



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$1.00

WINDHOEK - 2 February 2000

No. 2267

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Government Notice

MINISTRY OF FINANCE

No. 34

2000

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), the Minister of Finance hereby exempts the micro loan transaction referred to in the Schedule from the provisions of the said Act except for sections 13, 14 and 17 of the Act, on the conditions set out in the Schedule.

N. MBUMBA
MINISTER OF FINANCE

Windhoek, 31 December 1999

SCHEDULE

Definition

1. In this Schedule, unless the context otherwise indicates, an expression defined in the Act, has a corresponding meaning and -

“annual rate for the total charge of credit” means the total charge of credit in respect of a micro loan transaction expressed as a nominal annual percentage rate;

“bank” means a bank registered in terms of the Banking Institutions Act, 1998 (Act No. 2 of 1998);

“borrower” means a person to whom a microlender has advanced a loan amount in terms

of a micro loan transaction, or any person to whom, whether by delegation, cession or otherwise, the rights and obligations of a borrower in respect of a micro loan transaction have passed;

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

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

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

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

- (a) does not exceed N\$10 000;
- (b) together with the total charge of credit which is owing by the borrower, shall 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- (c) is not paid in terms of a credit card scheme or withdrawn from a cheque account with a bank, so as to leave such account with a debit balance;

“Permanent Secretary” means the Permanent Secretary: Ministry of Finance;

“principal officer”, in relation to a microlender, means any person by whatever name referred to, who is chiefly responsible for the management of the affairs of the microlender in Namibia, and includes a person who applies for registration of a microlender;

“rules” means the rules set out in the Annexure;

“this notice” includes the Annexure;

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

“total charge of credit” means all charges levied in respect of the micro loan transaction, including, but not limited to, interest charges, but excluding insurance premiums.

Conditions

2. A micro loan transaction is exempted on the conditions that -
 - (a) the person advancing a loan amount under a micro loan transaction, not being a bank or a building society registered in terms of the Building Societies Act, 1986 (Act No. 2 of 1986), is registered as a microlender with the Permanent Secretary; and
 - (b) the microlender at all times complies with this notice.

Application for registration as microlender

3. (1) A person who wishes to register as a microlender shall apply to the Permanent Secretary for such registration.
 - (2) The application referred to in subclause (1) shall -
 - (a) be made in such form and manner as the Permanent Secretary may determine; and
 - (b) be signed on behalf of the applicant by its principal officer; and

- (c) be accompanied by an application fee of N\$100.

(3) On receipt of an application referred to in subclause (1), the Permanent Secretary may, before considering the application, in writing require the applicant to furnish him or her with such information as the Permanent Secretary may require.

Granting or refusal of application for registration and issuance of certificate of registration

4. (1) The Permanent Secretary, after receipt of an application made in terms of clause 3(1), and where the Permanent Secretary required any information in terms of clause 3(3), after receipt of such information, he or she may -

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

and shall immediately in writing inform the applicant of his or her decision.

(2) The application fee paid by or on behalf of the applicant in terms of clause 3(2)(c) shall, irrespective of whether the application is granted or refused, not be refundable.

(3) If the Permanent Secretary grants an application to register as a microlender, the Permanent Secretary shall issue a certificate of registration to the person who applied for the registration.

Cancellation of registration as a microlender

5. (1) The Permanent Secretary may, by notice in writing addressed and delivered to a microlender, cancel, from a date specified in the notice, the registration of that microlender granted in terms of clause 4 if that microlender -

- (a) fails to comply with any condition imposed by the Permanent Secretary in terms of that clause;
- (b) ceases to conduct the business for which the microlender is registered.
- (c) is found guilty of an offence under section 14 of the Act;

(2) The Permanent Secretary shall, before cancelling the registration of a microlender, but subject to subclause (5), in writing give the microlender not less than 30 days written notice of his or her intention to cancel the registration.

(3) A notice to a microlender contemplated in subclause (2) shall -

- (a) state that the Permanent Secretary intends to cancel the registration of the microlender;
- (b) specify the reason or reasons for the intended cancellation; and
- (c) invite the microlender to, within the period of time specified in the notice, in writing make representations to the Permanent Secretary to show cause why the registration shall not be cancelled.

(4) The Permanent Secretary may, at the expiration of the 30 day period contemplated in subclause (2) and after considering the representations, if any, made by the microlender concerned -

- (a) cancel the registration in terms of subclause (1); or
- (b) decide not to cancel the registration,

and shall immediately in writing inform the microlender of his or her decision.

(5) Notwithstanding subclause (2), the Permanent Secretary may, in circumstances contemplated in subclause (1) and without prior notice, direct a microlender by means of a notice, to summarily suspend the business of microlending of that microlender by means of a notice, to summarily suspend the business of microlending of that microlender for such period and subject to such conditions as the Permanent Secretary may specify in the notice.

(6) The notice referred to in subclause (5) shall be delivered during normal hours of business by a person appointed by the Permanent secretary for such purpose, upon the principal officer of the microlender or if the principal officer is not available, upon any person over the age of 16 years employed by the microlender.

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

(8) On receipt of representations by a microlender in terms of subclause (7) the Permanent Secretary may confirm or rescind the suspension made by him or her in terms of subclause (5), or may vary the conditions subject to which the business of microlending of the microlender was suspended.

General

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 the micro loan transaction, those obligations shall apply only in respect of that part of the entity to the extent that it shall be capable of being so applied.

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

Commencement of notice

7. This notice shall come into effect on 15 February 2000.

ANNEXURE

RULES FOR PURPOSES OF EXEMPTION UNDER SECTION 15A OF THE USURY ACT

Confidentiality

1. (1) A microlender shall 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 the borrower's credit record and payment history, the microlender shall obtain the borrower's consent through specific and prominent clauses contained in the application for the relevant micro loan transaction or other documentation signed by the borrower.

Disclosure

2. (1) A microlender shall, at each of the microlender's business premises conducting business in respect of micro loan transactions, keep available a copy of these rules, which rules shall be made available to the borrower for perusal prior to entering into micro loan transaction.

(2) A microlender shall, at each of the microlender's business premises conducting business in respect of micro loan transaction, display prominently a copy of the microlender's registration certificate issued by the Permanent Secretary.

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

(4) A microlender shall, prior to 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 Namibian dollars and cents;
- (b) the total amount repayable in Namibian dollars and cents, at the then current interest rate, over the repayment period;
- (c) the amount of the total charge of credit in Namibian dollars and cents, at the then current interest rate, over the repayment period and the elements comprising the total charge of credit;
- (d) the annual rate for the total charge of credit, 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 Namibian 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.

(5) A microlender shall -

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

(6) A microlender shall, on demand by 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 referred to in this subclause, but in no case shall the charge exceed N\$3.50 per page of the statement.

(7) A microlender shall maintain a proper set of accounting records reflecting full details of all money advanced, interest and other charges raised, repayments received and the amounts outstanding.

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

- (a) at the request of the borrower, provide the reasons for the refusal; and
- (b) if the reasons referred to in clause (a) 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.

(9) A microlender shall, at least 28 calendar days before the microlender forwards any adverse information on the borrower to a credit bureau, inform the borrower, by way of a notice addressed to the *domicilium* of the borrower of the microlender's intention to do so, which information shall be capable of being accessed by subscribers to the credit bureau before the microlender forwards any such information to it.

(10) If 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.

Consideration

3. (1) A microlender shall 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. This provision does not apply to fees charged for evaluating or preparing business plans.

(2) If the repayments period does not exceed twelve months, the borrower may make additional payments or settle the outstanding amount in one payment.

(3) If the repayment period exceeds 12 months, and if the borrower wishes to settle the outstanding amount in one payment, the microlender may require up to 60 days written notice of the borrower's intention to settle the outstanding amount in one payment, but only if such period was stipulated in the written agreement and does not exceed 60 days.

(4) A microlender shall not stipulate, demand or receive an annual rate for the total charge or credit which is in excess of twice the average prime overdraft lending rate of the banks.

Cooling-off period

4. (1) A microlender shall, in terms of the provisions of the agreement 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, where the loan amount has been advanced, simultaneously to 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, the microlender 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* charges of credit at the annual rate for the total charge of credit applicable to the agreement.

Collection methods

5. (1) A microlender shall not -

(a) keep in possession, or make use of, any bank cards or personal information such as pin codes, of the borrower as security or collection arrangements;

(b) use any process documents signed in blank;

(c) collect or attempt to collect any amounts for costs exceeding costs allowed in terms of the Magistrate's Court Act, 1944 (Act No. 32 of 1944); or

(d) make use of any illegal collection methods.