



Tonga

MICROFINANCE INSTITUTIONS ACT

Chapter 16.11

2020 Revised Edition



MICROFINANCE INSTITUTIONS ACT

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MICROFINANCE INSTITUTIONS ACT

AN ACT TO PROVIDE FOR THE ESTABLISHMENT, LICENSING, GOVERNANCE, AND SUPERVISION OF MICROFINANCE INSTITUTIONS IN TONGA FOR THE PURPOSE OF FACILITATING ACCESS TO CREDIT AND OTHER MICROFINANCE SERVICES TO THE PEOPLE AND PROMOTING FINANCIAL INCLUSION THROUGH

Commencement [21 June 2019]¹

PART I - PRELIMINARY

1 Short Title and Commencement

- (1) This Act may be cited as the Microfinance Institutions Act.
- (2) This Act shall come into force on a date proclaimed by Cabinet and published by notice in the Gazette.

2 Interpretation

In this Act, unless the context otherwise requires –

“annual percentage rate” means aggregate rate per annum in percentage consisting of interest, processing fees, service charges and any other charges or fees realised by the microfinance institution on any microfinance services provided to any member;

“bank” means any company engaged in banking business and other financial activities, as determined in the licence granted by the Reserve Bank under the Financial Institutions Act 2004;

“body corporate” means an incorporated body established under any written law relating to the formation and registration of companies incorporated in the Kingdom or overseas;

“corporate governance” means the overall environment in which the microfinance institution operates and consists of checks and balances which promote a healthy balancing of risk and return;

“declining balance calculation method” means that the interest charged on any loan payment is to be calculated based on the current outstanding principal and accounting for all payments made in previous periods;

“Governor” means the Governor of the Reserve Bank appointed under section 11 of the National Reserve Bank of Tonga Act (Cap.102);

“General Manager” means a person occupying a principal position which includes a director or chief executive officer of any microfinance institution, by whatever name called;

“member” means any customer of the microfinance institution where such institution avails to its members microfinance services;

“microfinance institution” means an organisation using owner’s equity, loan capital and savings to provide small and simple microfinance services such as taking deposits, offering any loan, advance, domestic money transfer services, grant or any guarantee or any other credit extended in cash or kind with or without security or guarantee and insurance to members;

“Minister” means the Minister responsible for finance;

“person” means any individual, company, partnership, fund, foundation or enterprise wherever located or incorporated; and

“Reserve Bank” means the National Reserve Bank of Tonga established under the National Reserve Bank of Tonga Act (Cap.102).

PART II – ESTABLISHMENT

3 Restriction on Microfinance Institution

- (1) No person, other than a body corporate shall be established as a microfinance institution.
- (2) No microfinance institution shall commence, or carry on, the business of a microfinance institution unless and until such institution has been licensed in accordance with the provisions of this Act.
- (3) No microfinance institution shall take deposits from the public other than from a member of the microfinance institution.

4 Doing business without a valid licence

Any person to who carries on the business of a microfinance institution without a licence under this Act commits an offence and shall be liable upon conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding five years, or both.

PART III – LICENSING OF MICROFINANCE INSTITUTIONS

5 Application for a licence by a Microfinance Institution

- (1) Any person meeting the criteria prescribed by the Reserve Bank, may apply for a licence to establish a microfinance institution accompanied by the necessary information and fee prescribed from time to time by the Reserve Bank.
- (2) A licence shall only be issued if the Reserve Bank is satisfied after conducting an investigation as deemed necessary and it is shown from the evidence submitted to it –
 - (a) that all the requirements of existing laws and regulations to engage in the business which the applicant proposes to carry on have been complied with;
 - (b) that the public interest and economic conditions, both general and local, justify the authorisation;
 - (c) that the amount of capital, the financing, organisation, direction and administration, as well as the integrity and responsibility of the organisers and administrators reasonably assure the safety of the interests which the public may entrust to them and that the needs and convenience of the community it intends to serve are met;
 - (d) that the microfinance institution is financially sound and will be in a position to meet its liabilities;
 - (e) that the affairs of the microfinance institution are not being, and likely to be, conducted in a manner detrimental to the interests of its customers, present or future; and
 - (f) the establishment of an operating account in its name with a bank licenced under the Financial Institutions Act 2004.
- (3) Within 90 days after the receipt of an application, or where further information has been required, after the receipt of such information, the Reserve Bank may, at its discretion with or without conditions, grant a licence or inform the applicant of its refusal to grant a licence and in the event of refusal shall furnish the grounds upon which such refusal is based.
- (4) The Reserve Bank shall publish in the Gazette and its website all licenced microfinance institutions for the purposes of this Act.

- (5) Notwithstanding the provisions of any other law, a notice by the Reserve Bank shall be published in the Gazette and its website to add or remove a licenced microfinance institution.
- (6) Notwithstanding subsection (2), in the event the Reserve Bank is of the opinion that the granting of a licence under this Act would not be in the public interest, it may refuse to issue it.

6 Annual licence fees

- (1) The Reserve Bank may charge and collect a licence fee for each year that a licence is in effect and which shall be paid by the microfinance institution on the anniversary of the date of its licence being granted.
- (2) The annual fee is to be considered as a debt due to the Reserve Bank and a microfinance institution who fails to pay the fee by the due date is liable to a surcharge equivalent to 100% of the prescribed fee.
- (3) A licence is deemed suspended for the period when a microfinance institution fails to pay the annual fee by the due date to the date the annual fee and any surcharge has been paid to the Reserve Bank.

7 Power to vary conditions of licence

- (1) The Reserve Bank may, at any time, amend, vary or cancel any condition attached to, or impose new conditions on, the licence of a microfinance institution.
- (2) Where the Reserve Bank proposes to act under subsection (1), it shall notify the microfinance institution in writing thereof.
- (3) The microfinance institution may, within 30 days of receipt of a notice under subsection (2), make representations in writing to the Reserve Bank.
- (4) The Reserve Bank shall, after considering any representations made under subsection (3), make a decision on the action proposed in the notice and notify the microfinance institution in writing within 30 days of its decision.

8 Display of licence

- (1) A copy of the licence granted under this Act shall be displayed and kept displayed conspicuously in a public area of all places of business of the microfinance institution in Tonga.
- (2) A microfinance institution which contravenes subsection (1) commits an administrative offence and shall be liable to an administrative fine not exceeding \$10,000, which shall be imposed by the Reserve Bank.

9 Revocation and suspension of licence

- (1) The Reserve Bank may by notice in writing, revoke or suspend a licence issued under this Act if it is satisfied that the microfinance institution at any time –
 - (a) has not commenced or has ceased to carry on business;
 - (b) has furnished any information or document to the Reserve Bank in connection with its application for a licence which is false or misleading in a material particular;
 - (c) has been found by the Reserve Bank to be insolvent or unable to pay its liabilities;
 - (d) has gone into liquidation;
 - (e) has been wound up;
 - (f) has been dissolved;
 - (g) is in the opinion of the Reserve Bank conducting business in a manner detrimental to the interests of its depositors or customers;
 - (h) has persistently in the view of the Reserve Bank contravened the provisions of this Act;
 - (i) has engaged in deception of the Reserve Bank or the general public in respect of its financial condition, ownership, management, operations or other facts material to its business;
 - (j) has without the consent of the Reserve Bank been amalgamated with another company or has sold or otherwise transferred its assets and liabilities to another company;
 - (k) has failed to comply with any conditions specified in its licence;
 - (l) has transferred or assigned its licence;
 - (m) fails to submit or offer for inspection of its books of account and other relevant documents under section 20; or
 - (n) fails to comply with orders stipulated under sections 21 or 23.
- (2) Before suspending or revoking a licence, the Reserve Bank shall give a holder of the licence an opportunity to submit reasons why its licence should not be so suspended or revoked within fourteen days after being notified of the intended decision to suspend or revoke a licence.
- (3) The Reserve Bank after considering the reasons submitted under subsection (2) may effect the suspension or revocation of the licence.

10 Transfer or assignment of licence prohibited

- (1) A microfinance institution shall not transfer or assign its licence to –
 - (a) another person;
 - (b) cause or permit another person to use the licence; or

- (c) provide the services authorised in the licence.
- (2) Any purported transfer or assignment shall be null and void.

11 Approval and notification of change of profile

- (1) A microfinance institution shall obtain the prior approval of the Reserve Bank for –
 - (a) a change of the business name;
 - (b) the employment, appointment or admission of any person who will be responsible for the management of the microfinance institution; or
 - (c) any person becoming a director of the microfinance institution.
- (2) A microfinance institution shall notify the Reserve Bank within 14 days –
 - (a) of any person becoming a shareholder of the microfinance institution; or
 - (b) of any shareholder increasing or reducing his shareholding in the microfinance institution.
- (3) A microfinance institution shall notify the Reserve Bank –
 - (a) of any person ceasing to be a director, partner or shareholder; or
 - (b) of any person ceasing to be responsible for the management of the business of the microfinance institution, no later than 14 days after the cessation.
- (4) A microfinance institution shall notify the Reserve Bank of a liquidation order against the microfinance institution, or any director, partner or shareholder of the microfinance institution, no later than 14 days after the liquidation order is made.
- (5) A microfinance institution who contravenes subsections (1), (2), (3) or (4) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

12 Minimum capital requirements

- (1) Subject to this Act, a microfinance institution shall not be granted or hold a licence unless it has a minimum paid-up capital of \$100,000 invested in such liquid assets in Tonga as the Reserve Bank may approve.
- (2) The minimum capital funds of a microfinance institution referred to in subsection (1) unimpaired by losses shall at all times not be less than \$100,000.
- (3) The Reserve Bank may from time to time by regulations, vary the minimum paid-up capital prescribed by subsection (1).

PART IV – GOVERNANCE OF MICROFINANCE INSTITUTIONS

13 Structure of Microfinance Institutions

- (1) Microfinance institutions licensed by the Reserve Bank shall have a Board of Directors and a General Manager.
- (2) The Board of Directors shall manage the affairs of a microfinance institution in accordance with the principles of good governance.
- (3) The General Manager shall be responsible for the day-to-day administration of a microfinance institution.
- (4) The Board of Directors shall be responsible for monitoring the financial activities of a microfinance institution and management activities of the General Manager, and perform other responsibilities that may be stipulated in the constitution of a microfinance institution.

14 Disqualified persons

- (1) The following persons are disqualified from being directors or to the management of a microfinance institution who —
 - (a) has acted in a financial institution in Tonga or elsewhere which has had its licence revoked or which has been wound up by a court;
 - (b) has been sentenced by a court in any country for an offence involving dishonesty;
 - (c) is or becomes bankrupt or enters into a scheme of arrangement with his creditors;
 - (d) has been disqualified or suspended from practicing a profession on grounds of personal misconduct;
 - (e) does not possess sufficient financial competence and expertise;
 - (f) is an officer or employee of another microfinance institution unless both entities are commonly owned;
 - (g) who does not meet the criteria of a fit and proper person as prescribed by the Reserve Bank; or
 - (h) falls under such other criterion or criteria as may be established by the Reserve Bank in a directive, or other acts or decisions.
- (2) Any person who accepts an appointment in contravention of subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a period not exceeding three years, or both.

- (3) Any person appointed or elected as a director or to the management of a microfinance institution shall cease to hold such office if he is disqualified under subsection (1).

15 Responsibilities of Board of Directors

The Board of Directors of a microfinance institution shall be responsible for —

- (a) the good corporate governance and business performance of the microfinance institution;
- (b) ensuring that the board is in full control of the affairs and business operations of the microfinance institution;
- (c) ensuring that the business of the microfinance institution is conducted in a safe and sound manner; and
- (d) ensuring and reporting to the shareholders at the annual general meeting of the microfinance institution that the internal controls and systems, and management information systems of the microfinance institution —
 - (i) provide reasonable assurance as to the integrity and reliability of the financial statements of the microfinance institution;
 - (ii) adequately verify, safeguard and maintain accountability of the assets of the microfinance institution;
 - (iii) are based on established and written policies and procedures and are implemented by trained and skilled officers with an appropriate segregation of duties; and
 - (iv) are continuously monitored, reviewed and updated by the Board of Directors to ensure that no material breakdown occurs in the functioning of such controls, procedures and systems.

16 Responsibilities of General Manager

- (1) A General Manager in relation to a microfinance institution in which he serves stands in a fiduciary relationship and shall in addition and without derogation owe the microfinance institution and its shareholders the following duties —
- (a) a duty to act honestly and in good faith;
 - (b) a duty to act in the best interests and for the benefit of the microfinance institution;
 - (c) a duty to act independently, free from undue influence of any person; and
 - (d) a duty to access necessary information to enable the General Manager to control and discharge his responsibilities.
- (2) It shall be the duty of the Board of Directors and each General Manager individually to immediately report in writing to the Reserve Bank if they have reason to believe that —

- (a) the microfinance institution may not be able to conduct properly its business as a going concern;
 - (b) the microfinance institution appears to be or may in the near future be unable to meet all or any of its obligations under this Act; or
 - (c) the microfinance institution has suspended or is about to suspend any payment of any kind.
- (3) No General Manager serving on the board of a microfinance institution or any other financial institution licensed by the Reserve Bank under any other Act shall simultaneously serve as a board member or in any executive capacity with another microfinance institution or its subsidiary or affiliate.

17 Protection of Member's deposits

- (1) A microfinance institution shall, as required by the Reserve Bank, maintain deposits from members in a deposit account and shall not be appropriated in any manner except for withdrawals by members.
- (2) The Reserve Bank may, in the public interest or in the interest of members of any microfinance institution, direct any microfinance institution to invest the whole or part of the member's deposits in such unencumbered securities, as it may, by this Act specify, provided that any interest earned, the microfinance institution shall make a ratable payment to each depositor.

18 Audit

- (1) The accounts of a microfinance institution for each financial year shall be audited by a chartered accountant in public practice.
- (2) The auditor shall be appointed for such terms and on such remuneration, to be paid by the microfinance institution, as the Board of Directors of such institution may fix.
- (3) The auditor shall provide to the Reserve Bank within three months of the close of its financial year a certificate, attached to the balance sheet and profit and loss accounts verifying that such balance sheet and profit and loss accounts give a true and fair view of the financial position of the microfinance institution.
- (4) The Reserve Bank may direct a special audit of the accounts of a microfinance institution if the Reserve Bank is of the opinion that it is necessary in the public interest or in the interest of depositors or for the purpose of proper assessment of the records and accounts of the microfinance institution, and any expense of the special audit shall be borne by the microfinance institution.

PART V – REGULATION AND SUPERVISION

19 Returns

- (1) A microfinance institution shall furnish to the Reserve Bank such returns, reports and information as may be prescribed.
- (2) Without limitation to the foregoing, a microfinance institution shall -
 - (a) maintain a register of its members, Board of Directors and the General Manager and provide information thereof to the Reserve Bank at such time and in such manner as may be prescribed;
 - (b) maintain accounts and have the same audited as prescribed under section 18;
 - (c) submit its annual report and audited accounts to the Reserve Bank; and
 - (d) furnish to the Reserve Bank such particulars with regard to accounts and other records as the Reserve Bank may from time to time require.

20 Inspection and investigation

- (1) The Reserve Bank may, at any time, inspect books of accounts and records of any microfinance institution to evaluate its financial viability and may, of its own or on receipt of complaint investigate the affairs of such institution.
- (2) The inspection or investigation shall be carried out by such officer of the Reserve Bank or by such other person as the Reserve Bank may authorise.
- (3) It shall be the duty of every officer and employee of a microfinance institution or any other person dealing with or connected with the operations of the microfinance institution to produce to any officer, making an inspection or investigation under this section, hereafter in this section called the inspecting officer, all such books, accounts and other documents in his custody or power and to furnish him with such statements and information relating to the affairs of the microfinance institution within such time as the inspecting officer may require.
- (4) The Reserve Bank shall supply to the microfinance institution a copy of its report on the inspection made under this section.
- (5) The Reserve Bank shall systematically monitor and evaluate the performance of a microfinance institution to ensure that it is complying with the applicable criteria and prudential rules and regulations:

Provided that if any officer or any employee fails to produce any books of account or other documents or to furnish any statement or information which under sub-section (3) it is his duty to produce or furnish or to answer correctly any question relating to the business of the microfinance institution which he is asked by an inspecting officer, such officer or employee shall be liable to an administrative fine not exceeding \$5,000 to be imposed by the Reserve Bank

and to be recovered from the salary of such officer or employee and, in the event such failure persists, the Reserve Bank may order removal of such officer or employee and the microfinance institution shall comply with such order forthwith.

21 Powers to give directions

- (1) Where the Reserve Bank is satisfied that -
 - (a) in the public interest;
 - (b) to prevent the affairs of a microfinance institution being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of a microfinance institution;
 - (c) in furtherance of monetary or financial sector policy; or
 - (d) to secure the proper management of a microfinance institution, it is necessary to issue directions to microfinance institutions generally or to any microfinance institution in particular,

it may, from time to time, issue such directions as it may deem fit and the microfinance institutions or the microfinance institution, as the case may be, shall comply with such directions.
- (2) The Reserve Bank may, on representation made to it or of its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such condition, as it thinks fit, subject to which the modification or cancellation shall have effect.
- (3) In particular and without prejudice to the generality of the foregoing powers, such directions may provide for all or any of the following matters, namely –
 - (a) ceiling on amount of microfinance facilities and the number of individual members to whom such microfinance facilities may be provided by any microfinance institution;
 - (b) levy of fees, interest, life insurance premium and other terms relating to microfinance facilities including the ceiling on the percentage of loan interest margin to be maintained by a microfinance institution;
 - (c) microfinance institutions to become members of Credit Information Bureaus that may be set up for the microfinance sector;
 - (d) a Financial Consumer Protection Policy and its acceptance and observance by microfinance institutions;
 - (e) prudential standards relating to income recognition, accounting standards, provisioning for bad and doubtful debts, capital adequacy based on risk weights for assets and deployment of funds and corporate governance; and
 - (f) such other directions as may be specified by the Reserve Bank.

22 Prosecution of General Manager or other officers

A General Manager or other officer of a microfinance institution who, has knowingly acted in a manner causing loss of depositors' money or of the income of the microfinance institution, may be prosecuted.

23 General powers of the Reserve Bank

- (1) The Reserve Bank shall exercise general supervision and control over the carrying out of the provisions of this Act.
- (2) The Reserve Bank may authorise any person to assist it in the exercise of its functions under this Act, either generally or in any particular case.
- (3) Microfinance Institutions and where required by the Reserve Bank, any associated persons, shall be subject to the supervision, regulations, rules, orders or other directives of the Reserve Bank which may be issued in accordance with the provisions of this Act, of the National Reserve Bank of Tonga Act (Cap. 102), or any other written law.

PART VI – BUSINESS OF LENDING**24 Microfinance institution and member shall enter into a loan agreement**

- (1) A microfinance institution who intends to lend money to a member shall enter into a loan agreement with the member, and that agreement shall be in the prescribed form.
- (2) Any microfinance institution who contravenes this section commits an administrative offence and shall be liable to an administrative fine not exceeding \$10,000, to be imposed by the Reserve Bank.
- (3) Any loan agreement which does not comply with the prescribed form is void and unenforceable.

25 Loan agreement by unlicensed microfinance institution unenforceable

Any loan agreement in respect of money lent after the coming into force of this Act by an unlicensed microfinance institution is unenforceable.

26 Loan agreement to be given to the member

- (1) A loan agreement is enforceable where the agreement has –
 - (a) been signed by all the parties to the agreement; and
 - (b) a copy of the agreement is delivered to the member by the microfinance institution before the money is lent.

- (2) A microfinance institution who executes a loan agreement which does not comply with this section commits an administrative offence and shall be liable to an administrative fine not exceeding \$10,000, to be imposed by the Reserve Bank.

27 Interest and fees for secured and unsecured loans

- (1) For the purposes of this Act, after taking into consideration the microfinance institutions' cost of funds, profit margin, borrower's credit risk, administrative costs and other loan related costs, the interest rate of a loan whether secured or unsecured shall be linked to the policy rate set by the Reserve Bank from time to time.
- (2) A microfinance loan agreement may impose a default interest fee and default payment fee not exceeding an amount as prescribed by the Reserve Bank.
- (3) The maximum annual percentage rate which may be charged by a microfinance institution shall not exceed the rate prescribed by the Reserve Bank.
- (4) In calculating instalment payments for credit transactions, the microfinance institution shall use the declining balance calculation method and the interest shall be compounded on a monthly basis.
- (5) Notwithstanding subsections (1) and (2), interest and fees shall not at any time be recoverable by a microfinance institution of an amount in excess of the sum then due as principal unless a Court, having regard to all the circumstances, otherwise orders.
- (6) Where in a microfinance loan agreement the interest charged for a secured loan or an unsecured loan, as the case may be, is more than that specified in subsections (1), (2) and (3), that agreement is void and unenforceable.
- (7) Where in a microfinance loan agreement the securities are realised, the microfinance institution shall realise the securities at the current market value for the repayment of a loan and any excess money shall be paid to the borrower.
- (8) A microfinance institution who contravenes this section commits an administrative offence and shall be liable to an administrative fine not exceeding \$10,000, to be imposed by the Reserve Bank.

PART VII – MISCELLANEOUS

28 Winding up

Notwithstanding any other Act, in the event of any microfinance institution being placed under liquidation, the members' deposit funds set aside pursuant to section 17 shall be paid to the depositors in priority to other claims.

29 Offences and Penalties

- (1) Any person who carries on the business of a microfinance institution without having been licensed to do so or who carries on such business after the licence has been suspended or revoked commits an offence and shall be liable upon conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding five years, or both.
- (2) Any person who wilfully withholds or fails to deliver any document or information or makes a statement in any return, balance sheet or other document or in any information required or furnished under, or for the purpose of any provision of, this Act which to the knowledge of such person is false in any material respect, commits an offence and shall be liable upon conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or both.
- (3) If any officer of a microfinance institution, mismanages the affairs of the microfinance institution or misuses his position for gaining direct or indirect benefit for himself or any of his family members, he commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for term not exceeding three years.
- (4) A person convicted and sentenced under subsection (3) may also be ordered, by the Court, to deliver or refund to the microfinance institution within a time to be fixed by the court any property acquired or gained by him in his own name or in the name of his family members.

30 Restrictions on removal of records and documents

No microfinance institution shall remove from its location of business or property, to a place outside its location of business or property, any of its records and documents relating to its business without the prior permission in writing of the Reserve Bank.

31 Duty to keep original copy of loan agreement and accounts

- (1) A microfinance institution shall keep and maintain –
 - (a) such original copy of the loan agreement for each loan in which the microfinance institution is or has been concerned;
 - (b) regular accounts of each loan including accounting records;
 - (c) management information system information; and
 - (d) other related records,for a period of seven years from the date in which the loan is made.
- (2) A person failing to comply with this section –
 - (a) is not entitled to enforce any claim in respect of any transaction in relation to a default; and

- (b) commits and administrative offence and shall be liable to an administrative fine not exceeding \$10,000, to be imposed by the Reserve Bank.

32 Exclusion from liability

Neither the Reserve Bank nor any director, officer or employee of the Reserve Bank or person authorised to assist the Reserve Bank under section 20 shall be liable in any manner whatsoever for anything done or omitted to be done in good faith in the discharge or purported discharge of the functions and duties of the Reserve Bank under this Act.

33 Regulations

- (1) The Reserve Bank may with the consent of the Minister and Cabinet make regulations to give effect to the provisions of this Act.
- (2) For any breach of the regulations made under subsection (1) and for any breach of any rules, orders or directives made in accordance with the provisions of this Act, an administrative fine not exceeding \$1,000 for every day during which the contravention continues may be imposed by the Reserve Bank:

Provided that this provision shall not preclude the imposition of other penalties or sanctions in the National Reserve Bank of Tonga Act (Cap. 102) or in any other written law.

34 Transitional

- (1) A person who is not licenced shall not be regarded as contravening this Act by reason only of collecting money due under a loan agreement or a related transaction entered into before the commencement this Act.
- (2) A person who is not licenced and is carrying on the business of a microfinance institution shall apply for a licence in accordance with the provisions of this Act.

¹ GS.10 of 2019 dated 21 June 2019