THE DEVELOPMENT OF THE CREDIT REFERENCE SYSTEM: A CASE STUDY OF ZAMBIA

BY

MALUNGA SIWELA
(26130068)

A dissertation submitted to the school of Law of the University of Zambia in partial fulfilment of the requirements for the award of the Degree of Bachelor of Laws (LLB).

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DECLARATION

I, Malunga Siwela, do hereby declare that this dissertation is my authentic work and that to the best of my knowledge and belief, no similar piece of work has previously been produced at the University of Zambia or any other institution for the award of a Bachelor of Laws Degree.

All other works referred to in this dissertation have been duly acknowledged. I therefore bear the absolute responsibility for the contents, errors, defects and any omissions herein.

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By

MALUNGA SIWELA

(26130068)

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ABSTRACT

> "Today credit...has become the lubricant of economic life...a driving force for economic growth and the well-being of consumers. "[1]

Linked to the above, is the role of consumer credit reporting which has evidently become the most extensively used instrument employed by lenders to underwrite decisions on borrowing particularly as regards evaluation of a consumer's credit application and his or her creditworthiness. This is largely premised on the understanding that

> "the best predictor of future behaviour is past behaviour."[2]

In the case of Zambia, recent initiatives have been initiated to stimulate the growth of the financial sector and specifically that of the extension of credit, emanating from the recognition that

> "low financial intermediation, high cost of borrowing and poor credit culture in the financial market."[3]

In response to the recognition of an inherently weak credit culture, and particularly the recognition of the possibility of notable default on loans and the detrimental effect it possess to the Zambian financial system, the Zambian Government pursued a consultative agenda and developed and implemented Credit Reference Services Legislation, and further licensed one credit reference agency that is since operating. It is however apparent that though this agency has been operating for close to three (3) years with the legislation having been substantially passed five (5) years ago, the development process of the credit reference system in Zambia seems largely unattained particularly in light of the low usage and overall effectiveness of the agency. Said simply, the operationalization of the credit reference system in Zambia seems more like a protracted journey, as opposed to it having been an event, a situation this research sets out to determine why.

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[1]European Commission**. Draft directive on harmonisation of credit legislation across EU member states**
[2] M.J. Miller. **Credit Reporting Systems around the Globe**.
[3]Ministry of Finance & National Planning.Fiancial Sector Development Plan for Zambia. Page 63

DEDICATION

Dedicated to an acclaimed, esteemed and gallant academician, leader, and truly inspiring and committed Dad, the Late Professor Andrew A. Siwela.

(Gone Too Soon)

ACKNOWLEDGEMENTS

I finally arrive at the culmination of an excursion that though starting as a simple step, ended in an intense, enlightening and fulfilling task. I am indebted to countless people for their heartfelt prayer, encouragement, support and farsighted counsel allowing for the attainment of not only this research, but indeed for the invaluable exposure and experience it has presented to me.

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TABLE OF STATUTES

- The Fair Credit Reporting Act (FCRA) is a United States federal law (codified at 15 U.S.C. § 1681 et seq.)
- The Banking and Financial Services Act ,Chapter 387 of the Laws of Zambia
- The Banking and Financial Services Act, Cap 387Credit Reference Services (Licensing) Guidelines, 2006
- The Banking and Financial Services Act, Cap 387Credit Data (Privacy) Code
- The Banking and Financial Services (Provision of Data and Utilisation of Credit Reference Services) Directive

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CHAPTER ONE

1.1 Introduction

It has been stated and precisely so that

> "the best predictor of future behavior is past behavior,"[1]

and it is unsurprising that this cross cutting adage extends its efficacy to the realm of extension of credit. This is specifically pronounced by the fact that most lenders derive invaluable information from Credit Information Registries, commonly known as Credit Reference Bureaus, in determining decisions relating to the extension of credit.

> "Credit markets, by their nature, largely relate to transactions which occur over time and as such information asymmetry[2]

between the needy borrower and lender can culminate in inconsistencies as regards eligibility considerations of borrowers with the regrettable situation of some esteemed borrowers being denied credit or the risk of the ineligible accessing the same.

It is further undoubted that access to credit remains diminutive with only large corporations and selected individuals being perceived as credit worthy. This undesirable situation has resulted in

> the availability of credit to the private sector by banks remaining unacceptably low with Credit to private sector by banks represented only 8% of GDP.[3]

This scenario has also led to the repeated recognition by the Government of the Republic of Zambia that

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[1] M.J. Miller. **Credit Reporting Systems around the Globe**.

[2]**Information asymmetry** relates to the determination of decisions in transactions where one party has more or better information than the other. This at times creates an imbalance of power in transactions which can sometimes cause the transactions to be inconsistently appraised.

[3] J. Martinez.**Access to Financial Services in Zambia.**Policy Research Working papers.2006

> "access to credit has continued to be one of the greatest challenges for micro, small and medium businesses."[4]

It has further been revealed that

> "Zambia has an inherently weak credit culture with the possibility of borrowers to default on loans without in any way affecting the credit with other financial institutions."[5]

It is unquestionable that the absence of credit reference systems in Zambia had a role to play in this credit malaise. In response to this, the Government of the Republic of Zambia in line with the Poverty Reduction Strategy Paper whose implementation commenced in 2002, undertook an assessment of the financial system in Zambia through the Financial Sector Assessment Programme. One of the findings under this study was

> the recognition of poor credit culture in Zambia.[6]

The finding also identified the need to establish a credit reference bureau. It is further a fact that there exist very few countries that do not have such institutions whilst organisations such as the World Bank are working to implement at least one in those few emerging countries that do not have one.[7]

1.2 Statement of the Problem

The Credit Reference System in Zambia, having legally been permitted to operate in the country through the enactment of the Credit Reference Services Licensing Guidelines and the Credit

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[4] http://www.postzambia.com/post-read_article.php?articleId=3549
[5] Minsitry of Finance & National Planning.Financial Sector Development Plan for Zambia. Page 63
[6] *Ibid.*Page 3
[7] See http://www.doingbusiness.org/ExploreTopics/GettingCredit

Data Privacy Code,[8] both of which were gazetted on 30 March 2006, has since developed with the licensing of one Credit Reference Bureau[9].

However, like many law development processes, operationalisation of the Credit Reference System in Zambia has been inundated with challenges. One such example was the recent comment headed

> *"Bank of Zambia Governor Caleb Fundanga has bemoaned the resistance by some commercial banks to provide customer information to the Credit Reference Bureau."*[10]

It was indeed anticipated that the utilisation of the Credit Reference System in Zambia would commence in earnest shortly after the licensing and approval stages, with the incidences of loan delinquencies significantly reducing culminating in an overall reduction in the cost of borrowing, a more esteemed credit culture; and an overall quality enhancement in the credit portfolio in the financial system.It is however noted, that these milestones remain largely unattained.

This paper seeks to critically analyse the Development of the Credit Reference System in Zambia; detailing the numerous intricate processes that have been a part of its development, and shall endeavour to showcase the Zambian scenario, revealing the current status and indeed

[8] Both the Credit Reference Services Licensing Guidelines and the Credit Data Privacy Code were issued as subsidiary legislation pursuant to the Banking and Financial Services Act ,Chapter 387 of the Laws of Zambia.
[9] Credit Reference Bureau Africa Limited (CRBAL) was licensed in 2006 and was formally launched on 11 January 2007.
[10] As reported by The Post Newspaper of Wednesday, 2nd June 2010.

recommending ideal and preferred avenues towards the full attainment of the operationalisation of the Credit Reference System in Zambia.

1.3 Purpose and Significance of Study

It is a fact that one of the widely acknowledged impediments to the desired sustained broad based economic growth and poverty reduction in Zambia, has been the uninspiring state of the financial sector. This has unfortunately characterises "low financial intermediation, high cost of funds, and poor credit culture in the financial market."11 It has also been observed that one of the major justifications for regulation and supervision of financial institutions, whichincludes theregulation of Credit Reference Bureaus, is the need to correct market imperfections and failures which compromise consumer interest in a regulation-free environment.12 Regulation is thus often perceived as justified because an "uncontrolled market place will often culminate in failure to produce desired results in accordance with public interest13.

1.3.1 Systemic Considerations (To minimize the Impact of Failure)

The financial system is closely integrated with numerous linkages such as the inter-bank market, the payments clearing and settlement system and the maintenance of deposits being complexly interwoven.This then entails that any contagion in the market would almost simultaneously erode market confidence and could in turn culminate in an overall collapse of the Banking System. It is thus observable that the Banking System is indeed susceptible to systemic risk. It is

[11]Minsitry of Finance & National Planning.Financial Sector Development Plan for Zambia. Page 63
[12] S. Maimbo. (2002), The Implications of the Evolving Microfinance Agenda for Regulatory and Supervisory Policy. Development Policy Review 20(3)
[13]Baldwin, R. and M. Cave (1999), Understanding Regulation: Theory, Strategy and Practice, Oxford, Oxford University Press.

acknowledged that the information sharing role of Credit Reference Bureaus does assist in the reduction of this risk.

1.3.2 Information disclosure

As stated in the introduction above, there is an apparent asymmetrical relationship in many financial transactions between the provider of credit services and the borrower. It is generally acknowledged that in providing a mutually beneficial service, historical credit information not only avails invaluable information to the lender for the underwriting of credit, on the one hand, but also avails potential borrowers the opportunity to take their credit history from one financial institution to another, thereby through window shopping, rendering lending markets more reasonable and affordable. The provision of information between financial institutions in respect of customer credit behavior, therefore, has a positive economic impact.

1.3.4 Mitigation of Moral Hazard

Moral hazard occurs when a party insulated from risk behaves differently than it would behave if it were fully exposed to the risk.

> One major justification for the regulation of financial institutions is to counter the negative effects that may result from safety-net arrangements such as lender of last resort and depositor insurance, which may be a consequence of the tendency by banks and other financial institutions to take excessive risks in their operations.[14]

[14]Understanding Regulation: Theory, Strategy and Practice

1.4 Research Objectives

1. To understand why central banks seek to regulate and supervise Credit Reference Systems
2. To assess the impact or regulation and supervision on the provision of credit in Zambia in Zambia
3. To identify the challenges faced by the Bank of Zambia in the regulation and supervision of Credit Reference Bureau.
4. Provide valuable and informative recommendations that the Bank of Zambia can implement to overcome the challenges.

1.4.1 Research Questions

1. What are the underlying considerations that motivate central Banks to regulate and supervise financial institutions (Including credit reference bureaus)?
2. What has characterised the development process of the credit reference system in Zambia?
3. Is the current regulatory framework satisfactory for the development of the Credit Reference system in Zambia?
4. Have the objectives of regulation and supervision been achieved?
5. Has the operationalisation of the Credit Reference System been satisfactorily achieved?
6. What challenges exist and what related policy recommendations can be forwarded to overcome the challenges?

1.5 Key Definitions of Credit Reference Systems Regulation

It has generally been recognised and accepted that Credit Reference Agencies operate so as to collect both affirmative and negative financial information on individuals, information which is then used to often produce a credit report which in turn details decisive history of an individual. Regulation on the other hand

> "typically refers to the rules that govern the behaviour of financial institutions whereas supervision is the oversight that takes place to ensure that financial institutions comply with those rules."[15]

The distinction is important where the regulatory and supervisory functions are split between different agencies as they may have different policy implications.

1.6 Research Methodology

1.6.1 Research Design

The research will adopt a descriptive and qualitative approach based on both primary and secondary data.

1.6.2 Sampling

The financial service providers to be studied will be randomly selected from the following categories: commercial banks, microfinance institutions, and Non Governmental Organizations (NGOs).

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[15] Llewellyn, D. (1986), **Regulation and Supervision of Financial Institutions**. London, the Institute of Bankers.

1.6.3 Sources of Information

Primary data will be collected through a survey from financial institutions operating in Zambia. Data will also be collected from apex coordinating and regulatory authorities such as AZMIZ, Bank of Zambia and Cooperatives.

Secondary information will be obtained from different sources including working papers, publications, books, annual reports, and other microfinance related reference material. The internet will also be used to identify and analyse innovative approaches/partnerships being used regionally to deliver rural financial services.

1.6.4 Data Collection Methods

Data has be collected through personal interviews with representatives of the financial service providers, apex institutions and regulator authorities. An attempt will be made to interview the governor of the central bank.

1.7 Outline of Chapters

The paper is tailored around five (5) chapters. **Chapter 2** details the Regulation of Credit Reference Systems in Zambia, identifies the rationale for regulation of Credit Reference Systems and the Regulatory approaches to MFIs. **Chapter 3** particulars the operationalisation of the Credit Reference System in Zambia, deciphers the Regulators perspective, understands, the Credit Reference Bureaus perspective and considers the Borrower's perspective. **Chapter 4** identifies the challenges faced in the development of the Credit Reference System in Zambia. The paper ends with policy recommendations and conclusions in **Chapter 5**.

CHAPTER TWO

2.1 Introduction

It has frequently been observed that access to credit has persistently repressed the development of individuals on the one hand, as well as the private sector, small and medium businesses, in Zambia, on the other. This is evidenced by the fact that though there is a notable growth in the number of households and individuals borrowing from the financial system in Zambia, access to credit finance remains extremely low. It is further factual that for the few that have accessed credit, it has been structured in a very pricey mannerism and often on limiting terms, that in turn often lead to default. It has further been observed that

> "with the exception of high-income households, public servants and employees of large companies, most Zambians do not have access to credit."[16]

This has clearly culminated in a financial system that serves, but only a few people.

In analysing the above, a question that is often then asked is, "What then is the cause of this stagnation and what are the inherent fears and weaknesses that ought to be overcome so as to promote the access to credit." Whilst this inquiry remains largely unanswered, it is envisaged that the creation and operationalisation of a fully functional credit reference system would considerably stimulate access to credit which in turn will culminate in notable national development. Is this contention however correct? Further analysis in this paper shall reveal as to whether this is so.

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[16] J. Martinez. **Access to Financial Services in Zambia**. November 2006

2.2 Credit Reference Systems Defined

Having observed that access to credit remains largely diminutive with only large corporations and selected individuals being perceived as credit worthy, credit reference systems have developed to play the functional role of acting as a foundation that details consumer's use of credit as reported by those from who they borrow. This information frequently underpins consumer lending as most decisions relating to lending commence with detailed scrutiny of borrower's history.

When designed correctly and fully operational, credit references are generally used to determine the creditworthiness of a person or individual. In their effective operation, Credit Reference Systems operate so as to collect both affirmative and negative financial information on individuals, information which is then used to often produce a credit report which in turn details decisive credit history of an individual.

2.3 History of Credit Reference Systems (Globally)

It has long been observed that the deficiency of precise information as regards the credit performance and history as well as income profiles of households is a major impediment to the access of credit. It is also generally settled that the credit worthiness of borrowers has long been identified as the primary foundation for the grant or otherwise of credit and over

> "the last 40 years, credit bureaus have played a functional role in the development of risk assessment procedures that underpin consumer lending."[17]

[17]A.Matuszyk.**The Evolution of Credit Bureaus in European Countries**.September 2006

2.3.1 Historic Developments of the Credit Reference System

In reviewing the development of these systems, traced to the early 1920's[18] the early credit reporting entities of the past represented joint initiatives operated solely for the maintenance of credit information of selected members for the member's benefit.

> 'They typically limited their credit-related reporting to negative or 'derogatory.''[19]

M. Fulleti further cites an example of a credit reference system at the time as a group of retailers in a small town having agreed to form a cooperative that kept track of customers who were considered delinquent by any member of the group. The individual merchants would then use this information in managing their own credit relationships with prospective and current customers.[20] The credit reference systems of these times would normally use name and address as key fields and would more often than not, laboriously search public notices, including those of marriages, criminal records and deaths for additional information.

In analysing the above situation and gauging it against current trends, and in considering the elementary developmental stage at which information technology was at the time, the credit reference system was patently too mechanical and by far deficient and too laborious.

2.3.2 Modern Developments of the Credit Reference System

As global trends sharply turned towards modernisation, in the 1970's, market demands required for the development of a composite and responsive credit reference system, which played a cardinal role in determining the current structure of current systems.

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[18] Jentzsch, N. **Information Sharing and its implications for credit markets**. Page 213
[19] M.Fulleti. **An Overview and History of Credit Reporting**. page 3
[20] **An overview and History of Credit Reporting**. Page 4

Firstly, the decade witnessed a sharp development in the power of computers and database management systems which enabled efficiency of data processing and report generation. Further, and more importantly, the decade witnessed the passing of the Fair Credit Reporting Act (FCRA).[21] This Act was first passed in 1970 and was amended in 1996. This comprehensive law set standards for the access of information. The Act extended its provisions to the requirement for "*both positive and negative reporting of credit performance*,"[22]and avoided linkages to issues such as marriages, and criminal records that were previously the core of past systems. The Act was further centered on consumer rights and the need for confidentiality to be upheld at all times. The FCRA for instance established a couple of borrower's rights including, the rights for borrowers to be told if their information is used against them; right for borrowers to know what is in their files and right to dispute inaccurate information,[23] amongst others all with the aim of upholding the consumers right to confidentiality. Credit reference system legislation should be designed in a manner that upholds these trends.

The FCRA also, in recognising the negative effect of wholesale and unsystematic dispersion of credit data, details the "permissible purposes"[24] for which credit data can be disseminated limiting this distribution to transactions such as employment purposes, credit transactions, insurance underwriting and others. The above rights and permissible purposes are analysed in detail in Chapter 3.

[21]The **Fair Credit Reporting Act** (FCRA) is a United States federal law (codified at 15 U.S.C. § 1681 et seq.) that regulates the collection, dissemination, and use of consumer information, including consumer credit information.
[22]D.Kline.**CreditInformation Reporting**. P. 331
[23] S.605 of the Fair Credit Reporting Act
[24]S.604of the Fair Credit Reporting Act

With the establishment of the aforementioned, the above modern trends prominent in most if not all existing credit rating systems have been developed to ensure that credit reference systems operate in a manner that allows for both the grant of borrower's credit data to legitimate requests, whilst at the same time, upholding the requirement for confidentiality. Credit reference system legislation

2.4 History of Credit Reference Systems in Zambia

Zambia, like most nations has recognised the intrinsic value of credit reference systems emanating mainly from the recognition that private sector credit remains unacceptably low, with private sector credit representing a meager of about only 8% of GDP.[25] It is further noted that

> "Zambia has an inherently weak credit culture with the possibility of borrowers to default on loans without in any way affecting the credit with other financial institutions."[26]

The above pessimistic revelations necessitated a prompt broad based assessment of the Financial System in Zambia, through the Financial Sector Assessment Programme which commenced in 2002. It is unsurprising that one of the findings of this study was the recognition of poor credit culture in Zambia and the need to establish a credit reference bureau.[27]

In response to this, the Credit Reference System in Zambia was legally permitted to operate in the country through the passing of the Credit Reference Services Licensing Guidelines and the Credit Data Privacy Code,[28] both of which were gazetted on 30 March 2006. One Credit Reference Bureau[29]was subsequently licensed and has since begun operating.

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[25] J. Martinez.**Access to Financial Services in Zambia.** Policy Research Working papers.2006
[26]Ministry of Finance & National Planning.Financial Sector Development Plan for Zambia. Page 63
[27]Financial Sector Development Plan.Page 3
[28] Both the Credit Reference Services Licensing Guidelines and the Credit Data Privacy Code were issued as subsidiary legislation pursuant to the Banking and Financial Services Act ,Chapter 387 of the Laws of Zambia.
[29] Credit Reference Bureau Africa Limited (CRBAL) was licensed in 2006 and was formally launched on 11 January 2007.

2.5 Framework of establishment of the credit reference system in Zambia

2.5.1 The Financial Sector Assessment Programme

To understand and appreciate the legal development of the credit reference system, it is essential to determine the motivation for the development of the same. In the case of Zambia, the origin of the legal development is traced to the Financial Sector Assessment Programme (FSAP).[30] This broad based programme, examined structural issues in the banking system which included aspects of financial inclusion and access to credit. The FSAP clearly indentified, amongst others, the pressing need to establish framework to strengthen the credit culture, with the implementation of an effective credit bureau, detailed as highly critical.

2.5.2 The Financial Sector Development Plan

Stemming from the FSAP above, the Financial Sector Development Plan (FSDP)[31] was commissioned as a way of addressing the structural issues that adversely affected the Zambian financial system. The FSDP was structured as both a vision statement and a comprehensive strategy by government to address the inherent weaknesses in the Zambian financial system.

> "The FSDP is aimed at guiding efforts to realize the vision of a financial system that is stable, sound and market based and that would support efficient resource mobilisation necessary for economic diversification and sustainable growth."[32]

It is important to note at this point that the FSDP, through its two phased implementation approach, provided the foundation for the development of the legal framework for the

[30] The Financial Sector Assessment Program (FSAP), established in 1999, is a comprehensive and in-depth analysis of a country's financial sector.
[31] The FSDP is a comprehensive strategy to address the weaknesses identified in the Zambian financial sector, among the, poor credit culture. It was created as a project by the Government of Zambia, following the FSAP, in March 2003.
[32] Bank of Zambia.**Progress Report on the Implementation of the Financial Sector Development Plan** for the period July 2004 to March 2009.

establishment of a credit reference system in Zambia and even more importantly, the drafting of the relevant laws to govern the operationalisation of the same. The first phase of the FSDP implementation involved the identification of priority policy areas under each identified key financial sub sector, and commenced in March 2004.[33] The second phase on the other hand, which commenced in 2008, included the harmonisation of the financial sector legislation.

From the above, it is correct to observe that the FSAP and FSDP, identified the prevalent poor credit culture in the Zambian financial system, and as a response to the same, provided a direct response to mitigating this adverse condition by creating laws to facilitate the establishment of a credit reference bureau in Zambia.

2.6 Decisive considerations in the development of the Regulation governing the credit reference bureau in Zambia

It is acknowledged that the legal framework for credit reporting and the operation of credit reference bureaus varies greatly around the world, though similarity often exists as regards the laws relating to;

- Data protection
- Consumer protection
- Regulations affecting confidentiality and secrecy of banks, and
- Equitable credit granting.

It is further recognised that credit reference registries are most effective where they are structured in a manner that allows collection of information from varying sources including bank and non-bank financial institutions as well as businesses that are involved in the sale of goods on

[33]Progress Report on the Implementation of the Financial Sector Development Plan

credit.[34] It was that envisaged that the legal development of the credit reference law in Zambia would embrace the abovementioned tenets.

2.7 The Credit Reference System Legal Framework in Zambia

The credit reference system in Zambia is governed by the Credit Reference Services (Licensing) Guidelines and the Credit Data (Privacy) Code were both gazetted on 30 January 2006. Both pieces of subsidiary legislation are drawn from the Banking and Financial Services Act (BFSA).[35] The Bank of Zambia further issued the Banking and Financial Services (Provision of Data and Utilisation of Credit Reference Services) directive in December 2008 to compliment the other two pieces of legislation, as detailed below.

2.7.1 The Credit Reference Services (Licensing) Guidelines

The Credit Reference Services (Licensing) Guidelines, which draw their authority from the BFSA[36] detail the eligibility considerations to operate a credit reference bureau in Zambia. The law provides that

> "any company which is incorporated and registered under the Companies Act in Zambia is eligible to apply to the registrar of Banks and Financial Institutions to operate a credit reference bureau."[37]

The guidelines further prohibit any person, other than one duly authorised by way of having been licensed, from carrying on the business of credit reference services. It thus follows that through the vetting process, only persons of propriety and integrity are capable of obtaining a credit licence in Zambia.

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[34]The World Bank & International Monetary Fund.**Legal and Regulatory framework for credit reporting. International Experience**.2005
[35]Chapter 387 of the Laws of Zambia
[36]Chapter 387.Section 125
[37]S 3 of the Banking and Financial Services Act, Chapter 387, Credit Reference Services (Licensing) Guidelines, 2006

2.7.2 The Banking and Financial Services Credit Data (Privacy) Code

Issued pursuant to the BFSA, the Credit Data Privacy Code, which reflects confidentiality, details the manner in which data should be collected and handled by the Credit Reference Bureau (CRB). The code specifically details, amongst other issues, the scope of data to be collected; the security and integrity concerns of the data collected as well as, the rights of the borrowers with respect to their data in the CRB database.

The code further provides a borrower with an option to obtain his/her own credit report where the borrower believes that the data is incorrect and needs to be rectified.

2.7.3 The Banking and Financial Services (Provision of Data and Utilisation of Credit Reference Services) Directive

The Bank of Zambia, in recognising the need for the credit reference system in Zambia to acquire the critical mass of data to allow for the CRB to play meaningful and complete role, and in order to allow for the CRB to achieve its desired objective, as detailed earlier in this paper, issued the Banking and Financial Services (Provision of Data and Utilisation of Credit Reference Services) Directive.[38] This directive requires all financial service providers to submit credit data to the CRB and makes it compulsory for all financial service providers to refer to the data contained at the CRB, when extending credit.

2.8 Credit Reference Providers in Zambia

Shortly after the Credit Reference Services (Licensing) Guidelines and the Banking and Financial Services Credit Data (Privacy) Code where issued, the first and currently the only CRB

[38] The Directive which was issued pursuant to the Banking and Financial Services Act, Chapter 387 of the Laws of Zambia, was effective from 10 December 2008.

in Zambia, Credit Reference Bureau Africa Limited (CRBAL) was licensed.[39] The substantive operations of CRBAL however only gathered momentum after the passing of the Banking and Financial Services (Provision of Data and Utilisation of Credit Reference Services) Directive was passed. CRBAL has since successfully obtained the cooperation of all financial service providers and its operations have gather momentum as shall be detailed in chapter 3.

[39]Credit Reference Bureau Africa Limited was officially launched on 11 January 2007.

CHAPTER 3

3.0 OPERATIONALISATION OF THE CREDIT REFERENCE SYSTEM IN ZAMBIA

3.1 The Preliminary Implementation Phase

Subsequent to the enactment of the Credit Reference Services (Licensing) Guidelines and the Credit Data (Privacy) Code[40]and the licensing of Credit Reference Bureau Africa Limited (CRBAL), it was envisaged that a noted reduction in information asymmetry, achieved by permitting a potential borrower's credit history to be reviewed financial service providers, would be achieved. Further, with the signing of bilateral service level agreements[41] and with CRBAL commencing the collection of data in January 2007, it was anticipated that the operation of the Credit Reference Services (Licensing) Guidelines and the Credit Data (Privacy) Code, as well as the legal duties imposed by the service level agreements would provide a comprehensive and effective legal framework for the operationalisation of credit reference services in Zambia. Unfortunately, this desired objective did not come to fruition with the main impediment being that of effective utilisation of the service. The underlying question then becomes, "was the legislation effectually providing for the achievement of the desired objective?"

[40]Both of which are subsidiary legislation drawn from the Banking and Financial Services Act and gazetted on 30 January 2006.
[41]These bilateral Service level agreements were signedbetween the CRBAL and the various individual Commercial Bank, and Non Bank Financial Institutions in Zambia.

3.2 Challenges in Operating the Credit Reference System in Zambia

With the passage of time, it became increasingly apparent that the overall desired operational objective of utilisation of the credit reference system in Zambia, was not effectively being achieved and numerous comments, complaints and even directives emerged seeking to stimulate utilisation. Surprisingly, this condition existed whilst supposedly stringent legislation existed supporting the efficient function of the credit reference system.

3.2.1 The Regulators' Perspective

In response to the challenge of operationalising the credit reference system in Zambia, it was initially apparent that the Bank of Zambia, was satisfied with the existing legislation and the executed bilateral service agreements, and could not then contend with the low level of utilisation. In stating this position, the Governor of the Bank of Zambia emphatically expressed concern at the low usage of the credit reference system in Zambia and advised lenders not to withhold information of their borrowers in order to improve the quality of credit reports being accessed by subscribers.[42] Further concern was noted by the Registrar of Bank and Non Bank Financial Institutions (NBFIs) at the Bank of Zambia who stated that

> "the Bank of Zambia noted with great concern, some reluctance by most banks and NBFIs to provide relevant data to the Credit Reference Bureau."[43]

[42]http://www.statehouse.gov.zm/index.php/component/content/article/48-featured-items/798-use-credit-reference-system-boz-advises. Accessed on 1 February 2011).
[43]Dr. D.H. Kalyalya. **Welcoming Remarks to the Workshop on Credit Reference Services**. August 2008

The dissatisfaction by key stakeholders further increased with the Bank of Zambia's Director for Non-Bank Financial Institutions Supervision stressing that failure by financial institutions to comply with the use of Credit Reference system and submission of credit data to comply will force the central bank to ensure that the directive is enforced against those not complying.[44] Clearly, these strong comments strengthened the position that the existing legislation was indeed sufficient, whilst the problem was just that of utilisation.

3.2.2 The Lenders' Perspective

During the frequent meetings between the senior management of Bank and Non Bank Financial Institutions, and the Bank of Zambia,[45] the latter often sought to determine as to why under utilisation remained prevalent. In response to this, the Bankers Association of Zambia (BAZ) not only acknowledged the value and usefulness of such a system, but also pledged to influence greater utilisation amongst its members. The BAZ stated, through its Chairperson, stated that the CRB was a necessary tool in the financial sector that had potential to influence interest rates and other terms that apply to money circulation.He said the association recognised the importance of the introduction of a credit bureau in Zambia which was part of the Financial Sector Development Plan (FSDP) and would be directing member banks to comply to the BoZ directive for mandatory submission.[46]

Overall utilisation of the credit reference system however remained unimpressive and low.

[44] http://www.daily-mail.co.zm/media/news/viewnews.cgi?category=17&id=980257740. Accessed 27th January 2011
[45] The Bank of Zambia Governor and Senior Executive, meets with Senior Executives of Bank and Non Bank Financial Institutions on a monthly and quarterly basis, respectively.
[46] Times of Zambia.**BAZ in support of credit bureau.**9 June 2010

3.3 The Regulators Response to this concern

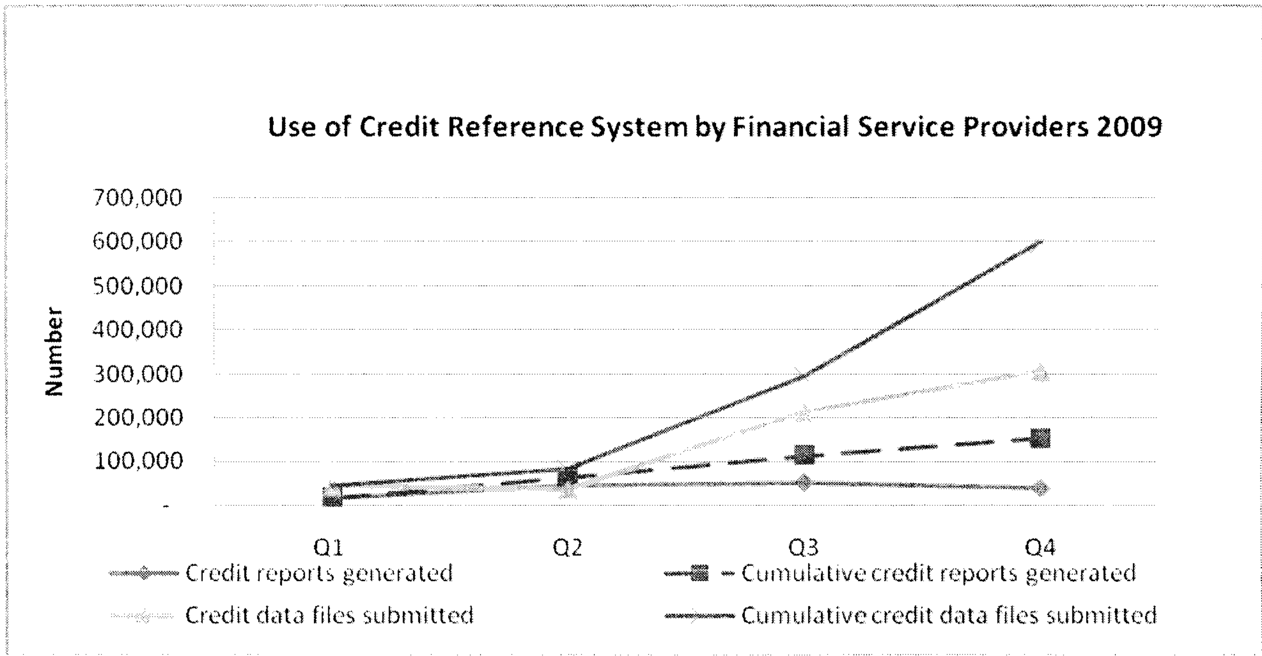
In response to the noted concerns, and in recognition of the credit reference system, through CRBAL, not attaining the critical mass of data required to endorse the continued existence of the credit reference system, the Bank of Zambia (BoZ) issued a directive pursuant to the Banking and Financial Services Act, on 10 December 2008.[47] The Directive requires all financial service providers to submit credit data to a CRB and to use the services of a CRB before extending a loan to any person. With this directive, it was envisaged that the legislative framework would then be strengthened and overall effectiveness of the CRB including a marked increment in utilisation would be attained.

3.4 Supposed defiance of the Law

From the above, it is apparent that whilst the stringent and rigorous law detailed above existed and operated, and even whilst the risk attached to defiance of the law was undoubtedly well understood by the bank and non-bank financial institutions, utilisation remained vividly low, and did not attain the anticipated exponential growth; clearly there was something amiss. In 2009, for instance, the trend of use of the Credit Reference Systems, by the Financial Service Providers, as detailed in Figure 1.below, depicts few credit reports generated and data files

[47] The Banking and Financial Services (Provision of Data and Utilisation of Credit Reference Services) Directive

submitted.



Source. The Zambanker[48]

However, upon reviewing the existing laws, it is evident that the law is not only instructive but authoritative.

3.4.1 The Banking and Financial Services Credit Data (Privacy) Code

As previously mentioned, the introduction of the Banking and Financial Services Credit Data (Privacy) Code[49] clearly details the objective of the code. It states that the code deals with collection, accuracy, use, security and access and correction issues as they relate to data of a person whohas accessed credit, or has been an applicant for credit. The Code also covers credit

[48]The Zambanker.A Bank of Zambia Journal.December 2009 edition

[49]Issued by the Bank of Zambia in the exercise of the powers conferred upon it by the Banking and Financial Services Act (BFSA) Cap 387 of the Laws of Zambia

reference service providers and credit providers in their dealing with credit reference services and debt collection agencies.[50] The act further categorically states that

> "A breach of the Code by a data user may give rise to a presumption against the data user in any legal proceedings in Zambia. Aside from legal proceedings, failure to observe this Code of Practice by a data user will weigh unfavourably against the data user in any case before the Registrar and or the Bank."

The above law is unquestionably authoritative and instructive and with the presence of such a code that covers, all including the aspect of utilisation, it is simply astounding that full operationalisation of the credit reference system remains inconclusive.

3.5 Efficacy of the existing law

It is indeed a fact that amongst the tenets of an effective law is that of enforceability and with the existence of a plethora of legislation including that of service level agreements and directives, the issue of placid utilisation ought to be not only undesirable, but indeed intolerable. The question then arises as to whether the embedded inefficiency emanates from the structure of the law, or is it an issue of insufficient enforcement.

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[50]The Banking and Financial Services Act (BFSA) Cap 387 of the Laws of Zambia

CHAPTER 4

4.0 HAVE THE OBJECTIVES OF THE OPERATIONALISATION OF THE CREDIT REFERENCE SYSTEM BEEN ATTAINED?

4.1 Requisite characteristics of the Law

It has long been accepted that for laws to be effective, they must achieve the intended or indeed expected results and it is further acknowledged fact that law can only effectively achieve its functions, if it is respected and complied with. In this we mean, there should often be none, or perhaps at the most, negligible social cohesion for adherence to the law, as the citizens at large, ought to plainly abide. This further entails that law, including those created in Zambia to provide the legislative framework for the operation of the credit reference system ought to be created as a social order, drafted in such a manner as to allow for the spirit of the law to manifest in a positive way, and to allow for resolution of the problem at hand, and in doing so permit the attainment of the desired objective of ensuring the effective operationalisation of the credit reference system in Zambia.

Effective law should further depict the critical characteristic of having the ability to be obeyed and it thus follows that disobedience of the law, should come with uncompromising sanction. This sanction should not only set out to punish the wrong doers, but should also trigger adherence to the law. This sanction, if meted out correctly should also act as a deterrent to those that daringly seek to disobey the law. The law should as such be an influential means by which the legislature should achieve specific goals and should include restrictions, prohibitions, coercions, or commands as it regulates those individuals and institutions that are subject to the law.

4.2 Evaluation of the characteristics and effectiveness of the Credit Reference Legislation in Zambia.

As previously mentioned, and stemming from the Financial Sector Assessment Programme in 2002 and later from the recommendations of the broad Financial Sector Development Programme, the government of the republic of Zambia, developed specific legislation to govern the provision of credit reference services in Zambia. This legislation, administered by the Bank of Zambia, that is legally mandated to regulate the financial services sector in Zambia, was largely issued pursuant to the BFSA.[51] This act is the primary source of legal authority on the regulation of credit reference services in Zambia is and pursuant to this Act, the Credit Reference Services (Licensing) Guidelines, 2006 and the Credit Data (Privacy) Code, were enacted. It was undoubtedly the legislatures desire to ensure that these laws, would amply and widely achieve the effective operationalisation of the credit reference system in Zambia. It is further correct to assert that if the various laws were drafted in a consultative manner, subjected to legal debate and were benchmarked against the prevailing market preferences, an efficient and effective social order would have been created would have catalysed the development of the credit reference system in Zambia. It is further logical that current efforts of developing legislation should benefit from previous experiences and in doing so, modern laws should be comprehensive, sound and if drafted correctly, should not only ably resolve the social challenge for which they were designed, but should also stand the test of time.

[51]Cap 387 of the Laws of Zambia

Emanating from the above, it is imperative that an elaborate assessment of the various pieces of specific legislation governing the provision of credit reference services in Zambia,be performed so as to determine the adequacy and sufficiency of the legislation, particularly in so far as its attainment of the desired objective is concerned.

4.2.1 The Relevant BFSA Provisions

It is important to state form the onset that the Bank of Zambia in pursuant of its mission

> "to formulate and implement monetary and supervisory policies that achieve and maintain price stability and promote financial system stability in the Republic of Zambia,"[52]

has authority to administer the BFSA and other legislation. This should enable the Bank to lawfully compel market participants, including those required to submit information to the CRBAL, to abide to specific laws. Of particular interest are those specific legal provisions that, through their operation, provide the legal framework and effectively support the operation of the credit reference system in Zambia. The BFSA for instance, specifically requires every bank or financial institution to produce and preserve customer credit information. The act states that

> "Every bank of financial institution shall cause to be created and shall maintain in its principal office in Zambia proper credit documentation and any other information concerning its business relations with its customers and other persons that the Bank of Zambia may prescribe."[53]

The act further requires the maintenance of a statement of the financial indebtedness of the borrower; a description of the collateral held; a statement of the terms of the credit, including the principal amount, rate of interest, schedule of repayments and the

[52]www.boz.zm

[53] Section 52(1) of the Banking and Financial Services Act, Cap 387 of the Laws of Zambia

borrower's objective of purpose for borrowing.[54]It is certainly noticeable that these laws in part, if obeyed, operate as a satisfactory overture to the specific credit reference system laws detailed below.

4.2.2 The Credit Reference Services (Licensing) Guidelines, 2006 and the Credit Data (Privacy) Code

As previously stated, the above regulations, issued pursuant to the BFSA effectively directed all financial service providers to submit credit data to a CRB and to use the services of a CRB prior to extending a loan to any person.Empirical evidenced detailed in the preceding chapter has however, shown that even though the above legislation and other specific pieces of legislation have been passed, they have not succeeded in sufficiently impelling the operationalisation of credit reference system.

4.3 THE UNIQUE NATURE OF THE ZAMBIAN CREDIT STRUCTURE – Important considerations to be considered in developing the law.

The Zambian financial system is unquestionably unique and inimitable and the drafters of the laws are required to identify and accommodate thisinherent uniqueness, of the Zambian situation in the development of the laws. In analysing the applicable legislation governing the credit reference system, certain structural inefficiencies are very apparent, with other critical considerations ostensibly having been glossed over, as shall be detailed below. It is anticipated, as part of this research, that a detailed understating of these inefficiencies could reveal the reason as to why the development of the credit reference system in Zambia is seemingly advancing at a very sluggish pace. A couple of these shall be detailed below.

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[54]Section 52 of the Banking and Financial Services Act

4.3.1 The Issue of Delinquency/ Default

As the law on credit reference system evolves largely on the issues of customer behavior, it is important that certain very specific terms are well understood and subsequently provided for in the law. It is further factual that credit reference systems are often desirous of receiving both positive and negative credit data, with the issue of delinquency, which is notably misconduct, remaining the cornerstone of most credit reference systems. Delinquency, which is defined as

> "a failure, by act or omission, to perform a legal or contractual obligation,"[55]

is typically referred to as negative data in the credit reference systems. This definition is clearly expansive and as such ought to be suitably tailored and appropriately incorporated in the legislation, particularly since it plays a fundamental role in the assessment of consumer credit.

The laws, in their current state specifically define "material default"[56] but interestingly, possibly in error, do not in any way refer to material default but instead refer to "default" throughout the law. This default has not been defined in the law and as such presents ambiguity as regards the interpretation and overall understating of the critical issue of loan default and delinquency. In being specific, the law provides in

> "where the credit provider has provided credit to a person and the account is subsequently in default, the credit provider shall, as a recommended practice, give to such person within 30 days from the date of default a written reminder stating that unless the amount in default is fully repaid before the expiry of 60 days from the date of the default, the person shall be liable to have his account data retained by the CRA until the expiry of 7 years from the date of final settlement of

[55]http://law.yourdictionary.com/delinquency

[56] The Banking and Financial Services Act, Cap 387, of the Laws of Zambia, Credit Data (Privacy) Code

> the amount in default or 7years from the date of the person's discharge from bankruptcy as notified to the CRA, whichever is earlier."[57]

As mentioned above, however, default has not been defined, thus effectively leaving a lacuna in the law. For instance, the provision opens with the need for the recognition of an account being in default;

> "where the credit provider has provided credit to a person and the account is subsequently in default"

the question then is,"what is default?"

It is further revealed that the law recommends that a written reminder precedes the classification of a borrower as a defaulter, possibly with the understating that such a reminder would encourage the would be defaulter to regularise his loan position, prior to being categorised as a defaulter. It has however been observed from practice, that this recommended procedure is largely not followed, with most banks perceiving this perquisite, as detailed in the provision above, as immaterial and costly.

The above reveals a precariousomission that speedily needs to be rectified. Unfortunately, Zambians are often perceived as being non litigious people and if certain discrepancies in the law remain without being subjected to legal challenge, it is normal for such discrepancies to remain as legal provisions for several years. It is as such required that this be speedily altered to allow for astuteness of the law.

[57]Section 2.3 of the Credit Data (Privacy) Code of the Banking and Financial Services Act, Cap 387 of the Laws of Zambia.

4.3.2 Characteristics of the Zambian Market Defaulter

It is indeed irrefutable that the Zambian financial market has had a protracted prevalence of very poor loan repayment, with several cases of loan default once loans are extended. It has infact been said that

> "Zambia has a weak credit culture"[58]

and it is ostensible that in drafting the various legislation governing the credit reference system in Zambia, the reason for the poor credit culture was largely inclined to that of the borrower's social disorder of having an incorrigible and incurable preference not to pay. It is indeed, possible that this understanding, could be one of the factors leading to the poor credit culture in Zambia, but it is incorrect to make this the primary basis of loan default as many other considerations trigger this situation. The challenge with making this constricted assumption is that the development of the laweffectively minimised the importance of the sociological jurisprudential requisite of tailoring the law to recognise society's expanded challenges, demands and desires. It is for instance factual, that whilst the law will so easily proceed through its provisions to render someone delinquent, it will completely skate over fundamental underlying considerations such as the insurmountable cost of borrowing in the Zambian market.[59] It is as such a possibility that many default on account of the prohibitive cost of borrowing, which it must be acknowledged has subsided in recent times. The law in its current state seems not to have been crafted in a manner that considered the effect of fundamental catalysts of default such as the comparatively high cost of borrowing in Zambia.

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[58]The Bank of Zambia.**Financial Sector Development Plan**.P. 63

[59]The high cost of borrowing has continued to be a source of major worry to various business stakeholders including the Zambian Government, the Bank of Zambia, borrowers and at times, even the financial service providers. Recently, the Minister of Commerce, Trade & Industry bemoaned the high cost of borrowing and noted the need to find ways of mitigating the cost of borrowing. (http://www.zamnet.zm/newsys/news/viewnews.cgi)

Further to the above, a detailed understating of the sociological influences that affect a typical Zambian borrower seems not to have been extensively conducted, leading to the possibility of the law not effectively representing society needs. For instance, it is further a fact that most Zambians have business linkages either with the Government and or with large business operations such as the mines, and are as such owed colossal sums of money. In providing further clarity, domestic debt which is defined as "the total debt the local, provincial, public enterprises and the central Government owe domestically, in other words, domestic debt is the debt the public sector owes its own People," includes as part of its definition, outstanding debts to suppliers of goods, works and services, as well as, determined litigations against Government and/or its agencies. Interestingly, if we take for instance Zambia's domestic debt positions as at 31st December 2004, it was estimated to amount to K5,308.3 billion of which 10.9% of this amount represented amounts due to suppliers and contractors.[60] This is certainly a factor to be considered as some of those perceived and categorised as delinquent could infact be owed such monies by the government. Shouldn't the law consider such as unique situations and categorise them differently?

4.3.3 The Issue of one Licensed Credit Reference provider – Inherent weaknesses

Whilst the Banking and Financial Services Act, Cap 387 (Credit Reference Services Licensing) Guidelines, 2006 allows for the licensing of multiple credit reference system providers, the Zambian market currently only has one operational agency located in Lusaka. It was observed during the various interviews conducted with the financial service providers, that numerous system challenges do occur, at times spanning protracted periods, causing the financial service providers to extend credit to their customers not only outside the credit reference system, but also

[60] Government of the Republic of Zambia.**Domestic Debt Policy and Reduction Strategy.**Volume Two. June 2006

clearly in defiance of the law that requires credit vetting prior to the extension of credit.[61] Sadly, and linked to the above, situations exist where the financial service providers in their desire to speedily write business, extend without using the credit reference system, as evidenced in the empirical data in the previous chapter. This conduct strongly negates the overall role of the law.

Further, during the life of the credit reference system in Zambia, an incident occurred where supposedly due to sabotage, computers were stolen from the Credit reference agency's head office in Lusaka. This perilous act effectively paralysed the entire credit rating process in Zambia, and led to unappreciated and unquestionably costly, avoidable system downtime.

It was also revealed that numerous cases of system inadequacy and inefficiency have occuerd during the operation of the credit reference agency, which directly affects the effective attainment of the desired objective. In the preceding chapter, for instance, a situation was cited where protracted system failure occurred at the credit reference agency, a problem that has happeneda couple of times, and a problem which again effectively paralysed the credit rating function. Interestingly, there inquiries revealed no evidence of reprimand of the service provider, by the Bank of Zambia, as the regulator, for this intolerable and avoidable situation. The above could no doubt be remedied through the provision of constructive competition that would be effectively stimulated by the licensing of additional service providers.

[61]In one noted instance, a Commercial Bank failed to comply with service level agreement provisions of a salary backed loan scheme with one of its customers, due to the inability to access the database at the Credit Reference Bureau (CRB) for in excess of three (3) working days.This was on account of a systems failure at the CRB.

4.3.4 Legislative inadequacies in defining loan sizes and other loan parameters

It was observed during this research that a number of financial service providers, particularly the microfinance institutions mentioned continued to violate the law by opting not to submit information to, nor access information from, the credit reference bureau on account of the attendant fees. When queried as to why this was the case, the main argument forwarded was that due to the unique nature of their business, the microfinance business, which involved the extension of numerous low value loans, the individual cost for each transaction was initially prohibitive.

Though this has seemingly been remedied, with what is perceived as mutually acceptable fee being agreed between the financial service providers and the credit reference agency,[62] the intial impact of the comparatively high fees triggered widespread underutilization of the credit reference agency and in turn, violation of the directives as per the law.

In light of the above, it was revealed that most market players consider that the licensing of a second credit reference would stimulate further operational efficiency and ultimately provide further compliance to the law.

4.4 Refining of the Existing Legislative Framework

It is apparent from the above and the preceding chapters that whilst various laws have been created to govern the provision of credit reference services in Zambia, the operationalisation evidently remains more of a journey, than an event. This is despite the recognition that in the absence of this critical data, i.e., credit data, the financial systems performance would rapidly

[62]As subscribers of the CRB, the microfinance institutions have been categoriesed into various bands with the cost per report accessed averaging K400.

deteriorate. There is as such a strong position for the need to revise the legislative framework to ensure the strong desire, shared by numerous stakeholders, of having an efficient and effective credit reference system, is attained.

The next chapter shall provide detailed recommendations, which with anticipation, would contribute towards the attainment of this desire.

CHAPTER FIVE

5.0 CONCLUSIONS AND RECOMMENDATIONS

5.1 Summary of Findings

It is evident and well accepted that credit reference bureaus supplement the fundamental role financial service providers play in the economy. It is also recognised that the design and implementation of a robust and effective legal framework, is essential if the desire of attaining an efficient, well organised and appreciated credit reference system is to be achieved, in line with the market desire as stated both in the financial Sector Development plan and the preceding Financial Sector Assessment programme, as detailed in previous chapters. It is again correct to emphasise that the law, if drafted correctly could stimulate the attainment of the desire of a fully functional credit reference system that would effectively result in, as previously stated, a low cost of credit, amongst others.

It is certainly widely acknowledged that he issue of non-performing loans is injurious to the wider financial system, and as such it is imperative that a legal framework is designed to not only provide the requisite ambience for the operation of an effective credit reference system, but also, reflects current trends to the contentment of all users.

It is however observable, with mild despondency from various stakeholders that despite the passing of the Banking and Financial Services Act, Cap 387 Credit Reference Services (Licensing) Guidelines, 2006; the Banking and Financial Services Credit Data (Privacy) Code and the Banking and Financial Services (Provision of Data and Utilisation of Credit Reference

Services) Directive,[63] and the licensing of, and commencement of business by, one Credit Rating Agency, the overall desired benefit has not been entirely attained, as detailed in chapter three. This then means, that the legal framework is deficient in its current form and whilst it has allowed for the commencement of the credit reference system in Zambia, a case for a broad based legislative review is strongly presented based on the following.

5.1.1 The Bank of Zambia's view

The Bank of Zambia's main motivation for the design of the credit reference legal framework, as detailed in both the FSAPand the FSDP was the need to effectively address the poor credit culture, which was perceived and noted as a major contributing factor to the weakness in the financial sector. With this in mind, various legislative steps were taken as detailed above.

However, the research has revealed, both empirically and theoretically, that though specific legislative steps have been taken to the effectively govern the operation of credit reference systems in Zambia, prevalent desecration of the law remains apparent. Numerous stakeholders, in raising concern as to this unfortunate situation, have related certain crevices in the legislative design, as partly responsible for the failure to attain the operationalization of the credit reference system in Zambia. The Bank of Zambia Governor, for instance, recently acknowledged that inefficiency of the system which was identified as one of the weaknesses in the financial sector, still remains prevalent with the Governor acknowledging limitations in the current legislation.[64]

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[63]All issued pursuant to the Banking and Financial Services Act Cap. 387 of the Laws of Zambia

[64]The Bank of Zambia.Remarks at the United Nations working group meeting on the world financial and economic crisis by Caleb M. Fundanga. Governor

The Bank of Zambia clearly, as custodians and guardians of the legislative framework, noticeably acknowledged the legislative deficiency.

5.2 KEY RECOMMENDATIONS

Having reviewed the development of the relevant legal provisions of the credit reference system in Zambia, having detailed the process of operationalising the same, having obtained associated empirical and theoretical data and having held detailed discussions with several staff at the Bank of Zambia, as the regulator; The Credit Reference Agency; various Bank and Non-Bank financial service providers, and with both reputable and negatively classified final borrowers a couple of final borrowers, I would like to proceed to make the following recommendations.

5.2.1 Broad Based Consultative Market Assessment

- In light of the fact that societal needs and desires are often the foundation of virtuous law, it is recommended that a broad based consultative understanding of the market needs is performed. This would facilitate a comprehensive understanding of market desires and needs, thereby providing a solid base for any subsequent legislative reform in the area of credit reference systems in Zambia. In further expounding the point, this research has revealed frequent complaints as to accessibility of the data. It was actually determined that any member of the public has the right to obtain a report of his credit standing from the reference agency, initially for free, then subsequently at a cost. Unfortunately, whilst this facility has been extended, inaccessibility of the centralised Lusaka office proved to be a major restrainingparticularly by individuals in areas other than Lusaka, who like all other are permitted by the law to inquire on their credit standing, but who are required to travel to head office to the head office of the credit reference agency to obtain a statement on their standing. These complaints are mostly inclined towards the inaccessibility of the credit reference system to most Zambians, as the data is currently held at the CRBAL head office in Lusaka. A consultative approach would allow for these and other market sentiments to be obtained, collated and subsequently used as a valuable input in legal reform.

5.2.2 Enforcement of Directives

- As part of the revelations of the research, it was observed that whilst the law was couched in such a manner as to compel submission of data and subsequent usage of the same, glaring evidence of non-compliance was observed as per data in chapter three.

Interestingly however, there has not been any enforcement of penalties or any formal reprimand by the Regulator, with the preference being more inclined to moral suasion than enforcement of the penalty provisions of the law. This has led to a jaded response by the financial service providers, to the usage of the credit reference systems.

The Bank of Zambia however, in the Bank of Zambia directive, sternly decrees that the Bank of Zambia considers that the omission or failure by any credit provider to adhere to or comply with the directive on usage of the credit reference bureau constitutes an unsafe and unsound practice and may attract Supervisory Action.[65]

It is thus recommended that the Bank of Zambia strengthens its enforcement operations as a means of stimulating growth of usage of the credit rating agency, and ensuring adherence by all to the existing legislation.

5.2.3 The Case for additional Credit Reference Service Providers

- Whilst a case exists for the provision of services by a monopoly in certain industries, it is often strongly preferred to invite meaningful competition to be a part of the service delivery mechanism of other sectors, with benefits such as a reduction in attendant fees often cited as an example. It is however factual that to date only one Credit Reference agency exists. This research, as previously stated, has revealed that numerous cases of inefficiency exist under the current arrangement which adversely affect the operation of the financial system.

In the preceding chapter, a situation was cited where the protracted system failure occurred at the credit reference agency which effectively paralysed the credit rating function, a situation that could have been avoided or indeed mitigated, if there was more than one service provider. Related to this, the research revealed that in instances where system downtime occurs, such as that revealed above, the Credit Reference agency

[65]The Banking and Financial Services Act, (Provision of credit data and utilisation of credit reference services) directive, 2008

escaped reprimand despite the laws incorporating relevant provisions to reprimand the agency.

It is thus strongly recommended, that at the very least, an additional credit reference agency be licensed as a means of stimulating further compliance to the law.

5.2.4 Legislative Reform

- With the current laws having been in force for a while, and yet they have not effectively achieved the desired operationalization of the credit reference system in Zambia, and whilst the FSDP remains in its active phase, it is recommended that a consultative and detailed legal review be immediately performed. This review should include an impact assessment of the current legislation as well as an overall enhancement of the existing law. As shown in the preceding chapters, care must be taken to ensure completeness of the legal provisions, particularly as regards, service delivery, and determination of what specifically constitutes default by borrowers, and non-compliance to the law by financial service providers.

  With certain both developed and developing markets having made strides in this area, it would be beneficial to pursue expert advice from regional and international experts to complement the existing ground technocrats. This, it is recommended, would allow for the development of valued and respected legislation.

5.2.5 Incorporation of Fair Credit Rating

- There is need to ensure that in reviewing the existing legislation, the law should incorporate fair reporting legislation that should ensure that not only is correct data obtained by the agency and retained, but also the tents of data integrity, such as accuracy should be upheld. The research revealed that situations have existed where incorrect reports are maintained at the rating agency leading to the making of incorrect decisions, often to the detriment of the customer.

5.3 Directions for Further Research

It is recommended that a wider study of the legal and regulatory framework of the credit reference systems in Zambia, is instituted with an inclination towards an understanding of the regional experiences particularly those of Kenya and Tanzania, and contrasting these with the Zambian situation.

The research should further analyse the reasons as to why certain other legislation relating to the financial sector in Zambia, and under the custody of the Bank of Zambia, such as the National Payment Systems Directives on Cheques and Direct Debit instructions issued on insufficiently funded accounts,[66]which seems to have been given more pre-eminence and is comparatively by far more toughly enforced, and monitored.

- The role of credit reference legislation within the wider economy
    - The vibrancy and dynamism of credit regulation legislation
    - The cost of credit to the consumer
    - Access to credit and the extent of credit exclusion
    - Lender behaviour, particularly in relation to customer management and debt
- recovery practice
    - The incidence of illegal practices and of illegal lending
    - The incidence and scale of over-indebtedness
    - The consequences of over-indebtedness for the consumer

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[66] Act no. 1 of 2007

- The cost to the state of over-indebtedness
- Financial and social inclusion

5.4 Conclusion

Though Credit reporting is a relatively new phenomenon in Africa, it is widely acknowledged as being an essential tool in the financial services industry, with the noted benefits of improving the accessibility of credit, by all.

It is however a requirement that for such systems to operate effectively and efficiently, the law must operate in such a manner as to expeditiously ensure the attainment of this social requirement. It is however, further recognised that different jurisdictions have different features and intricacies and as such the legal framework cannot be copied and imported from a differing jurisdiction, say the West, and planted to the Zambian financial sector.

This then means that for the Zambian law to operate effectively, it must be a product of a broad based legal development exercise commencing with an interactive and expansive consultative needs assessment, followed by an intricate understanding of the role that the legislative framework is required to specifically play.

The law should then be drafted in a manner that will ensure social adherence by all and will allow for the law to not only be modern and in tune with prevailing requirements, but will also ensure it stands the test of time.

From the research conducted, it is evident that the law, in its current design, falls short of this desire and as a result, non-adherence to the law by the financial service providers, as well as noted operational inefficiencies in the credit reference agency, remains rife, despite the existence of not only defining laws, but also a directive. The Bank of Zambia, has also restricted its intervention in this matter, more to the use of moral suasion and not stern legislative action. This has further heightened the violations of the law.

The research has revealed that the legal framework needs to be refined so as to ensure the specific market desires as stated in the FSAP and FSDP, and indeed those desired by most of the market players are attained.

It is recommended that law should be speedily reformed and designed in a manner that will effectively positively influence the access to credit in Zambia.

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KEY INTERVIEWS

The Managing Director,CreditReference Bureau Africa Limited (CRBAL)

The Legal Counsel.Bank of Zambia.

The Senior Inspector Regulatory Policy, Bank of Zambia, Bank Supervision Department.

The Senior Inspector Regulatory, Non-Bank Financial Institutions Supervision Department.

The Senior Credit Manager – Indo Zambia Bank Zambia Limited.

The Head of Credit and Corporate Banking – Intermarket Banking Corporation.

The Managing Director – Capital Solutions Limited.