Act requires microfinance service providers to comply with the complaint handling and dispute resolution mechanisms to be prescribed in the regulations.

It has also been noted that even the Cooperative Regulations which currently regulates the conduct of SACCOS business do not provide detailed procedures on handling consumer complaints at the institutional level SACCOS. This is inconsistent with the requirements of good practices that require the establishment of an alternative dispute

resolution such as tribunals and financial ombudsman as they are considered to be efficient, affordable and less formal than ordinary courts.⁴³²

A review of the literature suggests the establishment of two avenues for dispute settlement. The first avenue should be within the institution itself (internal handling of complaints) and the second should be an external independent body.⁴³³ Thus, lack of establishment of such a mechanism for dispute settlement subjects consumers to the use of the ordinary court system which is costly, complex and time-consuming.

Furthermore, it has also been revealed that consumers of microfinance services have been left without any avenue to lodge their complaints or seek stop orders in the event their properties at stake.⁴³⁴ Neither the BoT nor Delegated Authorities have the authority to issue stop order or nullify a sale or disposal of attached property which did not comply with the requirements section 51 (2) of the Microfinance Act. This entails that consumers could face challenges in trying to rescue their properties from being illegally disposed of by their service providers.

4.2.6 Guarantee Schemes and Insolvency

It is a settled principle in the financial system that there must be safeguards for protection of depositors' funds especially in cases involving deposit-taking microfinance service providers. This is to ensure the protection of depositors when a deposit-taking microfinance service provider is unable to meet its obligations, including the return of deposits.

Though under the Microfinance Act, no mechanisms for the protection of deposits are enshrined, such mechanisms have been elaborated in other financial laws. For instance, under the Banking and Financial Institutions Act, the deposit insurance scheme has been established.

⁴³²Thomas D &Frizon F, *Op.cit*, p.11.

⁴³³H.Ahmed & I.R. Ibrahim, *Op.cit*.

⁴³⁴ This refers to the illegal or unjustifiable sale or disposal of consumer's properties by a microfinance service provider.

Deposit insurance is a guarantee that all or part of a depositor's debt with a bank will be honoured in the event of bankruptcy. The specific form of insurance schemes can vary in a number of ways, including the fee structure (flat fee versus variable, risk-related fees); the degree of coverage (full versus partial coverage, maximum limits); funding provisions (funded versus unfunded systems); public versus private solutions; compulsory versus voluntary participation. Deposit insurance reduces (and in most cases eliminates entirely) the incentive to "run" on the bank in the event of financial difficulty. Therefore, it reduces the possibility that a temporary situation of illiquidity and insolvency of the bank actually lead to the failure of the bank.

Furthermore, deposit insurance prevents the "chain reaction" that can also be started associated with the run on a single bank, so that it reduces the possibility of contagion in the banking system.

In Tanzania, deposit insurance is implemented through the Deposit Insurance Board (DIB) and the Deposit Insurance Fund. Among the notable functions of the DIB include to: undertake insurance assessment and premium collection from banks and financial institutions and review of insurance coverage from time to time; monitors the health of banks and financial institutions, examine and identify risk areas or weaknesses through off-site and on-site examination; and institute corrective measures to prevent closure of banks and financial institutions through restructuring or provide financial assistance to distressed banks and financial institutions.

The amount of protected deposit is the aggregate credit balance of any amounts maintained by a customer at a bank or a financial institution less any liability of the customer to the bank or financial institution to the extent determined by the Minister for Finance from time to time by order published in the Gazette. Currently, the amount of protected deposit rose from TZS 500,000.00 up to TZS 1,500,000.⁴³⁵

⁴³⁵ The relevant provisions pertaining to deposit insurance are sections 36, 37, 38, 39, 40 and 41 of the Banking Act.

As observed earlier on, the maximum amount of money that is legally protected is, currently, at the tune of 1,500,000/=. This amount is so trivial and disproportional as compared to the huge sum of money that one might have deposited in a bank or financial institution. This appears to be inconsistent with the tenor and spirit of the principle of indemnity as applied in insurance, which is to restore the insured into the same position as he was before the loss occurred. Again, such an amount might be disproportionate to the number of deposits of the consumer. This might jeopardize consumer's interests in case the relevant deposit-taking microfinance service provider undergoes liquidation.

4.3 Conclusion

From the preceding analysis, it can be concluded that though the Government has relentlessly thrived to ensure the stability of the financial sector in its holistic sense, the microfinance sub-sector is still lagging behind. The inconsistencies between the NMP 2017 and the Microfinance Act, is a clear indication that the legislative process was rushed. Apart from such inconsistencies, the Act itself has left many “stones” un-turned.

The Microfinance Act left most of the precious and substantial consumer protection principles to be elaborated in the regulations. This over-reliance on regulations might negatively impact the interest of microfinance service consumers. It follows, therefore, that to a large extent, the legal framework does not adequately and comprehensively address the issue of consumer protection in microfinance services.

CHAPTER FIVE

SUMMARY, CONCLUSION, AND RECOMMENDATIONS

5.1 Summary

This study examined the extent to which consumers of microfinance services in Mainland Tanzania are protected under the current legal framework. Specifically, the study sought to identify the legal framework for financial consumer protection in microfinance services in Mainland Tanzania, to examine the extent to which consumers in microfinance services are protected under the existing legal framework, and to recommend reforms in the existing legal framework so as to enhance financial consumer protection in microfinance services.

Moreover, the study sought to provide a deeper understanding and insights into the legal framework for consumer protection in microfinance services in Tanzania, to determine the extent into which consumers of microfinance service are protected under the existing legal framework and to recommend reforms that are necessary to improve the existing legal framework on consumer protection in microfinance services in Mainland Tanzania.

5.2 Conclusion

The study has observed that the legal framework on consumer protection in microfinance sub-sector in Mainland Tanzania is far from satisfactory. It was observed that the relevant legislation have serious flaws that have a high probability of negatively impacting interests of microfinance consumers.

The study has revealed serious contradictions between the NMP 2017 and the Microfinance Act. The contradiction has been more serious to the extent which raises serious doubts on the government's commitment to improving the microfinance sub-sector.

The contradictions relate to supervisory mandates on microfinance sub-sector, the interaction between different regulators within the subsector as well as collaboration with important stakeholders in the sub-sector.

Moreover, another feature that undermines the adequacy of the microfinance subsector legal regime is the absence of a robust framework for consumer protection. It was observed that while the Microfinance Act, has provided some provisions on consumer protection, yet most of the key principles and components were left un-elaborated.

Again, with the exception of section 50 of the Microfinance Act, which shallowly enumerates the six principles applicable in financial consumer protection, the Act has not clearly elaborated those principles. However, it must be emphasized here that this is not the problem in the microfinance sub-sector but the whole financial sector. As observed in chapter three, other sub-sectors within the financial sector like banks, insurance, capital markets, and social security schemes also lack a robust and comprehensive framework for consumer protection.

Likewise, it was observed that the sub-sector lacks adequate mechanisms for protecting consumer's data and ensuring their privacy. Few provisions in the Microfinance Act have been put in place to mitigate the consequences. However, these few provisions cannot cater to the adequate mechanism to protect consumers personal data obtained in the course of consuming microfinance services.

The study has further observed that the Microfinance Act has almost dumped everything in the regulations. Even for the things which are so serious and substantial. This has watered down the thrust of the Microfinance Act. For instance, section 50 of the Microfinance Act which caters to consumer protection principles, has directed that each principle should be more elaborated in the regulations.

It has also observed that the Microfinance Act has failed to provide for adequate mechanisms for handling disputes. In the whole Microfinance Act, there is no single provision which provides an avenue or guidance on how to deal with complaints or

otherwise solving disputes. All these substantial matters have been left to be provided for in the regulations.

5.3 Recommendations

In order to tame the present situation, and ultimately ensuring adequate consumer protection within the microfinance sub-sector, the following are the key recommendations:

5.3.1 Enactment of the new and standalone legislation on Financial Consumer Protection

Since the financial sector is far-reaching, there is a need for the Government to come up with a comprehensive legal framework that will safeguard interests of consumers within the financial sector, instead of relying on regulations to provide for this important concept. The comprehensive legal regime will avoid the duplicity of regulations on consumer protection.

5.3.2 Enactment of the new and standalone legislation on Data Protection and Privacy

As highlighted in the preceding chapters, data protection, and privacy is one of the key principles in consumer protection. The Government should borrow a leaf from our neighbours, the Republic of Uganda who, apart from having standalone microfinance legislation, also has full-fledged and standalone legislation on data protection and privacy.⁴³⁶ South Africa is yet another country having two separate legal regimes on both microfinance and data protection⁴³⁷

⁴³⁶ The Data Protection and Privacy Act of 2019.

⁴³⁷ Protection of Personal Information Act, No. 4 of 2013.

5.3.3 Reconciliation between the NMP 2017 and the Microfinance Act

It is further recommended that policymakers should take the trouble to reconcile the current Microfinance Act and the NMP 2017. The spirit and tenor of these two instruments are not in harmony despite their common objective.

5.3.4 Hasten the making of regulations

As observed earlier on, the Microfinance Act has put much emphasis on regulations. Even to matters which are so substantial, the legislation has directed them to be prescribed in regulations. This makes the implementation of the Microfinance Act ineffective without such regulations. Thus, as an alternative route, the relevant Minister should hasten in causing such regulations to be made.

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