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VAN  
SUID-AFRIKA

# Government Gazette Staatskoerant

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PRETORIA, 13 NOVEMBER 1998

No. 19457

## GENERAL NOTICE • ALGEMENE KENNISGEWING

NOTICE 2726 OF 1998

### DEPARTMENT OF TRADE AND INDUSTRY

#### EXEMPTION IN TERMS OF SECTION 15A OF THE USURY ACT, 1968

I, Alexander Erwin, Minister of Trade and Industry, hereby give notice that I intend to publish the following notice in the Government Gazette.

Interested persons are invited to furnish written comment and representations before or on 18 December 1998 to:

**The Director-General  
Department of Trade and Industry  
Private Bag X84  
PRETORIA  
0001**

For Attention: Ms Lizell Reinecke  
Tel (012) 310 9456  
Fax (012) 322 8489

**ALEXANDER ERWIN  
MINISTER OF TRADE AND INDUSTRY**

**KENNISGEWING 2726 VAN 1998**

**DEPARTEMENT VAN HANDEL EN NYWERHEID**

**VRYSTELLING IN TERME VAN ARTIKEL 15A VAN DIE WOEKERWET, 1968**

Ek, Alexander Erwin, Minister van Handel en Nywerheid, gee hiermee kennis dat ek van voorneme is om die volgende kennisgewing in the Staatskoerant te publiseer.

Belanghebbende persone word versoek om voor of op **18 Desember 1998** hul skriftelike kommentaar en vertoë te verskaf aan:

**Die Direkteur-generaal  
Departement van Handel en Nywerheid  
Privaatsak X84  
PRETORIA  
0001**

Vir Aandag: Me Lizell Reinecke  
Tel (012) 310 9456  
Faks (012) 322 8489



**ALEXANDER ERWIN  
MINISTER VAN HANDEL EN NYWERHEID**

## NOTICE IN TERMS OF SECTION 15A OF THE USURY ACT, 1968 (ACT NO 73 OF 1968)

In terms of section 15A of the Usury Act, 1968 (Act No 73 of 1968), I Alexander Erwin, Minister of Trade and Industry, hereby exempt the category of money lending transaction referred to in the Schedule from the provisions of the said Act with the exception of sections 13, 14 and 17A of the Act, on the conditions set out in the Schedule.

### SCHEDULE

#### 1. Definitions

In this Schedule any word to which a meaning has been ascribed in the Usury Act, 1968, shall have the meaning ascribed to it in the Act, and

- 1.1 “*category of money lending transaction*” means a money lending transaction in respect of which the loan amount -
- (a) does not exceed R 50 000.00;
  - (b) together with the total charges for credit which are owing by the borrower, shall be paid to the moneylender, whether in instalments or otherwise, within a period not exceeding 60 months after the date on which the sum of money has been advanced to the borrower; and
  - (c) is not paid in terms of a credit card scheme or withdrawn from a cheque account with a bank registered in terms of the Banks Act, 1990 (Act No 94 of 1990), or a mutual bank registered in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993), so as to leave such account with a debit balance.
- 1.2 “*regulatory institution*” means a legal entity having a Board of Directors which has balanced representation between consumers and industry and which is approved by the Minister in writing and published in the Government Gazette as having the capacity and the mechanisms in place effectively to -

- (a) manage its business as a regulatory institution with competent management and staff;
- (b) register members in accordance with accreditation criteria set out in the rules;
- (c) ensure adequate standards of training of staff members interacting with the general public;
- (d) set maximum rates for the total charge of credit in the rules in respect of categories of loans, with reference to the cost of advancing and recovering the loan amount and charges in respect thereof, loan product, loan period and risk profile, as being a determinable researched rate;
- (e) require adherence to and monitor and ensure compliance by registered moneylenders with this notice and the rules;
- (f) fund itself from contributions by registered moneylenders on a basis as set out in the rules or other sources;
- (g) ensure that complaints from the general public are responded to objectively;
- (h) ensure that mechanisms are in place to deal with appeals by registered moneylenders and consumers in respect of any decision of the regulatory entity or any committee, ombudsperson or referee instituted by it;
- (i) educate and inform the general public and the registered moneylenders of the institution in relation to their rights and obligations under the rules;
- (j) annually publish information regarding the industry and its members, the services provided, types of charges and the average annual charges levied by each registered moneylender in a comparable format;
- (k) collect and collate information and statistics on members and complaints handled by the institution, including the -
  - (i) number of complaints lodged and details of the complainant;
  - (ii) number of registered moneylenders found in breach of the rules and the reasons therefor;
  - (iii) names of registered moneylenders against whom complaints have been lodged and the number and nature of complaints;
  - (iv) response time to resolve complaints;

- (v) the number of items monitored under each category;
  - (vi) the number of breaches detected through monitoring;
  - (vii) the number and nature of sanctions imposed;
  - (viii) the number of decisions appealed against and the outcome thereof;  
and
- (l) review its own effectiveness and the effectiveness of its rules and to implement appropriate changes subject to the approval by the Minister.
- 1.3 "*loan amount*" means any money or monies paid over to or on behalf of the borrower;
- 1.4 "*registered moneylender*" means a moneylender whose business includes moneylending and which is registered with a regulatory institution;
- 1.5 "*rules*" means the rules or code of conduct issued by the regulatory institution after approval thereof by the Minister as providing adequate protection to consumers and complying with the principles set out in Annexure "A" to this Schedule;
- 1.6 "*this notice*" includes Annexure "A"; and
- 1.7 "*total charge of credit*" means all charges levied on the loan, including interest charges and other charges including administration fees, ledger fees, commissions, but excluding insurance premiums;

## 2. Conditions

- 2.1 The category of money lending transaction is exempted on the conditions that -
- (a) the moneylender concluding the category of moneylending transaction is a registered moneylender,
  - (b) the registered moneylender shall at all times comply with the rules;
  - (c) the registered moneylender shall provide the borrower, prior to the conclusion of the loan agreement with a schedule setting out -
    - (i) the loan amount in rands and cents;
    - (ii) the total amount repayable in rands and cents over the repayment period;
    - (iii) the nature and amount of the total charge of credit in rands and cents over the repayment period;
    - (iv) the annual rate for the total charge of credit;
    - (v) the nature and amount of any insurance, including the name of the insurer;

- (vi) the penalty interest and any additional costs that would become payable in the case of default by the borrower or how that would be calculated;
  - (vii) the instalment amount in rands and cents and the number of instalments;
  - (viii) the repayment period in respect of the loan;
- (d) the Minister may withdraw the approval of the regulatory institution should it fail to fulfil the functions contemplated in paragraph 1.4 above;
- (e) the regulatory institution shall provide the Minister -
  - (i) as and when requested, with a list of registered moneylenders or any other information as may be required; and
  - (ii) with a detailed annual report on its activities and its functions as contemplated in paragraph 1.2.

2.2 Insofar as the exemption may be interpreted to impose any obligation on a entity only a part of which conducts business in respect of the category of moneylending transactions, such obligations shall apply only in respect of such part of the entity to the extent it shall be capable of being so applied.

2.3 The Usury Act, 1968, shall apply to a moneylending transaction falling within the category of moneylending transactions should a registered moneylender fail to comply in respect of such moneylending transaction with the conditions of this notice, or in the event of the approval of the regulatory institution being withdrawn by the Minister. The Minister may publish the names of registered moneylenders or regulatory institutions where consistent disregard for the rules is proved.

### 3. Repeal

Government Notice R3451 of 31 December 1992 is hereby repealed.



**ANNEXURE "A"****MINIMUM RULES FOR PURPOSES OF EXEMPTION UNDER SECTION 15A OF THE USURY ACT****1. Confidentiality**

- 1.1 The registered moneylender shall not disclose, without the express consent of the borrower, any confidential information obtained in the course of a money lending transaction.
- 1.2 Should the member wish to obtain from or to disclose to a third party, the borrower's credit record and payment history, the borrower's consent shall be obtained through specific and prominent clauses in the application for the relevant loan.

**2. Disclosure**

- 2.1 The registered moneylender shall at each of its business premises conducting business in respect of the category of moneylending transactions keep a set of the rules of the regulatory institution available for perusal by borrowers.
- 2.2 The registered moneylender shall at each of its business premises conducting business in respect of the category of moneylending transactions display prominently -
  - 2.2.1 a copy of the moneylenders' registration certificate issued by the relevant regulatory institution; and
  - 2.2.2 the complaints procedure and the manner in which and where complaints may be lodged.
- 2.3 The registered moneylender shall use standard written agreements, as approved by the regulatory institution, containing all the terms and conditions of the loans and clearly reflecting the rights and obligations of the borrower and the registered moneylender.
- 2.4 The registered moneylender shall in a language understood by the borrower before the conclusion of a loan agreement explain the essential terms of the loan agreement to the borrower so as to ensure that the meaning and consequences of the loan agreement are understood.
- 2.5 The registered moneylender shall, before the conclusion of a loan agreement, allow the borrower an opportunity to read the loan agreement.

- 2.6 The registered moneylender shall provide the borrower with a copy of the signed loan agreement before or at the time of advancing the loan amount.
- 2.7 The registered moneylender shall maintain a proper set of accounting records reflecting full details of all loans advanced, interest and other charges raised, repayments received and the amount outstanding.
- 2.8 The registered moneylender shall on demand provide the borrower with a statement setting out all charges levied, all payments made and the amount outstanding. A charge may be levied for this, but may not exceed the amount prescribed in section 10(2) of the Usury Act, 1968.
- 2.9 Should the registered moneylender decline a loan application, the registered moneylender shall at the request of the borrower provide reasons therefor. If such reasons include an adverse credit record recorded with a credit information bureau, the name and details of the relevant credit bureau will be provided to the borrower by the registered moneylender so as to enable the borrower to rectify any incorrect information.
- 2.10 The registered moneylender shall inform the borrower in writing, by way of a notice addressed to the *domicilium* of the borrower, of the registered moneylender's intention to forward adverse information to any credit bureau, to be recorded in the public sector of the bureau's database, before forwarding any such information to the relevant credit bureau.
- 2.11 Where any amount owing by the borrower is disputed by the borrower, that fact shall be communicated to the credit bureau when providing information to it.

### 3. Consideration

- 3.1 The registered moneylender shall not charge any fee to be paid by the borrower in circumstances where the loan is not granted or money is not paid out to the borrower by the registered moneylender. This excludes fees charged for evaluating or preparing business plans.
- 3.2 The borrower may make additional payments or settle the outstanding amount in one amount where the repayment period does not exceed 12 (twelve) months. Where the repayment period exceeds 12 (twelve) months, the registered moneylender may require 60 (sixty) days written notice of the borrower's intention to settle the outstanding amount in one amount within a period which the moneylender may stipulate in its standard loan agreement not to be earlier than a number of days which may not exceed 60 (sixty) days. No penalty may be charged for the settlement of the loan in the case of retrenchment of the borrower.



- 3.3 The registered moneylender shall ensure that the annual rate for the total charge of credit stipulated, demanded or received by the registered moneylender shall not exceed the rates determined by the regulatory institution in respect of any category of loans.

### **Cooling-off period**

- 4.1 The registered moneylender shall, in terms of the provisions of his or her loan agreement with the borrower, allow the borrower to terminate the loan agreement within a period of 3 (three) business days after the date of the signing of the loan agreement, and, where the loan amount had been advanced, simultaneously to repay the loan amount advanced to the registered moneylender.
- 4.2 Should the borrower terminate the loan agreement within such period after having received the money, the registered moneylender shall, upon the borrower offering simultaneously to repay the total amount advanced to the borrower, only be entitled to stipulate for, demand or receive from the borrower, *pro rata* finance charges at the finance charge rate applicable to the contract.

### **Collection methods**

- 5.1 As from the date determined by the Minister in the Government Gazette, the registered moneylender shall not make use of personal information such as pin codes and bank cards as security arrangements.
- 5.2 Until such time, security arrangements may only be used where in terms of the loan agreement, the member undertakes -
- 5.2.1 not to access funds exceeding an amount legally owing by the borrower to the registered moneylender;
- 5.2.2 not to use or replicate any personal information which may become available to the registered moneylender as a result of the security arrangement.
- 5.3 The registered moneylender shall not use any illegal methods, including physical force or the threat of such force, to collect any amount owing by a borrower.

# Keep South Africa Clean

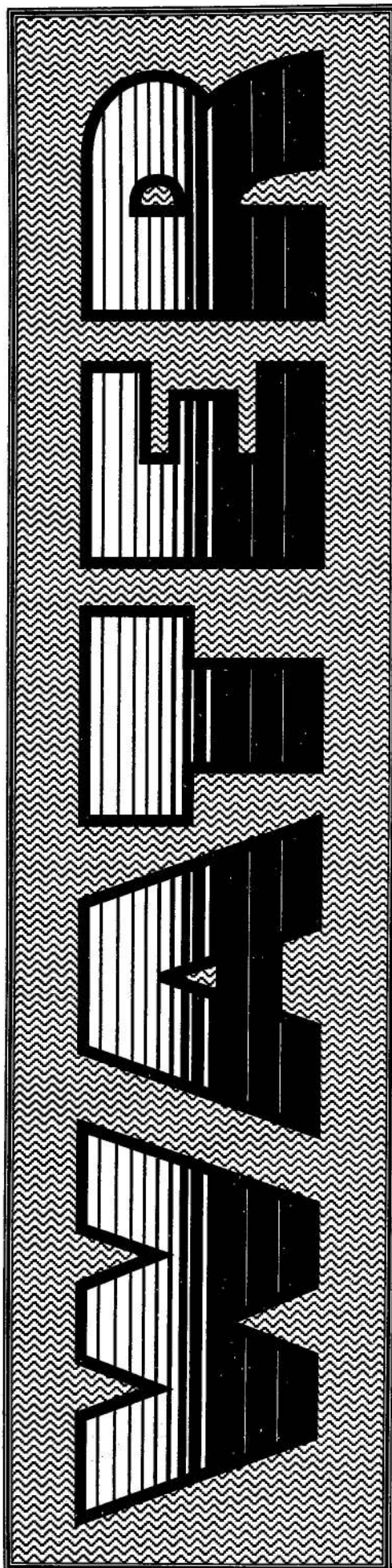


## Throw trash where it belongs

# Hou Suid-Afrika Skoon



**Gooi rommel waar dit hoort**



**DON'T**

**WASTE**

**It!**



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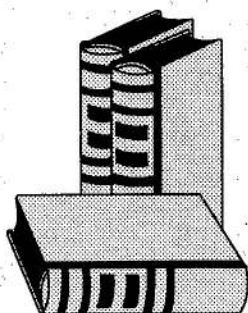
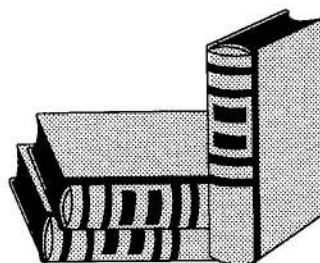
**WERK**

**SPAARSAAM**

**DAARMEE !**



*Where is the largest amount of meteorological information in the whole of South Africa available?*

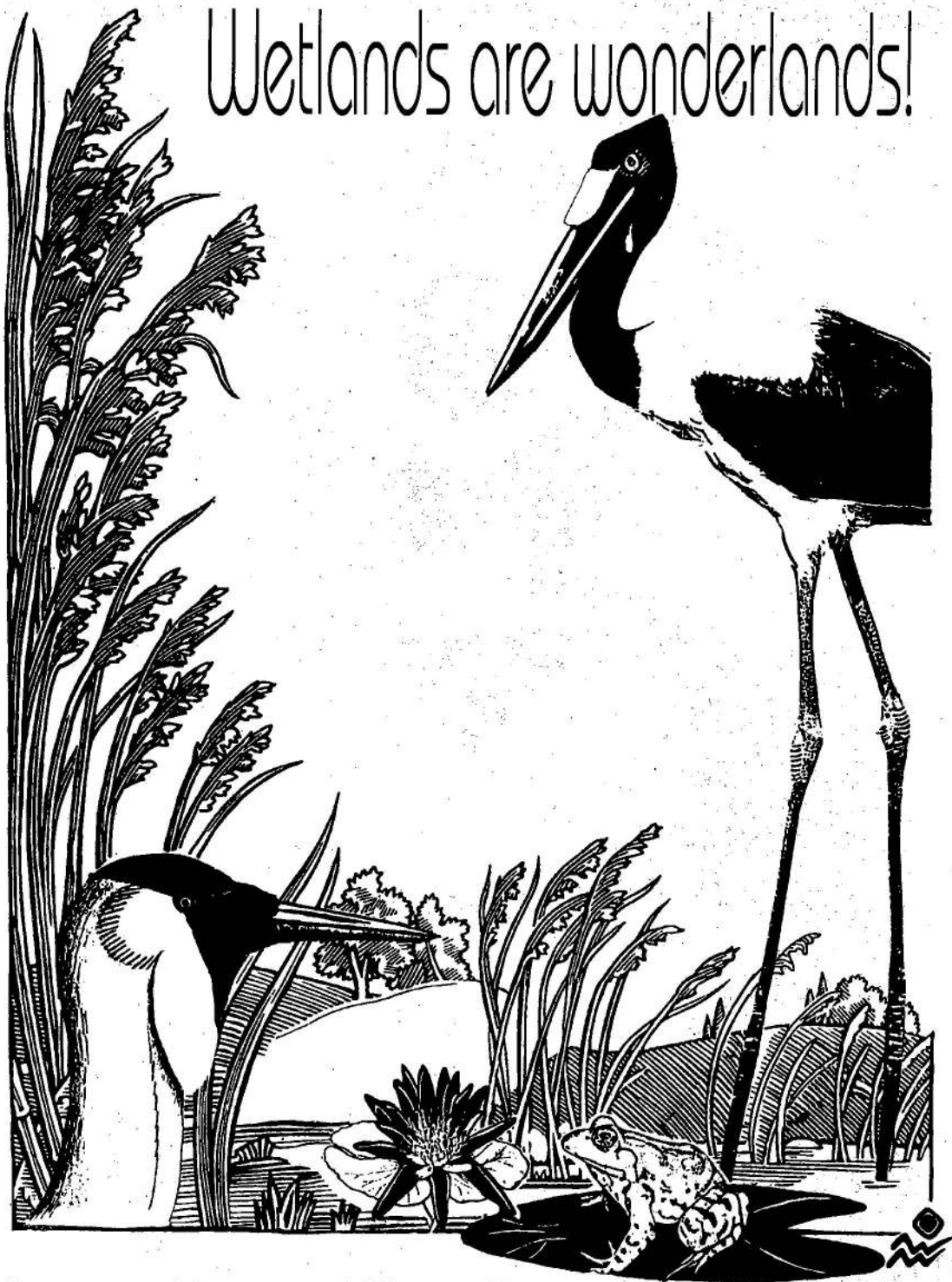


*Waar is die meeste weerkundige inligting in die hele Suid-Afrika beskikbaar?*

*Department of Environmental Affairs and Tourism*  
*Departement van Omgewingsake en Toerisme*



Wetlands are wonderlands!



Department of Environmental Affairs and Tourism

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