

## CHAPTER 14:14

### MONEYLENDING AND RATES OF INTEREST ACT

*Acts 9/1930, 25/1948 (s. 24), 59/1961, 6/1967 (s. 15), 57/1972 (s. 17), 5/1981, 30/1984, 22/2001 (s. 4), 16/1998 (s. 4-8, 3/2013 (s. 61); R.G.N. 554/1962.*

#### ARRANGEMENT OF SECTIONS

##### *Section*

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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;

[Definition inserted by section 4 of Act 16 of 2004]

“Secretary” ....

[Definition inserted by section 4 of Act 16 of 2004]

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

**2A** ....

**2B** ....

**3** .....

**4** .....

**5** .....

**6** .....

**7** .....

[Sections 2A, 2B, 3 – 7 repealed by Act 3 of 2013]

## **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.

[Subsection inserted by section 4 of Act 22 of 2001]

## **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) ....

[Subsection repealed by section 4 of Act 22 of 2001]

## **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.

[Subsection amended by section 4 of Act 22 of 2001]

(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.

[Section amended by section 4 of Act 22 of 2001]

## **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.

[Subsection substituted by section 4 of Act 22 of 2001]

## **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) as 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.

[Subsection substituted by section 4 of Act 22 of 2001]

## **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*].

(2a) Nothing in this Act, other than sections 8 to 16, shall apply to or in respect of a person registered as a microfinancer in term of the Microfinance Act [*Chapter 24:29*].

[Subsection inserted by Act 3 of 2013]

(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 .....**

[Section repealed by section 4 of Act 22 of 2001]

### **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 regulations, but no such penalty shall exceed a five of level five or imprisonment for a period of three months or both such fine and such imprisonment.

[Paragraph inserted by section 4 of Act 22 of 2001]

(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.