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MicroFinance Transparency
Truth-in-Lending Legislation Summary: Bolivia

Scope of Legislation

Bolivia has a truth-in-lending system established under a statute enacted in 2013, known as the “Financial Services Law” (or *Ley de Servicios Financieros*, in the Spanish original).¹ This law replaced a 1993 statute,² and is a comprehensive piece of legislation, intended to cover any financial intermediation activity and ancillary services. The regulations issued under the prior and the current statutes cover any extension of credit and are not specific to the microfinance sector.

The Financial Services Law grants broad enforcement, supervisory and regulatory powers to the Financial System Supervisory Authority (*Autoridad de Supervisión Del Sistema Financiero*, in the Spanish original, or “ASFI”), as did the prior 1993 statute. Under both such legislative mandates, ASFI issued several regulations applicable to the entire financial system, which are consolidated in the Consolidation of Rules for Banks and Financial Entities (*Recopilación de Normas para Bancos y Entidades Financieras*, in the Spanish original, or the “Consolidation”).

The Consolidation does not specifically regulate the microfinance sector. Rather, it provides for general rules applicable to any financial intermediation activity. The truth-in-lending provisions enacted by way of the Consolidation make no distinctions or exemptions based on the nature or size of the credit, the nature of the financial institution involved or its form of organization, or the nature or features of the assets held by the lenders. Accordingly, a separate governmental body is not created for the specific purposes of regulating or enforcing truth-in-lending rules. Instead, they are enacted and enforced by ASFI itself.

Borrowers Protected

The truth-in-lending rules in the Consolidation are applicable to all entities that carry out financial intermediation activities as well as ancillary services. The Consolidation does not expressly or directly grant rights to particular categories of borrowers: the customer protection provisions of the Consolidation simply define a customer as “any individual or legal entity who utilizes financial services provided by a supervised entity.”

Disclosure

¹ Ley No. 393, dated August 5, 2013.

² Ley No. 1488, dated April 14, 1993, as amended from time to time.

The Consolidation requires multiple disclosures by lenders at different times and in different instances. First, if a potential customer requests a quote for a loan, a lender must disclose, in writing, all financial charges associated with such loan (defined as any monetary costs of the credit, such as interest and any other charge made in connection with the extension of credit, but not including notarial and registration costs or any penalties).

The written quote must also include the payments due, the cost of any additional services performed by third parties engaged by the lender (for the benefit of the borrower), and the price of any death insurance, if applicable. The credit or loan agreement cannot provide for the payment of any charges or costs beyond what is specified in the written quote.

Any credit or loan agreement, pursuant to the Consolidation, must expressly disclose several terms and conditions of the loan, including (i) total amount of the loan; (ii) all financial charges; (iii) interest rates, whether fixed or variable, and the relevant reference rate in case of a variable interest rate (as set forth in more detail below), as well as the method and frequency of adjustment for variable rates; (iv) the payment plan for the loan; (v) the methods used for calculating outstanding balances and financial charges; (vi) the gross amount of total payments to be made under the agreement; (vii) penalties applicable in case of default; (viii) the cost of any death insurance relating to the loan; and (ix) the allocation of the notarial and registration expenses associated with the loan and any related guarantees.

Within 24 hours of the closing of any loan transaction, a lender must also inform the borrower of the "effective interest rate to the client" (*Tasa de Interés Efectiva Activa al Cliente*, in the Spanish original, or "TEAC"). The TEAC is to be calculated in accordance with a formula specified in the Consolidation and is to be expressed in terms of an annual interest rate that equates the present value of all disbursements by the borrower with the present value of all cash flows to the borrower associated with the credit service.

In addition, upon signing of a loan or credit agreement, a separate payment plan and a corresponding explanation must be delivered to the borrower, including details as to the effects of the variation of interest rates (if applicable) on the financial charges and the corresponding TEAC.

If a credit facility is extended, the relevant agreement must contain provisions disclosing the existence of any interest-free periods and the applicable rates for each type of transaction covered by the facility. Borrowers under credit facilities are also entitled to receive periodic reports, on agreed dates, with information about used and unused commitments, interest paid and charged and the method for its calculation, the TEAC associated with the transactions carried out under the facility, and other charges paid.

The Consolidation requires all supervised entities to publicly display posters in conspicuous places at each of their branches, setting forth, at a minimum, their nominal annual interest rates, broken down for each category or type of loan and for each applicable currency, the corresponding maturity for each rate, and any charges or fees applicable to a loan. If a lender offers variable interest rates, the underlying reference rate for each currency must also be included, and published on the lender's website.

In their recurring publications, lenders must disclose the terms and conditions of the services they offer, including nominal annual interest rates, types of rates offered, the frequency and method of adjustment for variable rates, and any additional financial charges associated with a loan. If any advertising

materials make reference to interest rates, then the nominal annual rates must be disclosed, and all additional fees and charges must be disclosed, in a clear and legible manner.

Pricing

As a general rule, the Consolidation does not impose any price or margin caps on loans, and allows for interest rates and other charges to be negotiated between the parties, except that compound interest is prohibited. Furthermore, interest rates and other charges may not be unilaterally changed. A lender is, however, allowed to adopt variable interest rates, which are to be determined by reference to an underlying variable reference rate selected from the roster of variable reference rates periodically published by the Central Bank of Bolivia, and to which a spread may be added, provided both the variable reference rate and the spread are agreed with the borrower. The underlying variable reference rate, the frequency of adjustment and the spread may not be altered during the term of the agreement.

The Consolidation prohibits any fees or charges which have not been expressly agreed by the borrower in writing. Conversely, fees and charges which have been agreed are permitted, with certain exceptions or limitations: (i) surcharges are not permitted if not the result of additional services performed by third parties engaged by the lender for the benefit of the borrower; (ii) account maintenance fees are not permitted; (iii) specific transaction fees are permitted only in certain limited circumstances; (iv) costs for the creation of all relevant legal documentation must be borne by the lender, although notarial and registration expenses in connection with the loan and related guarantees may be allocated between the parties pursuant to the written loan agreement; and (v) penalties for late payment of each overdue installment may only be based on the outstanding amount of each such installment.

Borrowers are to have the right to make prepayments of loans at any time, and prepayment premiums or penalties are not permitted.

Remedies and Enforcement

Under the Consolidation, customers of a supervised entity have (i) a right to select the product and service that best fits their needs and means, the satisfaction of which requires lenders to provide complete, adequate, truthful, accurate and understandable information to customers; (ii) a right to be provided with quality services, which includes being fairly and kindly treated by supervised entities and requires compliance with all contracts; and (iii) a right of complaint, to the entity's customer complaint service center in the first instance, and, ultimately, to the Complaint Center of ASFI.

Accordingly, the Consolidation requires supervised entities to create formal policies for customer service, which must address practices relating to, among other things, truthful, accurate, clear and complete information and advertising, the offering of services and products under conditions advertised and agreed upon, the use of plain language in written agreements, the prohibition against charging fees that have not been disclosed, and provision of adequate training to employees.

Each supervised entity must establish an internal customer complaint service center (*Servicio de Atención a Reclamos de Clientes*, in the Spanish original, or "SARC"), which must have an office in each branch where services are provided to the public. The SARC must create its own policies and procedures to address and resolve complaints by customers, and it must keep records of complaints filed and the corresponding resolutions.

Customers must be informed of their rights to make complaints to the SARC and to ASFI. The SARC must address a complaint within five business days, and if customers do not agree with the resulting decision,

they may appeal to the ASFI Complaint Center. ASFI may request the entity's SARC to provide any relevant information related to the complaint and it may conduct inspections to retrieve any such information. If any violations of the Financial Services Law or the Consolidation are found, ASFI may impose the sanctions delineated in the Financial Services Law, which range from a simple written warning to fines and deregistration of the supervised entity. ASFI also has the authority to award recovery of all damages incurred by a customer as a result of the violation, provided that such award is not greater than 0.5% of the minimum capital requirement applicable to the supervised entity under the relevant regulations.

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