



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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MINISTRY OF FINANCE

No. 189

2004

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 exempt the micro loan transactions referred to in the Schedule from the provisions of that Act, except from the provisions of sections 2, 13, 14 and 17 thereof, on the conditions set out in the Schedule.

Government Notice No. 136 of 6 August 2002 is revoked.

S. KUUGONGELWA-AMADHILA
MINISTER OF FINANCE

Windhoek, 12 August 2004

SCHEDULE

Definitions

1. In this Schedule, unless the context otherwise indicates, an expression defined in the Usury Act 1968, (Act No. 73 of 1968) has a corresponding meaning and -

“borrower” for the purposes of this notice, means a person to whom a microlender has advanced a loan amount in terms of a micro loan transaction, or any person to whom the rights and obligations of a borrower in respect of a micro loan transaction have passed, whether by delegation, cession or otherwise;

“credit bureau” means a business, which records the credit transactions and payment history of individual borrowers;

“loan amount” means the amount of money advanced by a microlender to or on behalf of a borrower;

“microlender” means a person registered with the Registrar and whose business includes the carrying on of micro loan transactions;

“micro loan transaction” means a money lending transaction in respect of which the loan amount -

- (a) does not exceed N\$50 000;
- (b) together with the finance charges which is owing by the borrower must be paid to the microlender, whether in instalments or otherwise, within a period of 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- (c) is not paid in terms of a credit card scheme or withdrawn from a cheque account with a bank so as to leave that cheque account with a debit balance;

“principal officer” in relation to a microlender means a person who is chiefly responsible for the management of the affairs of a microlender within Namibia and includes a person who applies for registration as a microlender; and

“the Act” means the Usury Act, 1968 (Act No. 73 of 1968).

Conditions

2. A micro loan transaction is exempted from the provisions of the Act, except from the provisions of sections 2, 13, 14 and 17, on the conditions -

- (a) that the person advancing the loan amount under a micro loan transaction is registered as a microlender with the Registrar; and
- (b) that the microlender at all times complies with the provisions of this notice.

PART I

OBLIGATION OF REGISTRATION TO CONDUCT BUSINESS OF MICROLENDER FOR PURPOSES OF EXEMPTION

Application for registration as a microlender

3. (1) A person who conducts, or intends to conduct a business as a microlender must apply to the Registrar for registration as a microlender.

- (2) An application referred to in subclause (1) must be -
 - (a) made in the form and manner as the Registrar may determine;
 - (b) signed on behalf of the applicant by the applicant’s principal officer;
 - (c) accompanied by an application fee of N\$2000, which fee is not refundable; and

- (d) accompanied by proof of membership to a microlenders' controlling body approved by the Registrar.

(3) On receipt of an application in terms of subclause (1), the Registrar may require the applicant to furnish such further information which the Registrar may determine reasonably necessary in order to consider that application.

(4) If the applicant, referred to in subclause (1), is a bank or building society registered in terms of the Banking Institutions Act, 1998 (Act No. 2 of 1998), or the Building Societies Act, 1986 (Act No. 2 of 1986), that bank or that building society must establish a legal entity to conduct micro loan transactions which are separate from the operations of that bank or that building society.

Granting or refusal of application for registration and certificate of registration

4. (1) The Registrar may, when considering an application made in terms of clause 3, either -

- (a) refuse the application;
- (b) grant the application; or
- (c) grant the application but subject to such conditions as he or she may impose.

(2) The Registrar must within a reasonable period in writing inform the applicant of his or her decision made under subclause (1).

Cancellation of registration as a microlender

5. (1) Subject to the provisions of this clause, the Registrar may by written notice and from a date specified in that notice cancel a microlender's registration if that microlender -

- (a) fails to comply with any condition imposed upon him or her by the Registrar in terms of clause 4(1)(c);
- (b) ceases to conduct a microlending business for which he or she is registered;
- (c) is found guilty of an offence under section 17 of the Act; or
- (d) imposes finance charges in excess of the annual finance charge rate determined by the Registrar in terms of section 2 of the Act.

(2) If the Registrar intends to cancel the registration of a microlender, the Registrar must notify that microlender in writing of his or her intention to cancel the registration, and must -

- (a) specify the reason or reasons for the intended cancellation; and
- (b) invite that microlender to submit, within 30 days of the date of the notice, written representations in relation to the intended cancellation.

(3) The Registrar may, after the expiry of the 30 day period referred to in subclause (2)(b) and after considering any representations submitted to him or her, decide -

- (a) to cancel the microlender's registration; or
- (b) not to cancel the microlender's registration,

and must as soon as is reasonably possible inform the microlender, in writing, of his or her decision.

(4) Notwithstanding subclause (2), if in respect of any micro loan transaction a microlender fails to comply with the provisions of this notice and the Registrar considers that it is necessary to act as a matter of urgency, the Registrar may by written notice direct the microlender to summarily suspend the business of microlending for such period and subject to such conditions as the Registrar may specify in that notice.

(5) The notice referred to in subclause (4) must be delivered -

- (a) during office hours by a person appointed by the Registrar for such purpose; and
- (b) upon the principal officer of the microlender or upon any person of the age of 16 years or older employed by the microlender, if the principal officer is not available.

(6) A microlender to whom a notice in terms of subclause (4) has been delivered may, within 14 days after receipt of that notice, submit to the Registrar written representations relating to that notice and to the suspension of the microlender's business of microlending.

(7) The Registrar may, after considering the representations made by the microlender under subclause (6), either -

- (a) confirm the suspension;
- (b) rescind the suspension; or
- (c) vary the conditions, if any, subject to which the business of the microlender was suspended.

General Provisions

6. (1) In so far as the exemption may be interpreted to impose an obligation on an entity, only a part of which conducts business in respect of micro loan transactions, those obligations apply only in respect of that part of the entity to the extent that it is capable of being so applied.

(2) If in respect of a micro loan transaction a microlender fails to comply with the provisions of this notice, then the provisions of the Act apply to that micro loan transaction.

PART II RULES FOR THE PURPOSES OF EXEMPTION UNDER SECTION 15A OF THE ACT

Confidentiality

7. (1) A microlender may not, without the express consent of the borrower, disclose any confidential information obtained in the course of a micro loan transaction.

(2) If a microlender wishes to obtain from, or to disclose to, a third party a borrower's credit record and payment history, the borrower's consent must be obtained through specific and prominent clauses in the application for the relevant micro loan transaction or other documentation signed by the borrower.

Disclosure

8. (1) A microlender must, at every premises where the microlender conducts business in respect of micro loan transactions -

- (a) keep available a copy of the rules contained in this Part, which must be made available to the borrower for perusal before entering into a micro loan transaction; and
- (b) display prominently a copy of the micro lender's registration certificate issued by the Registrar.

(2) A microlender must use standard written agreements, as approved by the Registrar, containing all the terms and conditions of a micro loan transaction and clearly reflecting the rights and obligations of a borrower and the microlender.

(3) A microlender must, before the conclusion of a micro loan transaction and at the conclusion of the agreement, provide the borrower with a schedule setting out -

- (a) the loan amount in Namibia dollars and cents;
- (b) the total amount repayable in Namibia dollars and cents, at the then current interest rate, over the repayment period;
- (c) the amount of finance charges in Namibia dollars and cents, at the then current interest rate, over the repayment period and the elements comprising the finance charges;
- (d) the annual finance charge rate, whether this is fixed or variable and, if variable, how it may vary;
- (e) the nature and amount of any insurance, including the name of the insurer and the amount of the premiums payable;
- (f) 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;
- (g) the instalment amount in Namibia dollars and cents, at the then current interest rate, and the number of instalments; and
- (h) the repayment period in respect of the micro loan transaction.

(4) A microlender must -

- (a) before the conclusion of a micro loan agreement -
 - (i) explain to the borrower in a language which the borrower understands, and if necessary with the assistance of an interpreter, the essential terms of the micro loan agreement so as to ensure that the meaning and consequences of the agreement are understood; and
 - (ii) allow the borrower an opportunity to read the agreement, or have it read to the borrower if the borrower is illiterate; and
- (b) provide the borrower with a copy of the signed micro loan agreement before or at the time of advancing the loan amount and, if applicable, a copy of the insurance contract pertaining to the micro loan transaction.

(5) A microlender must, at the request of the borrower, provide the borrower with a statement setting out all the charges levied, all the payments made and the balance outstanding, and may levy a charge for the provision of a duplicate copy of the statement but in no case may the charge exceed N\$2,00 per page of the statement.

(6) A microlender must maintain a proper set of accounting records reflecting full details of all monies advanced, interest and other charges raised, repayments received and all amounts outstanding.

(7) If a microlender refuses to grant an application for a micro loan application, the microlender must -

- (a) at the request of the borrower, provide the reasons for the refusal; and
- (b) if the reasons include an adverse credit record, recorded with a credit bureau, provide the name and details of that credit bureau to the borrower so as to enable the borrower to check the accuracy of the credit information held by the credit bureau or to obtain advice from the credit bureau on how to improve the record.

(8) A microlender must at least 28 calendar days before the microlender forwards any adverse information on the borrower to a credit bureau, which will be capable of being accessed by subscribers to the credit bureau, inform the borrower by way of a notice addressed to the chosen domicilium of the borrower of the micro lender's intention to do so.

(9) If any amount owing by the borrower is disputed by the borrower, that fact must be communicated by the microlender to the credit bureau when providing information to it.

Consideration

9. (1) Subject to subclause (2), a microlender may not charge any fee to be paid by the borrower in circumstances where a micro loan transaction is not granted or money is not paid out to the borrower in respect of the micro loan transaction.

(2) The provision contained in subclause (1) does not apply to fees reasonably charged for evaluating or preparing business plans.

(3) If the repayment period provided in a micro loan agreement does not exceed twelve months, the borrower may make additional payments or settle the outstanding amount in one payment.

(4) If the repayment period exceeds 12 months, and if the borrower wishes to settle the outstanding amount in one payment, the microlender may, if written notice is required in terms of the agreement, require up to and no more than 60 days written notice of the borrower's intention to settle the outstanding amount in one payment.

(5) A microlender may not stipulate, demand or receive finance charges which is in excess of the annual finance charge rate determined by the Registrar in terms of section 2 of the Act.

Cooling-off period

10. (1) A microlender must, in terms of the provisions of the agreement entered into with the borrower, allow the borrower to terminate the micro loan agreement within a period of three business days after the date of signing the agreement and if the loan amount has been advanced, to simultaneously repay the loan amount advanced to the microlender.

(2) If the borrower terminates the micro loan agreement within the period referred to in subclause (1), after having received the money in respect of the loan amount the microlender is entitled, upon the borrower offering simultaneously to repay the total amount advanced to the borrower, only to stipulate for demand or receive from the borrower pro rata charges at the annual finance charge rate applicable to the agreement.

Collection methods

11. A microlender may not -
 - (a) as security or for collection arrangement purposes, keep in possession or make use of any bank cards or personal information such as pin codes of the borrower;
 - (b) use any process documents signed in blank by the borrower;
 - (c) collect or attempt to collect any amount in respect of costs exceeding costs allowed in terms of the Magistrate's Court Act, 1944 (Act No. 32 of 1944); or
 - (d) make use of any collection methods not authorized by law.

General Notice

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

No. 196

2004

DETERMINATION OF THE MAXIMUM ANNUAL FINANCE CHARGE
RATES IN TERMS OF THE USURY ACT, 1968
(ACT NO. 73 OF 1968)

In terms of subsection (1), (2) and (3) of section 2 of the Usury Act, 1968 (Act No. 73 of 1968), I, in accordance with the directions of the Minister of Finance, determine that from the date of publication of this notice -

- (a) a money lender may not in connection with any money lending transaction;
- (b) a credit grantor may not in connection with any credit transaction; and
- (c) a lessor may not in connection with any leasing transaction,

stipulate for, demand or receive finance charges at an annual finance charge rate greater than the percentage stipulated in the Schedule in respect of such transaction.

Government Notice No. 135 of 6 August 2002 is withdrawn.

F. VAN RENSBURG**Chief Executive Officer: NAMFISA**

Windhoek, 12 August 2004

SCHEDULE

1. For the purpose of subsection (1) of section 2 of the Act, the annual finance charge rate may not be greater than -

- (a) 1.6 times the average prime rate in respect of a money lending transaction other than a micro loan transaction; and
- (b) two times the average prime rate in respect of a micro loan transaction.

2. For the purpose of subsection (2) of section 2 of the Act, the annual finance charge rate may not be greater than 1.6 times the average prime rate in respect of a credit transaction.

3. For the purpose of subsection (3) of section 2 of the Act, the annual finance charge rate may not be greater than 1.6 times the average prime rate in respect of a leasing transaction.

4. For the purpose of this Schedule -

- (a) “average prime rate” means the average prime rate charged by banking institutions in Namibia; and
 - (b) “micro loan transaction” means a micro loan transaction as defined in paragraph 1 of the Schedule to Government Notice No. 189 of 25 August 2004.
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