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# LEGISLATION OF CREDIT BUREAUS IN MOZAMBIQUE

REVIEW OF DRAFT REGULATIONS

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# LEGISLATION OF CREDIT BUREAUS IN MOZAMBIQUE

## REVIEW OF DRAFT REGULATIONS

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# FOREWORD

Empirical studies on private credit in a large number of countries and 25 years of data shows that higher ratios of private credit to GDP are associated with information sharing institutions. Credit information is of greatest value not only to commercial banks but also to nonbank financial services and retail and commercial sectors of an economy. Credit bureaus have strong relation with economic growth through their provision of reliable information and they help lenders make better informed decisions and better assessment of credit risk, thereby supporting the expansion of credit which results in higher demand for goods and services, expansion of production, increase in employment and incomes and improvement in living standards. Credit information in particular supports the small and medium enterprise sector which is the engine of growth in developing countries.



# PREFACE

This report provides a review of the draft regulation that will be approved by the Council of Ministries in Mozambique in connection with law number 6/2015. As per the scope of work the review of the draft regulation for private credit bureaus should determine to what extent it:

- a) Adequately facilitates the functioning of the economy by increasing access to credit;
- b) Is aligned with the Private Credit Information Bureau Law (Law 6/2015);
- c) Addresses all of the relevant technical and legal aspects that allow credit bureaus to operate effectively.
- d) Aligns with regional and international best practices (including costing);
- e) Responds to the need for a regulation on private credit information bureaus, fulfilling all the requirements established by the law;

The author reviewed the draft regulations and law 6/2015 in English. These were translated from Portuguese. The regulations are to be approved by the Council of Ministries.

The review was done with a view that that the ultimate goal is to have successful operations of one or more private credit bureaus in Mozambique to support. For this reason the report is structured around some important issues that are material to the establishment and successful operation of private credit bureaus. Basically to ensure that the legal framework will facilitate information sharing and is drafted along best practices covering issues of privacy, data quality, access to information, legal aspects, IT issues, borrowers' protection, the openness of the system and the role of the Central bank.











# EXECUTIVE SUMMARY

The Assembly of the Republic of Mozambique promulgated law number 6/2015 to legislate for private credit bureau in Mozambique. The law requires the Council of Ministers to regulate this Law within a period of ninety days from its entry into force. A draft regulation has been prepared and USAID project SPEED was requested to review the draft regulation in connection with the law and offer an opinion.

The law as a primary legislation is extensive and detailed leaving fewer areas to be developed in the regulations. Both the Law and the draft regulations, in broad terms and in most of the articles, follow the provisions and principles of legislations in both developed and developing countries which cover regulations of private credit bureaus. In particular the licensing section is very elaborate and is overweighed compared to the operational issues of the private credit bureau. Some subjects in the regulations will be later covered via notices issued by the central bank such as the licensing fee, feeding the central registry of the central bank from the private credit bureau in real time.

The law and draft regulations covered the licensing requirements, liabilities of private credit bureaus, sharing of information, safety measures to protect the data, roles of data users and providers, privacy and confidentiality issues, use of the data, the rights of the data subject, IT issues and the supervisory role of the Central Bank.

Some aspects of the legislation are very liberal: There are no restrictions on foreign or natural persons owning a private credit bureau, the capital requirement is not substantial, cross border information sharing is allowed and the data subject can obtain a free credit report in many situations.

Other aspects of the legislation are restrictive: sharing of information is restricted to users in the same sector with the exception of credit institutions which can see information from all sectors; the central bank can interfere in pricing of services, the central bank may license only one private credit bureau, the backup system of the credit bureau to be in the country, etc

Some areas can be further developed/ incorporated in the regulations as long as they do not conflict/contradict with the primary legislation. Examples would be the complaints system, allowing the central bank to share its own database with the private credit bureau, the operations of “bearer shares”, the definition of social capital, putting sanctions on data providers, feeding in the central registry at the central bank with information from the private credit bureau, etc

The minimum capital required in the legislation is not substantial. It is only U.S \$ 344 thousand). Given the technological requirement for a private credit bureau, a system could be costly and could range from one to five million U.S dollars depending on the components. There is no doubt that more financial resources will be needed not only to establish the system in the first place but also to cover expected losses at the beginning. A credit bureau may take some time to issue its first credit bureau and may incur losses for a few years as indicated by studies undertaken by the International Finance Corporation.

From a financial perspective, having more financial resources could sustain the private credit bureau. Additionally what could help the private credit bureau is also the generation of good revenues.

At the moment only credit institutions are obliged to send their data and use the credit bureau. This has implications for the data base as this means that requests for credit reports will come from these institutions only. For other institutions it is optional to join the credit bureau system. What could be discussed with the central bank is for the central bank to use its authority in such a way that all institutions under its umbrella join the system. In this way the database will be rich and the number of inquiries will be higher. More inquiries and more credit report requests mean more revenue and more financial resources and ensuring financial sustainability in the long run.

The legislation also seems to require the processing system and the data base system to be in the country. Therefore, the private credit bureau has to invest in hardware and software. There are other countries which use a processing facility outside their borders which saves on cost especially when the country is small and the number of inquiries are not expected to be large.

The legislation gave the client (data subject/borrower) the right to get a free report in many situations. Although this is in line with practices in some markets, yet other countries have not followed. This means more cost for the private credit bureau as it will use its processing facilities and its staff. This issue could be also subject of discussion in order to help the credit bureau generate revenues.

Furthermore if the central bank increases the range of purposes for which credit reports could be requested and oblige financial institutions under its umbrella to request them this will help the revenue of the credit bureau. There is no real need to go back to the central bank to request approval every time there is a new purpose which was not mentioned in the regulation. The range of purposes could be expanded in the regulation and the central bank could expand them in the future via notices as the banking /financial system develops. For example, and for now the following could be also added: accepting guarantees which is also part of credit risk, money laundering, checking the risk of the lender's portfolio, to fulfill know your client rule, to calculate risk in connected groups of borrowers, to inquire about the individuals who are owners of a partnership business, etc.

Although the regulations allowed other entities to join, (i.e. it is optional) there is no principle of reciprocity. With a shallow or limited data base, these entities may not be encouraged to inquire. The central bank can support the private credit bureau and play a leading role in discussing with regulators in the insurance and retail and commercial sectors the provision of comfort and awareness of the new system so that these regulators could in turn encourage the institutions under their supervision to be part of the system: send their data to enrich the database and use the database too.

The private credit bureau is at some risk as the legislation required that the private credit bureau be connected to the central bank in real time and feed its center which raises the question of whether the central bank will compete with the private credit bureau.

Two last important issues is the consent as this could be an issue in implementation and is necessary when data is sent and when institutions inquire and the existence of identifiers as the system has to operate in a good way such as the right information is retrieved on the right person.



# BENEFITS OF PRIVATE CREDIT BUREAUS

A credit bureau is an independent organization that provides credit information. It is an agency that manages information but does not change it and does not provide a credit decision. Its relations with the data users and subscribers are via contracts. It maintains a central database that is searchable and processes information through computerized hardware and sophisticated software.

The credit bureau file contains demographic information, payment habits, information from public records and inquires. When both positive and negative information are available they provide a better broader picture of the borrowers and are more predictable of default.

Credit bureaus provide value added services compared to central registries of central banks. The latter focuses on the big borrowers, is government regulated and controlled. Information by lenders is mandatory sent by them to the central bank. Central registries cover supervised institutions and are not service oriented, and the information is used mainly for supervision basis. The information is at minimal cost or no cost to the lenders.

Private credit bureaus include more data subjects/borrowers, i.e. not necessarily bank borrowers. They include more data not necessarily information with commercial banks. Data sources are diversified. Creditors access the information. Agreements with private credit bureaus are normally based on the principle of reciprocity. Credit bureaus charge a fee and respond to market needs. The consumer (borrower or data subject) has the right to see his/her r own information and correct erroneous information

Private credit bureaus in addition to providing credit information provide also value added services such as generic scoring, based on the information in the borrowers' files. Scoring is calculated based on payment history, the length of credit history, amounts owed, types of credit used and new credit obtained. A credit score is a number that indicates the probability of default and creditors in retail transactions base their decisions on the score without going into the detail of the credit report. Additionally, credit bureaus provide fraud detection services, tailored reports for insurance, mobile operators, portfolio monitoring, early warning signs, market research and others.

To the lenders the benefits are: accurate risk evaluation and better allocation of credit, efficiency gains as the lender's time and cost are saved and the lender can focus on generating business. Better credit information results in lowering default rates and lowering lending rates as a result of competition.

Lending relies on reputational collateral and not on traditional banking practices that rely on securities and tangible collaterals. Credit information helps lenders/creditors process and makes decisions about large volumes of credit requests.

The benefits to the borrower/data subject are tremendous. It creates a reputation collateral and rewards the person with good credit standing. Because they know their information is in the credit bureau they are disciplined. Small and micro businesses and lower income consumers should benefit at least as much because usually the processing cost of smaller loans is higher and they lack collateral and adequate proof of income.

Because of all these benefits, many developing countries have undertaken legislations to allow for the formation and operation of private credit bureaus.

## **INTERNATIONAL AND REGIONAL LEGAL FRAMEWORKS**

The level and nature of the licensing of private credit bureaus around the world is a matter determined by the political, economic and cultural preferences of a particular country. In countries where there is less economic regulation, the licensing requirements are less stringent or even nonexistent. In countries and economies that rely on more regulation and government oversight, the licensing requirements are more stringent. There is no particular reason to prefer one methodology or system to another. It is rather a matter of the political and economic structure and level of control that fits the framework of a particular country.

In some countries, credit bureaus developed in response to a business need prior to the establishment of laws or regulations addressing information on individuals for evaluating credit risk. Subsequently, laws were enacted to regulate an existing business model. However, since the regulation came after the business existed, the licensing requirements in those countries continue to be less stringent. The most prominent example of credit bureaus without licensing is the United States. Credit reporting has a long history in the United States. Regulations were first enacted in 1970 with the Fair Credit Reporting Act (FCRA). The Federal Trade Commission was given oversight responsibility for assuring credit bureaus operate within the legal requirements and follow the law. The Federal Reserve Bank or other banking regulators have no authority over credit bureaus but their regulatory authority extends only over financial institutions.

Similar to a number of other countries, including Canada, credit bureaus existed in South Africa prior to the legislation that regulating and licensing them was enacted. A credit bureau law was enacted in 2005.

The law now requires the licensing of any entity engaged in the business of receiving reports of, or investigating credit applications, credit agreements, payment history or patterns; or other consumer<sup>1</sup> credit information other than public record information; compiling and maintaining that information for the purpose of issuing reports concerning consumers or other natural persons based on that information. The law designates a National Credit Regulator who is charged with registering credit bureaus that have appropriate qualification, competence, knowledge and experience requirements for its employees or contractors who will have authority to represent it in any function under the law; have, in the opinion of the National Credit Regulator, sufficient human, financial and operational resources to enable it to function efficiently and to carry out effectively its functions in terms of the law, or present to the National Credit Regulator a credible plan to acquire or develop those resources; have adopted procedures to handle consumer questions, concerns and complaints in a timely, efficient and courteous manner, or present to the National Credit Regulator a credible plan to acquire or develop those procedures; and are registered with the South African Revenue Services.

In other countries the existence of private credit bureaus responds or comes after legislation is approved by the parliament of the country and a regulator usually the central bank of the country oversees the operations of private credit bureau(s). This was the case in many developing countries as Egypt, Nigeria, Kenya and others. For example, the Central Bank of Nigeria established regulations for credit bureaus, pursuant to legislation, and included licensing provisions. The licensing provisions are fairly detailed and provide that individuals and entities may be owners of the credit bureau. However, banks may not have an interest that exceeds 10%, and no bank may invest in more than one credit bureau.

The regulations set out the number of directors a credit bureau may have their required educational qualifications and a number of years of experience. The license application must be accompanied by a fee; the applicant must meet certain capital requirements; must present a feasibility report including a comprehensive business plan indicating the growth and expected profitability; include a listing of the directors and their CVs; a listing of the shareholders; the management or service level agreements; and sworn statements from the directors attesting to their willingness to adhere to the code of conduct.

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<sup>1</sup> There are different terms that are used to mean more or less the same. Consumer, data subject, borrower, client, applicant are all used in different countries in legislations.

If the application is accepted, the credit bureau is approved in principle, with a final license issued after the Central Bank ascertains that the credit bureau is ready to commence operations, assuming that is within six months of the grant of the provisional license.

Egypt followed the route of making a simple amendment in its banking laws to enable exchange of information with a private credit bureau and the board of directors of the central bank was given authority to issue the regulations.

Many legislations address the same issues more or less, most importantly is the issue of privacy and data subject's rights. Privacy is a fundamental human right and is embodied in the European Convention of Human Rights. The EU Data Protection Directive 95/46/EC of the European Parliament and Council Directive of 24 October 1995 sets minimum requirements for access to and circulation for processing of personal data in the EU, conditions for the processing of personal data in the EU, conditions for transfers of personal data to third countries, limits collection and use of personal data. Personal data may be processed only if the data subject has unambiguously given his/her consent or processing is necessary for the performance of a contract to which the data subject is party, for compliance with a legal obligation, etc. Personal data must be processed fairly and lawfully, collected for specified, explicit and legitimate purpose, must also be accurate and kept up to date

EU directives include right to be informed, right to access data, know the logic in processing and the right to object (i.e. entity determining the purposes & means of the processing of personal data), purposes of the processing, recipients of data, existence of the right of access to and right to rectify the data concerning him, know whether data is being processed, Information as to the purposes of processing, Recipients to whom data are disclosed,

Fair Credit Reporting Act of the U.S also addressed protection issues by providing rights. It gave consumers a right to obtain a copy of the information a credit bureau had about them. It created a dispute process by which a consumer could contest items in a credit report that he or she believed to be in error. FCRA also required that credit bureaus implement "reasonable procedures to ensure maximum possible accuracy" in consumer reports.

Other developed and developing countries have similar clauses

## THE MOZAMBIQUE LICENSING REGIME

The Mozambique licensing requirements follow the standards of the countries that have licensing regimes. The Central Bank in Mozambique is responsible for the regulation and licensing of the private credit bureaus<sup>2</sup> and oversight over their operations. The licensing requirements in chapter II in the law and chapter II in the regulations and the supervisory role of the Central Bank chapter VIII of the law are well developed.

In general review of the regulations indicates that it adopts a licensing regime that is very comprehensive and thorough by international standards. The requirements are similar to those in nations where credit bureaus did not develop naturally in the economy but are the result of a national decision to create a more credit focused economic order and assure the proper structure of the credit bureaus.

The licensing section in the draft regulation is extensive and allows the central bank to review the shareholders, the business plan/viability, a business continuity plan, provide operational manual, assess reputation and integrity of management/board of directors (articles 10 and 11 of the law), the technological infrastructure and will make a determination as to whether all the standards for licensing have been met.

While the central bank will indicate reasons for rejecting applicants (article 6.4 of the regulation) yet reserves the right not to reveal reasons due to confidentiality of resources (article 6.5 of the regulation).

## OWNERSHIP

Under the licensing requirement both legal and natural persons can be owners and there is no restriction on foreign ownership. Other countries require institutional shareholders only and prevent foreigners from owning a private credit bureau.

However the licensing prevented limits the control of one individual or a group of individuals to 20% or 49% respectively as per article 8.1.e of the law.

Disposal of shares which exceeds 5% (probably due to the existence of minority rights under laws) is subject to approval by the central bank. (Article 14.1 of the regulation)

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<sup>2</sup> The Mozambique legislation uses the terminology privately managed credit information system or credit information centers. Private credit bureau and credit bureau are used to mean the same thing in this report.

Changes in composition and changes in liquidation are also adequately covered (chapter VII of the law)

Given all the extensive licensing requirement in both the law and the draft regulation regarding the registration of share capital which is allowed by “bearer shares” (article 8.1.e of the law)

## **CAPITAL/FINANCIAL CAPACITY**

There is a minimum capital stock (article 8 of the law and article 3.1 of the regulation)). The capital of about U.S \$ 344 thousand does not constitute a barrier to entry; however a system to establish a private credit bureau will cost more than the required capital and could vary from one to five million U.S dollars depending on the components.

Practical experience shows that a private credit bureau could make losses which might erode the capital. Studies conducted by the IFC (International Finance Corporation) shows that a newly credit bureau could break even after three years.

Article 3.2 of the regulations gives the central bank the right to update the minimum capital.

It is recommended that article 3.2 of the regulation be rewritten so that a request to increase capital should be dependent on a review of the tangible net worth of the private credit bureau and not to market conditions as is currently the case. Market conditions are subject to interpretation. Alternatively the article can specify that tangible net worth should not be less than a certain percent of assets and/or dividends not to be distributed before approval of the central bank.

The law also enables the central bank to evaluate the financial capacity of the proponents (article 5.b of the law). This can provide comfort to the central bank that they will have funds to inject into the private credit bureau perhaps more than the required capital or to financially support the private credit bureau in the future.

Noteworthy of mention is that the law/regulation did not prohibit the private credit bureau from pledging assets.

There is a requirement to deposit or provide a guarantee representing 5 % of social capital (article 4.2.j in the regulation). Social capital needs to be defined

## **EXPIRY OF THE LICENSE**

One of the conditions to ensure that the license is ongoing is to commence operations with 12 months from date of authorization (article 6 of the law). In these types of projects it takes a longer time to issue the first credit report. The regulations could define operations in a more flexible matter or to allow for an extension of the license which will provide more comfort to credit bureau.

## **LICENSING OF ONE OR SEVERAL PRIVATE CREDIT BUREAUS**

Though the law allows the existence of more than one private credit bureau, the provision of a second license is at the discretion of the central bank. An applicant may be ready to fulfill the licensing requirements, yet the central bank may decide to license only one. This gives the central bank flexibility. Some countries have several credit bureaus such as South Africa and Nigeria. Other countries have one credit bureau such as Egypt. The licensing of only one could be viewed as monopoly of information though there are arguments why this could be more suitable in a developing country with the size of Mozambique. However, the central bank has the right to interfere in pricing of services (article 43.2.i of the law) which can be acceptable in the case of a monopoly but not when there is competition.

## **LEGAL ISSUES**

### **LEGAL AGREEMENTS**

The data provider will enter into a contract with the credit bureau (article 27.a of the law) and public entities may enter into agreement with the credit bureau (article 24 of the law)

These two articles can be complemented in the regulation by requiring that the private credit bureau sign agreements with signatories<sup>3</sup> too. The legal agreement will incorporate the rights and duties of the different parties as per the law and regulations and any additional operational matters. It will also provide the credit bureau with the opportunity to incorporate additional terms and conditions, especially in agreements with data providers and signatories that are not under the umbrella of central bank.

Article 34. 4 and 34.6 in the regulation address the confidentiality of the data. The regulation could additionally oblige the credit bureau to ensure that management, staff, outside vendors and anyone who

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<sup>3</sup> The word signatory is used to mean a person defined under the terms of the Mozambique law as eligible to have access to the reports of the credit information center.

has access to information sign confidentiality agreements. Everyone should get access to information on a need to know basis only including the board of directors.

## THE CONSENT

The consent is an important legal document that is required in information sharing to enable the signatories to view the information at the credit bureau registry. The Mozambique law and the regulation showed respect for privacy of clients<sup>4</sup> and is required before requesting information (article 29 of the law).

It is also required before sending positive information about them (article 29.2 of the law) which implies that consent is not required in provision of negative information

The consent in article 29.3 of the law stated that it is explicit.<sup>5</sup>

The possible exclusion or revocation of the client's consent as mentioned in article 27.g of the law is unusual in developing markets as there is possibility that it will result in incomplete information in the databases of the private credit bureau.

In emerging market it might be preferable that a client not withdraw his /her consent; however the consent should be associated with legitimate purposes for requesting the credit report and only as per the law and regulation. This can be incorporated into the wording of the consent.

## CLIENT RIGHTS

Chapter VI in the law provided coverage of the rights of the client: the right to know (article 35), the right to obtain a report (article 36) and the right to dispute (article 37) and that access to his/her data is only with the consent (article 29)

The law even provided the client with the right to get free reports in certain situations in line with some international practices and regulations such as those in the U.S.

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<sup>4</sup> In the legislation, the client is defined as “a natural or legal person that, within the scope of this law, is contractually linked to one or more data provider or signatories”

<sup>5</sup> Explicit was defined “that the client has the knowledge of the nature of information being shared, of the use, etc.”

The client has the right to know who inquired (the identity of the institutions, article 16.3 of the law). In general these rights are in line with privacy clauses in the Mozambique constitution and are in line with practices in regulations and legislations of other countries.

However there are some details in the operation and implementation of their operations which can be better covered/addressed in the regulations if possible.

## **NOTIFICATION WITH NEGATIVE INFORMATION**

The law (articles 27.h and 35.2 of the law) stated that the client has the right to receive from the data provider within a period to be regulated the negative information to be sent to the credit information centers. Article 27 of the regulation stated that the data provider shall notify the client with the negative information he intends to mail (The word mail implies that the system is not automated) to the credit information centre at least five working days in advance.

It is not customary to inform the client in advance five working days before sending negative information. Article 27 in the regulation is a burden on the data provider and the creditor probably informed the client that with the event of default. The consent of the client should ideally include wording once and for all that he/she knows or is aware that negative information will be sent to the credit bureau and that such information may affect the credit standing and credit scoring of the client.

Furthermore, article 36.2.a of the law gives the client the right to get a credit report once he has been refused on the basis of information. Although the article did not state that it is negative information yet it is presumed that this will be the reason for rejection.

Article 32 of the law and article 28 of the regulation stipulates a notice of reservation (i.e. rejection of the request) which justifies requesting a free credit report. These articles are in line with practices in developed economies.

## **THE COMPLAINTS PROCEDURES/RIGHT TO CORRECT INFORMATION**

Article 27 of the law stated that the data provider has to respond to the complaints from clients within the period defined by the regulation. Although article 29.1 of the regulation allowed a period of three days to make corrections when a complaint is received, article 29 as a whole needs clarification regarding the complaints system and how it will work, and define the response time by the data provider to a client if

the client submits a complaint directly, the response time by the data provider to the credit bureau if the credit bureau submits a complaint on behalf of a client, and the response by the credit bureau to the client, as well as obligations to correct in the databases of both the data provider and the credit bureau and other matters.

## **THE NEW INFORMATION SHARING MODEL**

Sharing of information by credit bureaus is restricted to signatories of the same sector except for credit institutions and microfinance operators who shall obtain information from providers of all sectors. The rest of the signatories to obtain reports from the respective sectors (articles 15, 16.4 and 16.5 of the law). This restriction is not conducive to information sharing.

Credit institutions are obliged to be signatories and data providers of at least one established credit information center (article 23. 1 of the law) and are obliged to request a report in certain situations ( article 28 of the law). For other entities it seems voluntary (article 23.2 of the law) i.e. it is optional for microfinance institutions to join the system.

While it is understood that the central bank cannot force entities not regulated by it to join, it is not clear why all institutions regulated by the central bank shouldn't be obliged to join and use the new private credit bureau system. This is a very acceptable model in developing countries and has a positive impact on the revenue of the private credit bureau(s)

However, articles in the law have supremacy over any regulation, and secondary legislation cannot change a primary legislation.

## **THE CENTRAL CREDIT REGISTRY**

Article 22 of the draft regulation mentioned that information to be mailed periodically to the Bank of Mozambique is for purposes of supervision of the private credit bureau. Supervision of the credit bureau was the subject of Chapter VIII of the law.

Additionally, the central bank will feed its center from the private credit bureau and will be connected in real time (article 16.1 in the law and article 18 in the regulation titled: Feeding and updating the Bank of Mozambique Database). This clearly suggests that it is one way flow of information. There are two issues here: (1) Any potential private credit bureau will want to discuss the role of the old system/ the central registry and whether it will compete with or complement the new private credit bureau system.

(2) The feeding of the Central Bank central registry with information of clients coming from data providers who fall under other regulators could be an issue to the regulators

To provide comfort, the central bank can, in its regulation, clarify that the information provided in real time is to improve its supervisory function whether on the clients of the banking system or on the private credit bureau.

The central bank is allowed to share information with credit information centers be these in the country or abroad (and other banking supervision authorities). (Article 11.5 of the law). The word “share” implies it is a two way flow yet the same article restricts sharing of information for the purpose of article 11 only which is titled “reputability of the members of the governing board”. As long as the principle of sharing information is approved in the law, and there is no prohibition in the law, the central bank could incorporate in the regulation the possibility of sharing its own data base or part of it with a private credit bureau as the latter can provide value added services. This can also be at the discretion of the central bank. It might be conducive to develop the information sharing model in the future and will be a matter of discussion with the credit bureau(s).

## **OTHER SIGNATORIES**

The central bank has authority (as per article 23.3 of the law) to approve other signatories under the terms defined in the regulations however under article 25 of the regulation no terms or conditions for their joining the system have been defined.

The regulations could recommend, however, that as long as a potential signatory / data provider has a legitimate purpose and abides by the law and regulation and a legal agreement is signed then it can join the new private credit bureau system.

## **CROSS BORDER SHARING OF INFORMATION**

Both the law and regulations incorporated articles on cross border sharing of information (article 17 of the law has been extended in the regulation in article 17) which is commendable given the fact that this is a new area and other developing countries have not incorporated it into their regulations. A memorandum of understanding will be signed with the authorities in other countries and then this will be followed by agreements between the credit bureaus.

## THE DATA

International and regional best practices incorporate in their regulations/laws clauses to ensure accuracy by requiring the implementation of strict quality control procedures in order to ensure the maximum possible accuracy of the database, and to take steps reasonably necessary to ensure the information is current, authentic, legitimate, reliable, accurate and truthful. If information is determined not to be accurate, corrective measures must be taken to rectify the deficiencies. Also, individuals are brought into the process of assuring accuracy by being given the right to obtain a copy of the information the credit bureau maintains about them once a year and being able to dispute information that they believe is inaccurate.

In general the Mozambique law and regulation follow the provisions and principals which are consistent with international standards. For example and In line with international practices in both developed and developing countries private bureaus are not allowed to process discriminatory information (article 9 of the law) and data needs to be validated ( article 22.c of the law), etc. Some observations on the issue of the data are as follows:

## DATA UPDATE

Credit Bureaus are required (article 20.g of the law) update the data in accordance with the terms and conditions of the regulations which stated in article 19.1 of the regulations that information has to be updated by the credit bureau within one working day from receiving the new information. This puts the liability on the credit bureau only. There has to be an equal liability on part of the data provider who should update the data sent to the private credit bureau at least on a monthly basis, at minimum, before the credit bureau can incorporate.

## DATA NORMALIZATION

Article 25 of the law stated that the data provider should send the data as per the formats of the credit bureau. The data format and the related manual is the propriety of the private credit bureau. Regulation should clarify that the data normalization manual to be approved by the Central Bank not be issued by it as this might raise questions on part of the credit bureau

## PURPOSES TO ACCESS

Legislation and regulations in other countries always includes a section on the legitimate purposes for using the credit reports. Article 30 of the law stated a number of purposes such as the provision of credit and insurance underwriting and in situations required by law (article 16. b iii of the law). Although article 30, e of the law mentioned that other purposes can be authorized by the central bank, the regulation could include other purposes beforehand instead of reverting to the Central Bank every time there is a new purpose. Examples would be to accept guarantees, portfolio checks, to fulfill know your client rule, for credit scoring, for supervision purposes of the central bank, as per a court order, etc.

The signatory agrees to dispose of client information that is no longer necessary (article 16.1.b.ii of the law). It seems that disposing of the information will be up to the signatory because information is the basis upon which decisions are made and risk taken and it might be necessary to keep them for audit and supervision purposes

## INFORMATION TECHNOLOGY AND SECURITY ISSUES

Information needs to be suitably protected. Information could be printed or written on paper, stored electronically, and transmitted by mail or electronic means, spoken in conversations and video.

Information security is all about protecting and preserving the confidentiality, integrity, authenticity, availability and reliability of information. With increasing cyber crime, there are concerns about lack of control in IT technology, especially in banking and telecom industries, nonexistence of IT policies, poor telecommunications and power infrastructure. Security threats exist.

International practice in both developed and developing economies address IT issues to ensure the security of the information and to ensure that information is protected against loss or unauthorized access and recommend comprehensive written security policies, identification of and assessment of risks, management and control of them, reduce risks from outside vendors, train employees, test programs and hold the board accountable.

The issue of information technology is well covered in the law and regulations before the Central Bank provides a license and as an ongoing requirement.

Section v of the law has sufficient language to indicate that the central bank obliges the credit bureau to undertake measures to mitigate the risks associated with information and information technology.

Under the regulations, and prior to providing a license the central bank will ensure the safety of the technological infrastructure (article 5, of the regulations) and inspection of the IT system, the facilities and the system ( article 11 of the regulation) and may order an audit of the safety of the system ( article 21 of the regulations), and requires the existence of back up centers( article 20 of the regulation), obligation to report material events affecting confidentiality, safety and integrity of the information in the database ( article 23.a of the regulation)

The central bank could additionally provide future recommendation, not necessarily in the regulation, to use for example the ISO standards (which is an information security standard issued by the international organization for Standardization and provides a code of practice for information security controls) as a benchmark as they are comprehensive in its nature.

## **INFRINGEMENTS**

There is an overweight on the liability of the private credit bureau in case of provision of incorrect or incomplete information in connection with article 37 of the law (which addresses client's right to correct information) and when they send information to the central bank ( article 48.1 a and 48.1.e of the law). Sanctions are established by regulations (article 32 of regulations).

The private credit bureau has correctly responsibility to collect information from sources that are deemed reliable, conduct due diligence on the data providers, and is responsible for its own processing system and that it has to operate well and needs to ensure that it has adequate data controls and data validations, etc. All this is dependent on the level of experience of the private credit bureau operator, the efficiency of the system and the knowhow.

At the same time, the private credit bureau provides information that is coming from the data provider who should also be held responsible and liable. Usually a private credit bureau will put a clause in its credit report that it is not responsible for the information it gathers and is not responsible for the decisions upon which they are made.

Though the private credit bureau has some responsibility, data providers have responsibilities too under article 27 of the law. If possible the regulations in chapter VI could incorporate sanctions on the data provider especially if they are regulated by the central bank. In addition legal agreements with data providers who do not fall under the central bank could address the responsibilities and the indemnifications.



