

TITLE 14**Chapter 14:14****PREVIOUS CHAPTER****MONEYLENDING AND RATES OF INTEREST ACT**

Acts 9/1930, 25/1948, 59/1961, 6/1967, 7/1972, 5/1981, 30/1984, 22/2001;
R.G.N. 554/1962, and S.I. 14/2004.

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AN ACT to regulate moneylending.

[Date of commencement: 1st October, 1930.]

1 Short title

This Act may be cited as the Moneylending and Rates of Interest Act [Chapter 14:14].

2 Interpretation

In this Act—

“borrower” means any person receiving a loan of money and any person to whom, whether by delegation or otherwise, the obligation of any borrower in respect of any loan of money has passed;

“instrument of debt” includes a negotiable instrument, bond, written contract or agreement or other document containing the terms of any contract or agreement in respect of any loan of money, but does not include any bona fide covering bond in so far as it purports to convey security for future advances;

“interest” means any valuable consideration given or promised for a loan of money,

whether such consideration is in cash, in goods, in kind or in any other form whatsoever, and includes any charges for discount, commission, expenses, inquiries, fines, foregift, bonus and renewal and any other charges whatsoever not being taxable conveyancing charges or revenue charges;

“lender” means any person making a loan of money, the cessionary of any right arising under any contract of loan of money and the holder of any instrument of debt, and includes a moneylender;

“Minister” means the Minister of Finance or any other Minister to whom the President may from time to time assign the administration of this Act;

“moneylender” means any person who carries on a business of moneylending or who advertises or announces himself or holds himself out in any way as carrying on such business, but does not include—

(a) any person engaged in any transaction exempted by section twenty or by regulations made in terms of section twenty-two, in so far as any such transaction is concerned; or

(b) any person exempted by section twenty or by regulations made in terms of section twenty-two, to the extent that he has been so exempted;

“moneylender’s licence” means a licence granted to a moneylender in terms of section three;

“Registrar” means the Registrar of Moneylenders referred to in subsection (1) of section two A or any person performing his or her functions in terms of subsection (3) of that section;

“Secretary”

[Repealed and above definition substituted by S.I. 14 of 2004 with effect from 30th January, 2004, in all sections following below – Editor.]

“Secretary” means the Secretary of the Ministry for which the Minister is responsible;

“true name” means, in relation to any person, that person’s own proper name, without any addition, abstraction or other alteration whatever.

2A Registrar of Moneylenders and other officers

(1) There shall be a Registrar of Moneylenders and such other officers as may be necessary for the proper administration of this Act, who shall be employees of the Reserve Bank appointed in terms of section 46 of the Reserve Bank Act [Chapter 22:15].

(2) The Registrar shall be responsible for licensing moneylenders and cancelling their licences, and performing such other functions as are conferred or imposed upon him by or in terms of this Act or any other enactment.

(3) Subject to the directions of the Registrar, the other officers referred to in subsection (1) shall perform such of the Registrar's functions as the Registrar may assign to them.

2B Register of moneylenders' licences

(1) The Registrar shall establish and maintain a register of moneylenders' licences, in which the following shall be recorded—

- (a) the name and address of the licensed moneylender; and
- (b) the date of licensing of the moneylender; and
- (c) any terms or conditions imposed on the licensed moneylender; and
- (d) the particulars of the cancellation of any moneylender's licence,

and of the restoration of any such licence; and

- (e) any alterations to the particulars referred to in paragraph (a) or (c).

(2) Any person may, for the prescribed fee, if any, inspect the register of moneylenders' licences at all reasonable times at the premises of the Reserve Bank or at such other place as the Registrar may direct.

[Sections 2A and 2B inserted by S.I. 14 of 2004 w.e.f. 30th January, 2004.]

2C Existing Moneylenders

[This new Section was inserted by Section 8 of S.I. 14 of 2004 w.e.f. 30th January, 2004, and is inserted here for ease of reference, in the absence of its own section number allocated by the amending S.I. – Editor.]

Every moneylender who, on the fixed date, was licensed in terms of the Moneylending and Rates of Interest Act, shall, no later than three months from the fixed date [i.e. – by the end of April 2004 – Editor] transmit to the Registrar the particulars required to be recorded in the register referred to in subsection (1) of section 2B above .

(2) Any moneylender referred to in subsection (1) who contravenes that subsection shall be guilty of an offence and liable to a fine not exceeding level six.

3 Moneylenders' licences

[amended by S.I. 14 of 2004 w.e.f. 30 January,2004.]

(1) No moneylender shall carry on business as such, whether alone or in partnership or association with any other person, unless he is the holder of a valid moneylender's licence taken out in his true name in respect of every address at which he carries on business as a moneylender.

(2) Every moneylender's licence shall—

(a) be in the prescribed form; and

(b) unless renewed earlier, expire on the 31st December of the year in respect of which it was granted or previously renewed, as the case may be.

(3) An application for the grant or renewal of a moneylender's licence shall be made to the Registrar and shall be accompanied by—

(a) such fee as may be prescribed; and

(b) such information, certificates or documents as may be prescribed or as may be required by the Registrar.

(4) On receipt of an application in terms of subsection (3), the Registrar shall—

(a) if he is satisfied that the applicant is a fit and proper person to carry on business as a moneylender, grant the applicant a moneylender's licence or, as the case may be, renew the moneylender's licence in respect of which the application was made; or

(b) if he is not so satisfied, refuse to grant the application.

(5) Any person who is aggrieved by a refusal of the Registrar to grant or renew a moneylender's licence in terms of subsection (4) may appeal against such refusal to the Minister.

(6) In an appeal in terms of subsection (5) the Minister may—

(a) uphold the decision of the Registrar; or

(b) if he considers that the appellant is a fit and proper person to carry on business as a moneylender, direct the Registrar to grant the appellant a moneylender's licence or, as the case may be, to renew his moneylender's licence; and the decision of the Minister in the matter shall be final.

(7) Any person who—

(a) contravenes subsection (1); or

(b) secures for himself the grant or renewal of a moneylender's licence in any name other than his true name; or

(c) being the holder of a moneylender's licence, carries on business as a moneylender in any name other than his true name or at any address other than one stated in such licence;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such

imprisonment.

[amended by Act 22 of 2001, with effect from the 10th September, 2002]

(8) Any person guilty of an offence in terms of subsection (7) shall be liable to a fine not exceeding—

(a) two thousand dollars; or

(b) three times the amount of money, if any, that he is proved to have lent in the course of his business as a moneylender whilst contravening subsection (7);

whichever is the greater, or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

4 Suspension of licence on conviction

When any moneylender is convicted of an offence under this Act, the court may order the suspension for any period which it may consider fit of any moneylender's licence held by him, and in the case of a firm, by any other partner in the firm, or the cancellation of any such licence; and thereafter no person whose licence has been so cancelled shall obtain a moneylender's licence within a period of five years:

Provided that an appeal shall lie against any such order in the same manner as against the conviction, and the court may, if it thinks fit, defer the operation of the order pending the appeal.

5 Duties of moneylenders

(1) A moneylender shall—

(a) paint or affix, and keep painted or affixed, in a conspicuous position on the outside of every office or place in which any part of his business as moneylender or any branch or agency of such business is carried on, and in characters easily legible, his true name, with the addition of the word "moneylender"; and

(b) have his true name and the word "moneylender" mentioned in legible characters—

(i) in all notices and advertisements issued by him; and

(ii) on all bills of exchange, promissory notes or other negotiable instruments, vouchers, acknowledgements of debt or other documents of security or title signed or endorsed by him; and

(iii) at the head of all letters or other written communications sent by him which have any reference to his business as a moneylender.

(2) Any moneylender who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[amended by Act 22 of 2001, with effect from the 10th September, 2002.]

6 Offences by moneylenders

(1) No moneylender shall—

(a) except in response to a written request, knowingly send or deliver, or cause to be sent or delivered, to any person a circular or other document inviting that person—

(i) to borrow money, or

(ii) to enter into any transaction involving the borrowing of money; or

(iii) to apply to any place with a view to obtaining information or advice as to borrowing any money;

(b) insert or cause to be inserted in any newspaper or other printed paper issued periodically for circulation an advertisement inviting any person to do any such thing as aforesaid:

Provided that nothing in this paragraph shall be taken to prohibit any moneylender from inserting in any newspaper, or in any such paper as aforesaid, an advertisement which—

(a) contains only the following particulars, that is to say, his true name, the place at which he carries on his business and a statement of the amount of money which he is prepared to lend; and

(b) complies with the requirement of subparagraph (i) of paragraph (b) of subsection (1) of section five;

(c) enter in any agreement in the course of his business as a moneylender with respect to the advance and repayment of money, or take any security for money, otherwise than in his own true name.

(2) No moneylender shall employ any agent or canvasser for the purpose of inviting any person to borrow money or to enter into any transaction involving the borrowing of money, and no person shall act as such agent or canvasser or demand or receive, directly or indirectly, any sum by way of commission or otherwise for introducing or undertaking to introduce to a moneylender any person desiring to borrow money.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable-

(a) in the case of a contravention of subsection (1), to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;

(b) in the case of a contravention of subsection (2), to a fine not exceeding level six.

[amended by Act 22 of 2001, with effect from the 10th September, 2002.]

7 Inspection of books

(1) Every moneylender shall, at the demand of the Registrar or any person authorized thereto in writing by the Registrar, forthwith produce for inspection by the Registrar or such person all the books and accounts relating to his business as a moneylender.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002, and amended by S.I. 14 of 2004 with effect from 30th January, 2004.]

8 Maximum rates of interest

(1) No lender shall stipulate for, demand or receive from the borrower interest at a rate greater than the prescribed rate of interest.

(2) Any lender who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[amended by Act 22 of 2001, with effect from the 10th September, 2002.]

9 No recovery of excess interest

(1) No lender shall, under any contract of loan of money, obtain judgment for or recover from the borrower an amount which exceeds a capital amount which, added to any sum already paid in respect of the capital debt, equals the sum actually advanced to and received by the borrower under the contract plus—

(a) interest at a rate not exceeding the prescribed rate of interest; and

(b) any sums which, in terms of the contract, may be payable by the borrower as or for any conveyancing charges actually incurred, or any disbursement actually made for revenue purposes, in connection with the contract; and

(c) any sums which, in the exercise of any power conferred upon him by the contract or otherwise, have actually and necessarily been expended by the lender in the payment of—

(i) rates and taxes of whatever kind, licence fees and fire insurance premiums due in respect of, and the maintenance and repair of, immovable property mortgaged to the lender as security for the repayment of the loan; and

(ii) renewal premiums on any insurance policy on the life of the borrower which has been ceded to the lender as security for the repayment of the loan:

Provided that where the lender is a moneylender the policy was taken out at least twelve months before the contracting of the loan; and

(iii) renewal premiums on any fire insurance policy upon, or storage, agistment or other like charges for the maintenance, care and custody of any movable property pledged to the lender, not being a moneylender, as security for the repayment of the loan;

and

(d) any costs which have actually been incurred by the lender in the recovery of his debt or any interest payable thereon and which would be recoverable at law from the borrower.

(2) No lender shall in any proceedings against a borrower recover, as for loss, damage or expense alleged to have been incurred in connection with any loan of money, any sum not included in an amount recoverable in respect of such loan under subsection (1).

(3) No lender shall in any proceedings in insolvency, assignment or liquidation be allowed to prove, in respect of any loan of money, for any sum for which he could not in terms of this section have obtained judgment.

10 Guarantees for debts

(1) No person shall stipulate for, allow or exact as a charge or reward for endorsing, or for giving any guarantee in respect of, any instrument of debt a sum which exceeds the prescribed percentage of the capital amount of the loan stated in such instrument.

(2)

[repealed by Act 22 of 2001, with effect from the 20th May, 2002.]

11 Recovery by borrower of excess interest paid

Any person who, under or in connection with any contract of loan of money, has paid to the lender an amount which exceeds the amount which could upon such contract have been recovered from such person under any provision of this Act shall be entitled, at any time within two years after the date of the payment, to recover from the person to whom he made it a sum equal to the amount of the excess.

12 Requirements in connection with instruments of debt

(1) Every instrument of debt, other than a mortgage or general covering bond, executed within Zimbabwe, in respect of a loan of money shall separately and distinctly set forth—

- (a) that it is executed for money lent; and
- (b) the amount actually paid to the borrower; and
- (c) the rate of interest which is to be charged in respect of the loan.

(2) Any person who makes or executes or is a party to the making or execution of, or who as cessionary or otherwise knowingly accepts or holds, any such instrument of debt which does not comply with the requirements of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(3) Any person who wilfully makes or executes, or is knowingly a party to the making or execution of, any such instrument of debt which contains a statement which is false as to any particulars required to be inserted therein by subsection (1), and any person who utters any such instrument of debt knowing that it contains any such false statement as aforesaid, shall be guilty of an offence and liable to punishment as for forgery or for uttering a forged instrument knowing it to be forged, as the case may be.

13 False representation to obtain loans

Any person who, by any false, misleading or deceptive statement, representation or promise, or by any dishonest concealment of any material fact, induces or attempts to induce any person to borrow money or to agree to the terms on which money is borrowed or is to be borrowed, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[amended by Act 22 of 2001, with effect from the 10th September, 2002.]

14 Lender's obligations when interest over prescribed rate

(1) Whenever a loan of money is made at a rate of interest exceeding the prescribed rate of interest, and the obligation of the debtor is not evidenced by a bond or other instrument registered in the Deeds Registry, the lender shall at the time of the loan take from the borrower a document signed by such borrower, setting out particulars of all the essential parts of the transaction, and shall deliver to such borrower a duplicate or true copy of such document signed by the borrower.

(2) A lender who contravenes subsection (1)—

(a) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment; and

(b) shall not recover upon the contract interest at a rate that exceeds the prescribed rate of interest.

[amended by Act 22 of 2001, with effect from the 10th September, 2002.]

15 Lender's obligations at any later date

(1) In respect of any loan of money at a rate of interest exceeding the prescribed rate of interest, the lender shall, on written demand being made by the borrower and on payment by the borrower of such sum as may be prescribed, supply to the borrower or to any person named by the borrower in such demand, at any time during the continuance of the contract, a statement signed by the lender or his agent showing—

(a) the amount actually paid to the borrower; and

(b) the rate of interest chargeable and the amount of the interest accrued due and unpaid; and

(c) the amount paid off in respect of the principal and interest; and

(d) the manner in which any amount so paid off has been appropriated to principal and interest, respectively.

(2) If a lender fails without reasonable excuse to comply with a demand in terms of subsection (1) within one week after he received the demand—

(a) he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment; and

(b) so long as his default continues, he shall not be entitled to sue for or recover any sum due under the contract on account either of principal or interest and interest shall not be chargeable in respect of the period of the default.

[inserted by Act 22 of 2001, gazetted on the 1st February, 2002]

16 Plaintiff to be called as witness at defendant's request

If in any proceedings, whether by way of provisional sentence, summary judgment or otherwise, to recover money lent the defendant alleges on oath that payment of interest is claimed by, or has been made to, the plaintiff in respect of the loan in excess of the maximum rate allowed by this Act, and requests that the plaintiff be examined as a witness to prove his claim, no judgment shall be granted in such proceedings until the plaintiff has been examined by the court from which judgment is sought or by the defendant or his legal representative, unless it is made to appear to

such court that such examination is impracticable.

17 Extent of operation of Act

Nothing in this Act shall operate to increase the rate of interest that may be recovered in any case where by law the rate is fixed at less than the rate allowed by this Act, or to derogate from any power or jurisdiction which any court may possess to refuse to order the payment or to reduce the rate of interest claimed in any proceedings before it, even when such rate is less than the prescribed rate.

18 Effect on negotiable instruments

The bona fide holder for value, before maturity, of any negotiable instrument of debt discounted by a preceding holder at a rate of interest exceeding that authorized by this Act, or in respect of which any interest has been paid at a rate exceeding that so authorized, may nevertheless recover the amount thereof, but the party from whom it is recovered may reclaim from such preceding holder or any person who has received interest in respect thereof at such unauthorized rate any amount paid for interest in excess of the amount allowed by this Act:

Provided that this section shall not apply to any instrument of debt on which there appears any name to which the word "moneylender" has been added in terms of subparagraph (ii) of paragraph (b) of subsection (1) of section five.

19 Act to apply to all transactions substantially moneylending

This Act shall apply to every transaction which, whatever its form may be, is substantially one of moneylending and whether or not the transaction forms part of any other transaction, and includes any arrangement under which goods are purchased under a condition of re-purchase at a higher price. In any such arrangement for re-purchase the transaction shall be regarded as a loan of the amount of the lower price, and the excess of the higher price over the lower shall be deemed to be interest on the lower price and shall be subject to this Act.

20 Exempted transactions

(1) Nothing in this Act contained shall apply to or in respect of any instalment of purchase price payable in accordance with a bona fide hire-purchase agreement.

(2) Nothing in this Act contained, other than section twelve, shall apply to any person registered in a class of banking business in terms of the Banking Act [Chapter 24:01].

(3) Nothing in this Act contained, other than section twelve, shall apply to or in respect of any commercial transaction to which a moneylender is not a party.

(4) Nothing in this Act contained shall apply to any loan of money or other transaction by a pawnbroker which is governed by any law for the time being in force in relation to pawnbrokers.

(5) Nothing in this Act contained shall apply to any transaction in terms of which a moneylender outside Zimbabwe grants a loan of a sum of money which is outside Zimbabwe to a borrower in Zimbabwe, whether or not the instrument of debt in respect of such loan is executed in Zimbabwe and whether or not such sum of money is transferred to Zimbabwe.

(6) This Act shall not apply to any person or transaction to the extent that such person or transaction has, in regulations made in terms of section twenty-two been exempted from such provisions.

(7) A friendly society registered under any law relating to friendly societies shall, notwithstanding anything contained in any law, be subject to section eight, but shall, in respect of any transaction of the society which is governed by any law relating to such society or by any regulation under such law, be exempted from any other provisions of this Act.

21

[repealed by Act 22 of 2001, with effect from the 20th May, 2002.]

22 Regulations

(1) The Minister may make regulations prescribing all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for the better carrying out of or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

(a) the forms in which application for the grant or renewal of a moneylender's licence shall be made;

(b) the procedure for appeals in terms of subsection (5) of section three;

(c) the exemption, either absolutely or subject to conditions, of any person or transaction, or any class of persons or transactions, from all or any of the provisions of this Act.

(d) penalties for contraventions of the regulations, but no such penalty shall exceed a fine of level five or imprisonment for a period of three months or both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002.]

(3) Where as a result of regulations made in terms of subsection (1), the maximum rate of interest or percentage which may be stipulated for, demanded or received in respect of any loan of money is reduced, the reduction shall not apply to or in respect of any loan of money made before the date of commencement of the regulations or to or in respect of any instrument of debt or renewal thereof existing immediately before that date.

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