



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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N\$2.00

WINDHOEK - 6 August 2002

No.2782

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## Government Notices

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### MINISTRY OF FINANCE

No. 135 2002

#### DETERMINATION OF MAXIMUM ANNUAL FINANCE CHARGES RATES: USURY ACT, 1968

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

- (a) no money lender shall in connection with any money lending transaction;
- (b) no credit grantor shall in connection with any credit transaction; and
- (c) no lessor shall in connection with any leasing transaction,

stipulate for, demand, or receive finance charges at an annual finance rate greater than the appropriate percentage specified in the Schedule in relation to such transaction.

Government Notice No. 6 of 15 January 2000 is hereby repealed.

**F VAN RENSBURG  
REGISTRAR OF FINANCIAL INSTITUTIONS**

**SCHEDULE**

1. (1) For the purpose of section 2(1) of the Act, in respect of money lending transactions -
    - (a) two times the average prime rate if the total amount of money does not exceed N\$10 000; and
    - (b) 1.8 times average prime rate if the total amount of money exceeds N\$10 000;
  - (2) For the purpose of section 2(2) of the Act, in respect of credit transactions -
    - (a) two times the average prime rate if the principal debt does not exceed N\$10 000; and
    - (b) 1.8 times average prime rate if the principal debt exceeds N\$10 000;
  - (3) For the purpose of section 2(3) of the Act, in respect of leasing transactions -
    - (a) two times the average prime rate if the principal debt does not exceed N\$10 000; and
    - (b) 1.8 times average prime rate if the principal debt exceeds N\$10 000.
2. In paragraph 1 "average prime rate" means the average prime rate charged by banking institutions in Namibia.

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**MINISTRY OF FINANCE**

No. 136

2002

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

Government Notice No. 34 of 2 February 2000 is revoked.

**N MBUMBA  
MINISTER OF FINANCE**

**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 -

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

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

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

- (a) does not exceed N\$20 000;
- (b) together with the total charge of credit 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 such account with a debit balance;

“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;

“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 Banking Institutions Act, 1998 (Act No. 2 of 1998) or the Building Societies Act, 1986 (Act No. 2 of 1986), is registered as a microlender with the Registrar; and
  - (b) the microlender at all times complies with this notice.

**PART I**  
**OBLIGATION OF REGISTRATION TO CONDUCT BUSINESS**  
**OF MICROLENDER**

**Application for registration as microlender**

3. (1) Any person who intends to carry on business as a microlender must apply to the Registrar for registration as a microlender.

- (2) The application referred to in subclause (1) must -
- (a) be made in such form and manner as the Registrar may determine;
  - (b) be signed on behalf of the applicant by its principal officer;
  - (c) be accompanied by an application fee of N\$200; and
  - (d) be 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 any further information which the Registrar may require to consider the application.

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

4. (1) Upon considering an application the Registrar may -
- (a) refuse the application;
  - (b) grant the application; or
  - (c) grant the application subject to such conditions as he or she may impose.

(2) The Registrar must immediately in writing inform the applicant of his or her decision in relation to the application.

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

**Cancellation of registration as a microlender**

5. (1) Subject to the provisions of this clause, the Registrar may, by notice in writing to a microlender, and from a date specified in the notice, cancel the microlender's registration under clause 4 if the microlender -

- (a) fails to comply with any condition imposed by the Registrar 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) If the Registrar proposes to cancel the registration of a microlender, the Registrar must give the microlender written notice of his or her intention to cancel the registration.

- (3) A notice in terms of subclause (2) must -
- (a) specify the reason for the proposed cancellation; and

(b) invite the microlender to submit to the Registrar in writing, within 30 days of the date of the notice, and representations which the microlender may wish to make in relation to the proposed cancellation.

(4) Upon expiration of the 30 day period mentioned in subclause (2) and after considering the representations, if any, made by the microlender, the Registrar may -

(a) cancel the registration; or

(b) decide not to cancel the registration,

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

(5) Notwithstanding subclause (2), if the Registrar in circumstances contemplated in subclause (1) considers that it is necessary to act as a matter of urgency, the registrar may by notice in writing to a moneylender direct the microlender to summarily suspend the business of microlending of that microlender for such period and subject to such conditions as the Registrar may specify in the notice.

(6) The notice referred to in subclause (5) must be delivered during normal hours of business by a person appointed by the Registrar 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 14 days after receipt of the notice, in writing submit to the Registrar 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 Registrar 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 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 any micro loan transaction a microlender fails to comply with the provisions of this notice, then the provisions of Act apply to that micro loan transaction.

## **PART II RULES TO BE COMPLIED WITH BY MICROLENDERS**

### **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 the borrower's credit record and payment history, the microlender must 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**

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 microlender'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 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.

(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 (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\$3,50 per page of the statement.

(6) A microlender must 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.

(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 microlender'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) 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. This provision does not apply to fees reasonably charged for evaluating or preparing business plans.

(2) 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.

(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 may 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 charged by banks in Namibia.

### **Cooling-off period**

10. (1) A microlender must, 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, if 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 in respect of the loan amount, the microlender, upon the borrower offering simultaneously to repay the total amount advanced to the borrower, is entitled only 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**

- 11.** A microlender may 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 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.
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