Statutory Instrument No. 14 of 2012

NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY ACT
(Cap. 46:08)

NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY (MICRO LENDING) REGULATIONS, 2012

(Published on 9th March, 2012)

ARRANGEMENT OF REGULATIONS

REGULATION

PART VI — *General*

IN EXERCISE of the powers conferred on the Minister of Finance and Development Planning by section 105 of the Non-Bank Financial Institutions Regulatory Authority Act, the following Regulations are hereby made —

Part I — *Preliminary*

Citation

1. These Regulations may be cited as the Non-Bank Financial Institutions Regulatory Authority (Micro Lending) Regulations, 2012.

Interpretation

2. In these Regulations, unless the context otherwise requires —

"annual interest rate" means the annual percentage rate of interest at which money is borrowed inclusive of all charges, except insurance premiums levied on the loan, and shall be expressed in terms of simple interest only and is calculated as —

$R=I/Pt$, where I is the total interest paid for the borrowing, P is the principal amount of the borrowing and t is the period of time the loan is outstanding;

"authorised address" means the address at which a micro lender is authorised, by the licence issued by the Regulatory Authority, to carry on a business as a micro lender;

"borrower" means a person who has concluded, or is in the process of concluding a loan agreement with a micro lender;

Cap. 03:07

"business day" excludes any public holiday as determined by the Public Holidays Act as well as a Saturday and Sunday;

"juristic person" includes a partnership, association or other body of persons, corporate or unincorporated;

"loan agreement" means a loan agreement concluded or to be concluded between a micro lender and a borrower;

"minimum financial balance" means the minimum cash balance that the micro lender shall have on-hand as a liquidity reserve at all times;

"principal amount" means the original amount advanced to a borrower, excluding any initial charges;

"repayment period" means the period stated in the loan agreement as the period within which the borrower is obliged to repay the loan;

"total cost of credit", in any loan agreement, means the difference between the aggregate of all repayments to be made and the principal amount; and

"total monthly cost of credit rate" means the monthly percentage rate at which money is borrowed, inclusive of all charges, except insurance premiums levied on the loan and is calculated as —

(aggregate of all repayments – principal amount) – (principal amount) x (100/ repayment period in months).

PART II — *Licencing Requirements*

Application for licence

3. (1) No person shall carry out a business as a micro lender without a licence issued by the Regulatory Authority.

(2) An application for a licence to carry out a business as a micro lender shall be made to the Regulatory Authority in Form 1 set out in the Schedule.

(3) An application for a licence under subregulation (2) shall be accompanied by —

(*a*) the full personal details, qualifications, experience and economic interests of its —
- (i) controller,
- (ii) manager,
- (iii) principal officer, and
- (iv) other senior officers; or

(*b*) full personal details, qualifications, experience, economic interests and occupation of the —
- (i) directors of its board,
- (ii) shareholders of the applicant, and
- (iii) beneficial holders of the applicant;

(*c*) constitution of the applicant, where the applicant is a company and other incorporating documents;

(*d*) any evidence of human resources sufficient to efficiently operate and manage its facilities;

(*e*) any evidence of the minimum financial requirements as provided in regulation 6; and

(*f*) a licence fee of P5 000.

(4) Any person who contravenes the provisions of subregulation (1) commits an offence and is liable to a fine specified in section 42 of the Act.

Issue of licence

4. (1)Where the Regulatory Authority is satisfied that the applicant has —

(*a*) complied with the requirements of regulation 3; and

(*b*) demonstrated the capacity to meet the obligations and compliance requirements as provided for under Part III of these Regulations,

it shall, within 90 days of receiving the application, issue a licence to the applicant in Form 2 set out in the Schedule.

(2) A licence issued under this regulation —

(*a*) shall be for a period of five years; and

(*b*) may be subject to such conditions as the Regulatory Authority may determine.

(3) A person issued with a licence under this regulation may apply to the Regulatory Authority for an approval to open a branch of his or her micro lending business in Form 3 as set out in the Schedule, and such application shall be accompanied by a processing fee of P1 000.

Requirement to be fit and proper person

5. (1) A controller of a micro lender to be licensed under these Regulations shall demonstrate, at time of application and when requested to do so, that he or she, individually or collectively with other controllers of the micro lender —

(*a*) is in a position to perform his or her tasks with integrity, prudence and professional skill; and

(*b*) for purposes of the licence applied for, has sufficient business knowledge and experience.

(2) No natural person shall be licensed as a micro lender if that person —

(*a*) is an un-rehabilitated insolvent in any country;

(*b*) is under the age of 18 years;

(*c*) is not a resident of Botswana;

(*d*) has been declared mentally unfit by a competent court in any country;

(*e*) has been removed from an office of trust on account of misconduct relating to fraud or misappropriation of money in any country;

(*f*) has been a director or member of a governing body of an entity at the time that such an entity was involuntarily deregistered in terms of any law; or

(*g*) has been convicted during the previous ten years, in Botswana or in any country, of —

(i) dishonesty or any other crime of a serious nature,

(ii) a crime involving violence against another person, or

(iii) an offence in terms of the Act.

(3) Any natural person who becomes disqualified in terms of subregulation (2) after the date of application shall notify the Regulatory Authority immediately, and if he or she fails to do so, shall be liable to a civil penalty not exceeding P5 000, to be imposed by the Regulatory Authority.

(4) A juristic person shall not be licensed if any natural person, who would be disqualified in terms of subregulation (2), is a controller, manager, principal officer or other senior officers of that juristic person, either alone or in conjunction with others.

(5) Any natural person who, after being licensed as a micro lender, becomes disqualified in terms of subregulation (2) shall notify the licensed micro lender where the micro lender is a juristic person, and the Regulatory Authority immediately and if he or she fails to do so, shall be liable to a civil penalty not exceeding P5 000, to be imposed by the Regulatory Authority.

(6) Where a natural person becomes disqualified in terms of subregulation (2) after being licensed as a micro lender, the Regulatory Authority may —

(*a*) request the natural person to dispose of his or her interest in the micro lender; or

(*b*) after considering the circumstances and the nature of the disqualification, impose conditions regarding the continuation of the licence.

(7) A trust shall not be licensed to carry on a business as a micro lender under these Regulations.

Minimum financial requirements

6. (1) Any person applying to carry on a business as a micro lender shall have and maintain at all times a minimum financial balance of P20 000.

(2) A person licensed as a micro lender under these Regulations shall demonstrate to the Regulatory Authority, when requested to do so, that the micro lender is financially solvent.

(3) The Regulatory Authority shall determine the financial solvency of a micro lender by financial analysis conducted by the Regulatory Authority on the micro lender's operations from time to time.

(4) The Regulatory Authority may declare a micro lender that has failed to maintain a minimum financial balance or to demonstrate its state of solvency as provided in subregulations (1) and (2) to be in an unsound financial position and may review the micro lender to determine whether it qualifies to continue to be licensed as a micro lender under these Regulations.

(5) Where the Regulatory Authority, after reviewing a micro lender, is of the view that the micro lender is in an unsound financial position, it may suspend the micro lender's licence for the period specified in the written notice given to the micro lender and the Regulatory Authority shall in so doing act in accordance with section 47 (2) of the Act.

PART III — Operational Requirements

Display of information on premises

7. (1) The following information shall be displayed by a micro lender in a prominent place on the micro lender's business premises —

(*a*) a copy of the licence issued under regulation 4;

(*b*) formal business hours for each day of the week;

(*c*) relevant contact numbers; and

(*d*) Dispute Resolution Policy Procedure including the place and contact numbers where a complaint may be lodged.

(2) A micro lender that contravenes the provisions of subregulation (1) shall be liable to a civil penalty not exceeding P5 000, to be imposed by the Regulatory Authority.

Marketing and advertising

8. (1) A micro lender shall not —

(*a*) issue statements or advertisements which make false, misleading or extravagant claims;

(*b*) use any harmful or misleading ways to solicit business; or

(*c*) coerce a person to apply for credit or to enter into a loan agreement or related transaction.

(2) A micro lender shall at all times —

(*a*) with each advertisement or marketing material, display with reasonable prominence the following statement —

"CAUTION! Borrowing more than you can afford to repay could lead to serve financial difficulties", and

(*b*) given an indication of the total monthly cost of credit rate with all marketing or advertising statements.

Assessment mechanisms

9. (1) A micro lender shall consider, on the balance of available information at the time a determination is made including the borrower's history of debt repayment, whether a particular borrower is or will be able to satisfy in a timely manner, all the obligations under the credit agreements to which the borrower is or would be party.

(2) The micro lender shall not enter into a loan agreement with a borrower without first taking reasonable steps to asses the proposed borrower's general understanding and appreciation of the —

(*a*) risks and cost of the proposed credit; and

(*b*) rights and obligations of a borrower under such agreement,

(*c*) A micro lender shall —

(3) have its own loan underwriting criteria, approval documentation, evaluative mechanisms and procedures to be used in its assesment obligations, including situations under which credit will not be available;

(*b*) Wherre the borrower is married in community of property, ensure that the borrower submits a complete consent of spouse in Form 4 set out in the scheduled; and

(*c*) keep a record and copy of each loan assessment process as well as the final outcome of the assessment for a minimum period of six years.

(4) A micro lender shall be considered by the Regulatory Authority as not carrying on its business with integrity, prudence and professional skill where the micro lender has —

(*a*) failed to conduct a proper assessment under this regulation; or

(*b*) entered into a loan agreement despite the fact that based on the balance of information available and based on the evaluative mechanisms and procedures in place for the micro lender, the loan agreement should have not been entered into.

(5) The provisions of this regulation shall not apply to a loan agreement where the borrower is a juristic person.

Disclosure of salient features

10. (1) A micro lender shall provide a borrower, prior to signing of the loan agreement, at the latest, with a salient features schedule in writing, stating —

(*a*) the principal amount;

(*b*) the total amount repayable over the repayment period;

(*c*) the total cost of credit;

(*d*) the repayment period;

(*e*) the number of instalments and the amount of each instalment;

(*f*) the total monthly cost of credit rate;

(*g*) a statement providing details of whether the interest rate element of the total monthly cost of credit is fixed for the repayment period or varable, and if variable, how and under which conditions it may vary;

(*h*) the circumstances under which penalties would be charged, the amount of the penalty, any additional costs that may have to be paid and the method of calculating the penalty; and

(*i*) the nature and amount of any insurance if required, including the name of the insurer, the amount and frequency of the premiums payable.

(2) A micro lender shall make available to a borrower, a revised salient features schedule, within a reasonable time, whenever the interest rate element under subregulation (1) (*g*) is changed in terms of any variable clause of the loan agreement.

(3) The aggregate of the penalty amount referred to in subregulation 1(*h*) and the additional costs, excluding identifiable legal fees shall not exceed five per cent of the outstanding principal amount per month with a maximum not exceeding the outstanding principal amount.

PART IV — Loan Agreement

Loan agreement requirements

11. (1) A micro lender shall ensure that a loan agreement concluded with a borrower —

(*a*) contains the minimum requirements set out in Form 5 in the Schedule;

(*b*) is written in clear and simple English or Setswana language; and

(*c*) is, where the borrower cannot understand the language of the agreement, clearly interpreted to the borrower.

(2) An agreement that is not concluded in accordance with the requirements of Form 5 set out in the Schedule shall have no effect in so far as it is inconsistent with those requirements.

(3) An agreement shall have no effect unless —

(*a*) the provisions of subsection (1) have been complied with before the agreement is signed by the borrower;

(*b*) it is in writing and is signed by the borrower before the loan is advanced to the borrower; and

(*c*) a copy of the loan agreement is provided to the borrower, within three business days of the borrower's signature of the loan agreement.

(4) A micro lender shall, before concluding a loan agreement with a borrower —

(*a*) provide the borrower with an opportunity to read the loan agreement, or have it read to him or her where the borrower is illiterate; and

(*b*) explain to the borrower, in a language understood by the borrower the essential terms of the loan agreement so as to ensure that the meaning and the consequences of the loan agreement are understood.

Cooling-off

12. A micro lender shall, in terms of the provisions of the loan agreement, allow the borrower to terminate the loan agreement within at least two days after the signing of the loan agreement or approval, where it happened earlier, and shall not charge the borrower any fee for the termination, provided that —

(*a*) where the principal amount has been advanced to the borrower, the borrower shall simultaneously repay the amount advanced; and

(*b*) the micro lender is entitled to charge the borrower the prorated cost of credit.

Provision of reasons for refusal to give credit

13. (1) A micro lender shall, on request from a borrower, advise the borrower, in writing, of the reasons for —

(*a*) refusing to enter into a loan agreement with the borrower; or

(*b*) changing the terms and conditions of the credit applied for by the borrower.

(2) When responding to a request made in terms of subregulation (1), a micro lender that based its decision on an adverse credit report received from a third party shall advise the borrower in writing of the name, address and other contact particulars of that third party.

Repayment and collection methods

14. (1) A micro lender shall not, as security for repayment of credit advanced —

(*a*) require the disclosure of the borrower's personal identification number used for a bankcard; or

(*b*) take possession of a bankcard, national identity card or any other official document.

(2) A micro lender shall ensure that evidence of payment is available for a period of 12 months from the end of the loan agreement for every payment made by the borrower in terms of the loan agreement, and the evidence —

(*a*) may be in the form of a bank order, e-mail, payslip, statement of payment or written receipt; and

(*b*) shall, on request by the borrower, be given to the borrower or the person paying on behalf of the borrower.

(3) A micro lender shall not collect any amount from the borrower that is in excess of any amount stated in the loan agreement.

(4) A micro lender shall not charge a borrower any fee for early settlement in terms of the agreement unless a reasonable amount is stipulated in the agreement.

(5) Where the repayment system is outsourced, the micro lender shall have a service agreement with the outsourcing entity and shall verify the integrity of the system from time to time.

(6) The micro lender shall provide a copy of any contract or service agreement to be used in the collection of the loan to the Regulatory Authority for review.

Duty to provide information to borrower

15. (1) A micro lender shall, on request by the borrower, at any time, provide the following information —

(*a*) the date on which the loan agreement was made;

(*b*) the principal amount, in Pula and the original total cost of credit and monthly cost of credit rate;

(*c*) the amount already paid in terms of the loan agreement by, or on behalf of the borrower and the date of such payment;

(*d*) the amount outstanding in terms of the loan agreement and the date upon which it is due and the amount of each installment;

(*e*) with respect to arrears, the date upon which installment became due and the amount of each installment; and

(*f*) a copy of the signed loan agreement.

(2) A micro lender may charge a nominal charge to provide the information referred to in subregulation (1).

Duty to provide statement of loan agreement

16. A micro lender shall, where the agreement is originally for a period longer than 12 months, provide the borrower with a statement, every six months while the loan agreement is still in force, in the same language as that of the loan agreement, signed by, or on behalf of the micro lender showing the —

(*a*) date of the statement;

(*b*) original principal amount;

(*c*) original total amount that was to be paid over the full term;

(*d*) total amount paid to date;

(*e*) total amount still to be paid; and

(*f*) total monthly cost of credit rate of the loan agreement.

PART V — Confidentiality Requirements

Confidentiality of information

17. (1) No micro lender, any officer, employee, agent of a micro lender or any person who, by virtue of his or her professional relationship with the micro lender, has access to the records of the micro lender, shall during or after his or her relationship with the micro lender, directly or indirectly disclose any information he or she may acquire in the course of his or her duties, concerning the borrower's transactions, personal, financial or business affairs without the written and freely given consent of the borrower or his or her personal representative.

(2) The provisions of subregulation (1) shall not apply where —

(*a*) the borrower is declared bankrupt in Botswana and the information is required in bankruptcy proceedings;

(*b*) the information is required in any legal proceedings;

(*c*) the information is required by an officer in the employment of the same micro lender in Botswana or by an auditor or a legal representative of the micro lender who requires, and is entitled to know, the in formation in the course of his or her professional duties;

(*d*) the information is required by another micro lender for the purpose of assessing the credit worthiness of a borrower and is required for assessment purposes only;

(*e*) the information is required in terms of any other law; or

(*f*) it is necessary to disclose the information in the public interest as approved by the Regulatory Authority.

18. (1) Where a micro lender intends to forward any adverse information relating to the borrower to a third party, the micro lender shall, at least 30 calendar days before forwarding the information, notify the borrower, in writing, of such intention except where the adverse credit information is required under regulation 17 (2). Fowarding of adverse credit information

(2) The notification referred to in subregulation (1) shall be addressed to the borrower's address set out in the loan agreement, or if the postal system is impractical, any other reasonable and appropriate means shall be used to deliver the notification.

(3) Where the amount owed by the borrower is in dispute, the micro lender shall communicate that fact to the third party concerned, together with the adverse credit information referred to in subregulation (1).

PART VI — General

19. (1) Where a micro lender is a natural person, the micro lender shall conduct his or her micro lending business through a bank account that is separate from the micro lender's personal bank account. Accounts and records of micro lender

(2) A micro lender shall keep all records, in Botswana, as are necessary to exhibit clearly and accurately the state of its affairs and to explain its transactions and financial position so as to enable the Regulatory Authority to determine whether the micro lender concerned has complied with the provisions of these Regulations and any other relevant legislation.

(3) Without prejudice to the generality of subregulation (2), a micro lender shall maintain proper accounting records reflecting full details of all credit advanced, charges raised, repayments received and amounts outstanding.

(4) A micro lender shall keep a signed copy of each loan agreement and the register referred to in regulation 20 for a period of not less than six years.

20. A micro lender shall, in respect of every loan agreement, maintain a register which shall contain the following details — Register

(*a*) loan agreement number or other reference to identify the agreement;
(*b*) name and address of the borrower;
(*c*) principal amount of credit advanced in terms of the loan agreement;
(*d*) date on which credit was advanced;
(*e*) amount of each repayment installment;
(*f*) number of installments;
(*g*) total cost of credit and the total monthly cost of credit rate;
(*h*) total amount payable in respect of the loan agreement;
(*i*) penalties and other incidental legal costs which were paid by the borrower; and
(*j*) statement showing in respect of each repayment —
(i) the amount of repayment made and date on which it was made, and
(ii) the balance outstanding after each repayment.

21. (1) A micro lender shall have a clear Dispute Resolution Policy and Procedure approved by the Regulatory Authority, which shall be displayed at a prominent position in each of the micro lender's premises, in accordance with regulation 7. Dispute resolution

(2) A micro lender shall ensure that the names and contact details of persons responsible for dispute resolution are clearly displayed on the micro lender's premises.

(3) A complainant shall submit any dispute in writing to the persons responsible for dispute resolution, and every attempt shall be made to resolve the dispute within a reasonable period of time.

(4) A micro lender shall ensure that a record of the dispute indicating —

(*a*) the loan agreement number;

(*b*) the date of the dispute;

(*c*) the name of complainant; and

(*d*) the outcome of the dispute, indicating whether the complainant was satisfied or not,

is kept for a period for six years.

(5) Where a dispute is not satisfactorily resolved, the micro lender shall ensure that the complainant confirms this in writing, and the micro lender shall notify the Regulatory Authority within 30 calendar days of the unresolved complaint.

Credit life insurance

22. (1) A micro lender may require a borrower to maintain during the term of the loan agreement, credit life insurance which does not exceed, at any time during the term of the loan and the subsistence of the loan agreement, the total of the borrower's outstanding obligations to the micro lender with a declining balance reflecting all loan repayments.

(2) A micro lender shall inform the borrower in writing, prior to committing to the loan, of his or her right to choose the intermediary and insurance company of the borrower's choice.

(3) A micro lender shall not add any surcharge, fee or additional premium above the actual cost of insurance as stipulated by the insurer.

(4) A micro lender shall not act as the insurer of a credit life insurance policy and shall disclose to the borrower any fee, commission, remuneration or benefit received by the micro lender in relation to that insurance.

Maximum cost of credit

23. (1) A micro lender shall not charge an unreasonable maximum total monthly cost of credit rate with regard to a loan agreement and the Regulatory Authority may at any stage of the borrowing and related loan agreement, whether a complaint has been received or not, ask an independent person to investigate and report on the matter to the Regulatory Authority.

(2) The Regulatory Authority may issue operational rules, directives or guidelines stipulating the maximum total monthly cost of credit rate, the maximum annual interest rate and the maximum total cost of credit.

(3) The Regulatory Authority may, where any micro lender fails without reasonable explanation to comply with the operational rules, directives or guidelines issued under subregulation (2), determine any loan agreement entered into by the micro lender as an unfair practice in terms of section 68 of the Act.

Corporate governance

24. A micro lender who is a juristic person shall adhere to the best practices of corporate governance for the size and complexity of its business.

Submission of information to Regulatory Authority

25. (1) A micro lender shall within five business days, inform to the Regulatory Authority, in writing, where —

(*a*) the micro lender or any of its branches ceases to operate;

(*b*) the micro lender becomes unable to discharge any of its debts promptly and in full;

(*c*) there is a change in contact numbers or address of the micro lender; or

(*d*) there is a change in the business affairs of the micro lender that has or may have a negative effect on the borrowers.

(2) A micro lender shall, within 90 days of the end of its fiscal year, complete and submit to the Regulatory Authority, a compliance report in Form 6 as set out in the Schedule.

(3) A micro lender who fails to submit any information required under these Regulations may be declared by the Regulatory Authority as not carrying on business with integrity, prudence and professional skill and shall be liable to a civil penalty specified under section 91 of the Act to be imposed by the Regulatory Authority.

Periodic and other returns of micro lender

26. (1) A micro lender shall, within 90 days of the end of its fiscal year, lodge with the Regulatory Authority, annual returns in Form 7 as set out in the Schedule.

(2) The Regulatory Authority may, from time to time request a micro lender to lodge any other periodic returns or any other information.

SCHEDULE

Form 1

APPLICATION TO BE LICENSED AS A MICRO LENDER

(Reg. 3 (2))

Address of applicant: _____

_____

_____

Date_____20_____

To:
The Chief Executive Officer
Non-Bank Financial Institutions Regulatory Office
Private Bag 00314
Gaborone
Botswana

I/We, the undersigned, do hereby apply for a license in terms of section 43 of the Non-Bank Financial Institutions Regulatory Authority Act, (Cap. 46:08) to operate a micro lending business in Botswana.

I/we have taken note of sections 92 – 95 of the Non-Bank Financial Institutions Regulatory Authority Act regarding the consequences of giving false or misleading statements to the Regulatory Authority or falsely holding out as being licensed.

PART I — APPLICANT AND BUSINESS INFORMATION

1. Name of applicant_____

2. Tradingname(s) of applicant_____

   Provide all the names if different_____

3. Legal status of applicant (mark with x)

Sole ownership/Individual	Private company	Public company	Partnership	Other (specify)

I/we take note that Regulatory Authority will not allow Micro Lenders to conduct additional activities parallel to those that the Micro Lender was licensed for without prior notice and approval by the Regulatory Authority. Permission to conduct such activity(ies) will only be granted upon the Regulatory Authority's physical inspection of the said premises.

4. Official registration number of the above legal status _____

5. Date of commencement of trading as a Micro Lender (dd/mm/yy) _____

6. Financial year end (dd/mm/yy) _____

7. Income tax registration number _____

8. Vat registration number (if applicable) _____

9. Contact details of the applicant (head office if applicable) _____

   Physical address _____

   Postal address _____

   Landline telephone number _____

   Fax number _____

   E-mail address _____

   Website _____

Note: Similar details to be provided if there are any branches with a different address. Provide on separate sheet of paper.

10. Contact details of principal officer

    Tittle _____

    Full name(s) _____

    ID number: _____

    Telephone number (office) _____

    E-mail address _____

Note: The principal officer means the person responsible for the daily management of the principal office of the Micro Lender in Botswana. Provide short Curriculum Vitae to show experience.

11. Auditor/Accountant

Note: Refer to Rule 18(6) of the Rules of Business Operation for Micro Lenders to ascertain whether an auditor or accountant should be involved.

Name of firm/person _____

Physical address _____

Postal address _____

Name of responsible person (if a firm) _____

Telephone number _____

Fax number _____

E-mail address _____

Professional registration number/practice number _____

Name of Professional body registered with _____

12. Banker

Name of bank _____

Branch name _____

Name of holder of main business account for lending business _____

Account number _____

I/we enclose an original letter from my/our bank confirming the above.

Note: If there is more than one such account due to branches for instance, provide full details.

PART II — CONTROLLER(S) OF THE MICRO LENDER

Note: The definition of a controller is provided in section 4 of the Non-Bank Financial Institutions Regulatory Authority Act.

13. Provide the following in respect of each of the above persons:

First Name(s)	Surname	ID Number	Nationality	Designation (Owners, Directors and Senior Management)	In case of Owners, please provide percentage of ownership

Note: Attach Curriculum Vitae for each controller and indicate any tertiary qualifications, abbreviated employment history and specific contribution to be made in respect of the lending business.

PART III — SALIENT FINANCIAL INFORMATION

14. The following salient financial information is hereby provided:

Description	At Most recent Financial Year End (Pula)	At Date of Application (Pula)
(*a*) Aggregate value of principal amounts still to be repaid		
(*b*) Aggregate value of all future payments		
(*c*) Less: provisions relating to (*b*) above (refer note 1)		
Net value of loan/debtors book (*b*) — (c)		
Number of contracts		
Number of borrowers		

Note 1: Provisions are those amounts that will with reasonable probability not be paid.
Note 2: A copy of your most recent set of financial statements, if applicable, must also be provide

PART IV — FUNDING

15. The existing and/or intended sources of funds to be utilised in the business are as follows:

Type of Funding	Approximate Percentage
Own funds	
Borrowed funds	
Donor funds	
Any other	

Note: A Micro Lender is not allowed to solicit and/or accept funds (deposits) from the public. If members of the public wish to invest in a Micro Lender, they do so by acquiring a stake in the business either through an equity contribution or the lending of funds.

PART V — DESCRIPTION OF BUSINESS

16. Applicant must provide a description of the business (existing and/or proposed business for next two years) describing the main product(s) including an indication of the total monthly cost of credit rate associated with each product, marketing methods, client focus, geographical spread of business and branches, number of persons to be employed, methods to ensure compliance with statutory responsibilities, administrative procedures and control. (Use separate piece of paper).

17. Describe briefly the system to be used to assess the credit worthiness of a borrower and policy regarding the refusal of an application for a loan.

18. Describe briefly the collection methods and systems to be used.

19. Do you, as the entity doing lending business, engage in any other activity than the lending business hereby applied for? Yes_____ No_____

    If yes, please provide details

    _____

20. Which of the following ancillary products does the applicant or its holding company or subsidiary or associate sell, or intends to sell, in conjunction with the lending products applied herewith:

    Life insurance _____

    Funeral cover _____

    Credit life insurance _____

    Short term insurance _____

Other (specify) _____

Explain the relative importance and volumes of these products in relation to the lending business applied herewith _____

Provide a schematic group structure and indicate whether the entity operates as a principal or intermediary for that specific product _____

_____

_____

PART VI — DECLARATION OF NATURAL PERSONS

This part must be completed and signed by each natural person mentioned in Part II (make additional copies if necessary).
Declaration

I/We, the undersigned, declare that the above information is true and correct to the best of our knowledge and belief and undertake to provide any other information that may be required by the Regulatory Authority.

I/We, the undersigned, declare that none of us, except as indicated hereafter, are disqualified in terms of any of the disqualifications as mentioned in paragraph _____ of the Rules of Business Operations published in the Government Gazette No_____dated_____20_____.

I/We, the undersigned, hereby give permission to the Botswana Police Criminal Record Center to furnish the Regulatory Authority or its authorized agents with my/our previous convictions or any relevant information in their possession, including any directions by the Court for my/our detention in a mental hospital or prison.

I/We hereby indemnify the Botswana police criminal center, its employees, the Regulatory Authority, its agents and its employees and hold them harmless against any claims by myself/ ourselves or any other person that may arise out of or be connected with such disclosure as well as any legal costs, including attorney and client costs.

First Name and Surname	ID Number	Signature	Date

ATTACHMENTS

I/We enclose the following:

1. Non-refundable application fee of P5,000 (Five Thousand Pula)
2. All additional information as to be provided in Application form above;
3. Articles of Association or any document by which the applicant is constituted (if applicable);
4. Certificate of Incorporation from Registrar of Companies (Ministry of Trade and Industry) (if applicable);
5. Copy of a document showing income tax registration number;
6. A copy of any other registration or licensing certificate (if applicable);
7. Copy of latest financial statements of the business (if already conducting lending business).

Yours faithfully

_____

Authorised signature

GENERAL NOTES:

1. Where an answer or documentation requested above is not known or available it is essential that this be brought to the attention of, and explained to, the Regulatory Authority. Any application not fully completed will be returned to the applicant.
2. Any controller and/or principal officer appointed after the approval of a license must within 30 days of such appointment complete and submit PART II and PART VI of this Form to the Regulatory Authority.
3. Prospective applicants are invited to hold informal discussions with the Regulatory Authority prior to formal application.
4. A prospective applicant need to establish as a company in Botswana, if applicable, before formal application.

Form 2

LICENCE TO CARRY ON A BUSINESS AS MICRO LENDER
(Reg. 4 (1))

Certificate No. 00000/CM

NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY

REPUBLIC OF BOTSWANA

NON-BANK FINANCIAL INSTITUTIONS REGULATORY ACT
(Cap. 46:08)

MICRO LENDER LICENSE

This is to certify that _____ has been duly licensed by Non-Bank Financial Institutions Regulatory Authority to carry out the business of MICRO LENDING.

This licence is not transferable and remains the property of the Non-Bank Financial Institutions Regulatory Authority.

Dated this_____ day of _____ 20_____ in Gaborone.

Signed: _____
CHIEF EXECUTIVE OFFICER

Form 3

APPLICATION TO OPEN A BRANCH OFFICE OF A MICRO LENDING BUSINESS
(Reg. 4(3))

Address of applicant: _____

_____

_____

Date _____20_____

To:
The Chief Executive Officer
Non-Bank Financial Institutions Regulatory Authority
Private Bag 314
Gaborone
Botswana

I/We, the undersigned, do hereby apply for approval to open a branch in terms of section 43 of the Non-Bank Financial Institutions Regulatory Authority Act, 2006 to open a micro lending business in Botswana.

I/We have taken note of sections 92 – 95 of the Non-Bank Financial Institutions Regulatory Authority Act regarding the consequences of giving false or misleading statements to the Regulatory Authority or falsely holding out as being licensed.

PART I — APPLICANT'S INFORMATION

1. Name of applicant _____
2. Trading name of this branch of the applicant _____
3. License number allocated by the Regulatory Authority _____
4. Legal status of licensed Micro Lender _____
5. Will this branch engage in any other activity than that of the approved license?
   If so, please provide details_____
6. Contact details of the applicant (Head Office)

   Physical address_____

   Postal address_____

   Telephone number_____

Form 4

CONSENT OF SPOUSE
(Reg. 9 (3) (b))

I,.....

the undersigned, married in community of property to

.....

hereby consent to my spouse binding himself/herself to this

*.....

as surety and co-principal debtor for the indebtedness of the Debtor(s) to the Micro Lender.

Consenting Spouse:

Full Name:.....

Identity Number: .....

Address: .....

Signature: .....

Date: .....

Witnesses:

1. Full Name: .....

   Address: .....

   Signature: .....

   Date: .....

2. Full Name: .....

   Address: .....

   Signature: .....

   Date: .....

*Surety, Loan agreement

Form 5

MINIMUM REQUIREMENTS TO BE INCLUDED IN THE LOAN AGREEMENT
(Reg. 11)

Any loan agreement between a lender and a borrower need to comply with the minimum requirements as set out in this sample agreement.

FRONT PAGE

PART A

Particulars about the lender

Name of lender_____

License number_____

Authorised address_____

Address of branch (if applicable) _____

Contact number(s) _____

Website (if available) _____

Particulars of the borrower

Name of borrower_____

ID number_____

Postal address_____

Physical address_____

Contact numbers: (home)_____

Work_____

Mobile_____

Any other (where necessary)_____

PART B

Details of the loan

Type of loan_____

Principal amount_____

Total amount to be repaid_____

Number of instalments _____

Amount of each instalment _____

Date of loan_____

Date(s) of instalment(s) _____

Total cost of credit and total cost of credit rate_____

FROM SECOND PAGE ONWARDS

1. Undertaking by the borrower to repay the full amount on due date(s).
2. Repayment arrangements (e.g. cash, electronically, deductions from wages or salary by employer or debit order) and applicable authorizations and indemnities.
3. Procedures and cost implications in case of failure of the borrower to adhere to the terms of the agreement. Reasonable penalty fee are to be stipulated and under what circumstances and added to the total amount to be repaid.
4. Confirmation by the borrower that all the required statutory disclosures have been made to the borrower and that the dispute resolution process been explained.
5. Confirmation by the borrower that he or she is in a position, financially and legally, to enter into the agreement.
6. Confirmation by the borrower that he or she has truthfully disclosed all relevant facts regarding his or her own current and expected future financial position.
7. Consent by the borrower that all legal means can be employed by the lender to establish the borrower's credit worthiness.
8. Early repayment conditions and procedures.
9. Whether insurance is taken out on behalf of the borrower and the associated costs.
10. Borrower undertakes to inform lender if any of his or her personal particulars change.
11. Cooling-off arrangements with a minimum of 2 calendar days.
12. Document to contain the entire agreement.
13. Statement and signature by the borrower that the agreement was explained and all blank spaces were duly filled before the borrower signed the agreement.
14. Any other normal legal clauses can be added.

Form 6

COMPLIANCE REPORT
(Reg. 25 (2))

For the period from _____ to_____

I/We,_____ in my/our

capacity as _____of_____ (name of Micro Lender)

do hereby wish to report as follows:

1. The necessary disclosures as specified in Regulation 7 of the Rules of Business Operation for Micro Lenders (hereafter just referred to as "the Regulation") as published in Government Gazette No. _____ dated _____ is in place.

2. The Micro Lender has complied with Regulation 8 of the Regulation regarding marketing and advertising.

3. The Micro Lender has complied with Regulation 9 subsections (6) (a) and (b) of the Regulations and has not failed to conduct a proper assessment or advanced a loan where it should not have.

4. The Micro Lender has complied with Regulation 10 regarding the provision of a salient features document and Regulation 11 (3) and (4) regarding signature, copy and explanation of the agreement to the borrower.

5. The Micro Lender has kept a record of all unresolved disputes and has notified the Regulatory Authority as requested in Regulation 21 (5).

6. The Micro Lender abided with the guideline in Rule 23.

7. In general, the Micro Lender has complied with the requirements of the Micro Lending Industry Regulations.

8. In case of non-compliance; the Micro Lender hereby discloses the following areas of non-compliance and the steps taken by the Micro Lender to rectify such non-compliance. *(Please list the areas and provide detailed explanation on separate paper).*

Signed on behalf of the board of Directors/Controllers/Members of:

_____

Date _____

Name _____

Capacity _____

Form 7

FINANCIAL AND STATISTICAL ANNUAL RETURN
(Reg. 26 (1))

Name of licensed Micro Lender: _____

NBFIRA Licence number: _____

Company/Partnership/other registration number: _____

Reporting period: from_____ to_____

Name of person completing this form: _____

Designation: _____

Contact information: E-mail:_____

Telephone number:_____ Mobile:_____

PART I — SALIENT INFORMATION

Table 1: Reporting Period Analysis

Description	Current Financial Period	Previous Financial Period
Total Pula value of loans disbursed during the period		
Total number of loans disbursed during the period		
Total value of loan Book at end of the period		
Total number of clients in the book at last day of reporting period		
Total number of employees on last day		
Total number of agents of period and broker (*if any*)		

Note 1: Value means only the principal amounts.

Table 2: Analysis of original terms of agreements approved during reporting period

Original Term	0-3 months	>3-6 months	>6-9 months	>9-12 months	>12-18months	>18-24months	>24 months	Total
Aggregate Value (refer to Note 2)								
Number of Agreements								

Note 2: Value in tables 2 and 3 means original principal amount. Each renewal or roll over during this period counts as a new agreement and principal amount.

Table 3: Analysis of original principal amounts approved during reporting period

Original principal Amount	**0-P300**	**P301-P500**	**P501-1000**	**P1000-P1500**	**P1501-P2000**	**P2001-P3000**	**>P3000**	**Total**
Aggregate value (note 2)								
Number of Agreements								
Average								

Loan Book Risk Analysis

Table 4: Age analysis of overdue payments (in Pula) (refer to Note 3)

Current (<30 days)	**31-60 days**	**61-90 days**	**91-120 days**	**120+ days**	**Total**

Note 3: Micro Lender to define 'overdue' in terms of its guidelines and payment means total payment that includes principal amount and cost of credit portion.

Table 5: Age analysis of principal amounts involved corresponding to Table 4 (in Pula)

Current (<30 days)	31-60 days	61-90 days	91-120 days	120+ days	Total

Table 6: Age analysis of number of agreements overdue corresponding to Table 4

Current (<30 days)	31-60 days	61-90 days	91-120 days	120+ days	Total

Table 7: Indicate fees for following sized transactions

Principal Amount	P300	P500	P800	P1000	P2000	P3000	P5000	P10000
(*a*) Initial fee:								
(*b*) Ongoing service fee								
(*c*) Any other fees, specify: _____								

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Table 8: Indicate total monthly cost of credit rate for following transactions

Principal Amount	P300	P500	P1000	P3000	P5000	P10000
Term:						
1 month						
3 months						
6 months						
9 months						
12 months						
24 months						

Table 9: Analysis of repayment methods

Repayment Method	Number of Agreements	Value of payments made during last month of reporting period
Cash		
Stop/bank order		
Bank Deposit slip		
Cheque		
Third party collection agent		
Bank card		
Other (specify)		
Mobile pay		
Internet pay (electronic transfer)		

PART II — FINANCIAL STATEMENTS

INCOME STATEMENT FOR THE PERIOD ENDING _____

Description	Current Financial Year	Previous Financial Year Income
(*a*) Gross repayments excluding capital portion in loan repayments		
(*b*) Other income related to loan book (specify)		
(*c*) Commissions and fees from insurance		
Gross income from money lending		
(*d*) Other income		
Total income		
Expenses		
(*e*) Bad debts written off		
(*f*) Interest paid		
(*g*) Change in provision for bad debts		
(*h*) Operational expenses		
(*i*) Other expenses		
Total expenses		
Net income		
Less Tax		
Net income after tax		

BALANCE SHEET AS AT _____

Description	Current Financial Year	Previous Financial Year Income
Assets		
(*a*) Gross loan debtors (Note 4)		
(*b*) Less: provision for bad debts		
(*c*) Less: other provisions		
(*d*) Net loan debtors		
(*e*) Current and other assets		
Total assets		
Liabilities		
(*f*) Long-term interest bearing liabilities (note 5)		
(*g*) Short-term interest bearing liabilities		
(*h*) Other current liabilities		
Total liabilities		
Equity		
(*i*) Stated capital		
(*j*) Retained earnings		
Total equity		

Note 4: *Gross loan debtors are the aggregate of all the future gross repayments to be made after the reporting date.*

Note 5: *Long-term liabilities are those liabilities with an outstanding term more than 12 months, and short-term liabilities are those with an outstanding term 12 months and less, at the reporting date.*

DECLARATION BY AUDITOR/ACCOUNTANT

Information contained in Financial and Statistical Return as prescribed in Regulation 8 (1) and Form 3 in the Second Schedule of the Micro Lending Industry Regulations.

In terms of Rule 18 (6) of the Rules of Business Operation for Micro Lenders:
"The annual return as prescribed in Regulation 8 of the Micro Lending Industry Regulations must be verified for its accurateness by a resident auditor who is a member of a recognized professional body as approved by the Regulatory Authority, in the case where the aggregate of the total cost of credit repaid during the specific reporting period were more than P5,000,000 otherwise by a resident accountant who is a member of the Botswana Institute of Accountants or any other recognised professional body approved by the Regulator".

Name _____

Professional body (if applicable) _____

Membership number (if applicable) _____

Report of the Auditor/Accountant (delete where applicable) regarding the Financial and Statistical Return

of _____ (name of Micro Lender).

NBFIRA license number is _____

Declaration A: Accountant (In terms of Regulation 7)

1. I/We have reviewed the accompanying Financial and Statistical Return for the year ended _____
2. Management/owner is responsible for the preparation and fair representation of the figures in this Return in accordance with International Financial Reporting Standards.
3. My/Our responsibility is to express an opinion on the accuracy of these figures. I/We have conducted enough reasonable checks, taking the size and complexity of the business of the Micro Lender into account, to obtain reasonable assurance whether the Return is free from material misstatement.
4. In my/our opinion, the Return has been properly prepared in accordance with the notes to the Return and is consistent with the records on which these have been based.

_____
Signature (Registered Accountant)

Date _____

Contact number _____

Declaration B: Auditor (In terms of Regulation 7)

Report of the auditor regarding the Financial and Statistical Return

of _____(name of Micro Lender).

NBFIRA licence number is_____

1. I/We have audited the accompanying financial statements which comprise the balance sheet as of _____ and the income statement, statement of changes in equity and cash flow statement for the year then ended and a summary of significant accounting policies and other explanatory notes.

2. **Management's responsibility for the financial statements**
   Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Financial Reporting Standards. This respon-sibility includes: designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

3. **Auditor's responsibility**
   Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those Standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

4. **Report on other legal and regulatory requirements**
   We have also audited the accompanying disclosures required in terms of Form 6 (Part I) of the Regulations. These disclosures are the responsibility of the company's management. Our responsibility is to express an opinion on the disclosures based on our audit.

5. In our opinion, the accompanying disclosures required in terms of the Form 6 (Part I) of the Regulations have been properly prepared in accordance with the relevant requirements and are consistent with the annual financial statements and the accounting records on which these have been based.

.....
Signature (Registered Auditor)

Date.....

Contact Number.....

Signature.....

MADE this 24th day of February, 2012.

O. K. MATAMBO,
Minister of Finance and Development Planning.

Fax number_____

E-mail address_____

7. Contact details of the applicant (branch office)

Physical address_____

Postal address_____

Telephone number_____

Fax number_____

E-mail address_____

8. Contact details of responsible person at branch

Title_____ Name_____

Surname_____

Telephone number (office) _____

E-mail address_____

9. Products marketed or intended to be marketed in this branch:

Micro lending products (yes/no) _____

Any other (yes/no) _____

10. Which of the following ancillary products does the applicant sell, or intends to sell, in conjunction with its lending products from this branch, i.e. as an intermediary?

Life insurance_____

Funeral cover_____

Credit life insurance_____

Short term insurance_____

Other (specify)_____

Explain shortly the relative importance and volumes of these products in relation to the micro lending products _____

_____

PART II — RESPONSIBLE PERSON OF THE APPLICANT IN THE BRANCH

11. Any new person assuming general management, control and reporting responsibilities for the branch must complete PART II and PART VI of Form No. 1 of this Regulation. *Provide separately.*

PART III — DESCRIPTION OF BUSINESS

12. Any changes to the original description of the business as approved should be noted.

I/We confirm that the information contained in this application is accurate and complete.

Yours Faithfully:

Applicant:	Principal Officer:
Date_____	Date _____
Name_____	Name _____
Capacity_____	Signature_____
Signature_____	

Note: If this application is completed on behalf of a juristic person, attach proof of authorisation.

ATTACHMENTS

I/We enclose the following:

1. Non-refundable application fee of P1 000 (One Thousand Pula)
2. All additional information as to be provided in the Application form above.

GENERAL NOTES:

Where an answer or documentation requested above is not known or available, it is essential that this be brought to the attention of, and explained to, the Regulatory Authority. Any application not fully completed will be returned to the applicant.