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Money-Lending and Credit Financing Act, 1991

Act 3 of 1991

Legislation as at 1 December 1998

FRBR URI: /akn/sz/act/1991/3/eng@1998-12-01

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PDF created on 21 February 2024 at 17:54.

Collection last checked for updates: 1 December 1998.

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Money-Lending and Credit Financing Act, 1991
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Money-Lending and Credit Financing Act, 1991

Act 3 of 1991

Published in Government Gazette 811 on 19 July 1991

Assented to on 3 January 1991

Commenced on 19 July 1991

[This is the version of this document at 1 December 1998.]

An Act to regulate money-lending and credit financing by persons other than recognized financial institutions.

1. Short title

This Act may be cited as the Money-Lending and Credit Financing Act, 1991.

2. Interpretation

In this Act unless the context otherwise requires:

“**annual interest rate**” means a rate calculated by multiplying the interest rate per period by the number of such periods in one year;

“**borrower**” means any person to whom a lender grants a loan of a sum of money in terms of a money-lending transaction or any person to whom, whether by delegation, cession or otherwise, the rights and obligations of a borrower in respect of a money-lending transaction are transferred;

“**credit transaction**” means any transaction by which a lender and a credit receiver agree that the lender sells, supplies or grants the use or enjoyment of movable property or services to the credit receiver against payment by the credit receiver to the lender of a stated or determinable sum of money at a stated or determined future date or in whole or in part in instalments over a period in the future;

“**lenders**” means—

- (a) any person who grants a loan of a sum of money to a borrower in terms of a money-lending transaction;
- (b) any person who grants credit to a credit receiver in terms of a credit transaction;
- (c) any person to whom, whether by delegation, cession or otherwise, the rights and obligations of a lender are transferred;
- (d) the holder of an instrument of debt executed in respect of a money-lending or credit transaction;

“**Minister**” means the Minister for Finance;

“**money-lending transaction**” means any transaction which, whatever its form may be and whether or not it forms part of another transaction, is substantially one of money lending;

“**prescribed**” means prescribed by regulations under [section 3](#) of this Act;

“**principal debt**” means—

- (a) in relation to a money-lending transaction:
 - (i) the cash amount in money actually received by or on behalf of a borrower in terms of such transaction; plus

- (ii) the costs in respect of stamp duties and other duties actually paid or payable by the lender in connection with such transaction and which are recoverable from the borrower;
- (b) in relation to a credit transaction:
 - (i) the selling price of movable property or services or the total sum of money, excluding finance charges, charged by the lender for the use or enjoyment of movable property or services or, if applicable, the difference between the selling price of, or amount charged for the use or enjoyment of, movable property or services and the cash amount in money paid or payable for such property or services to the lender by the credit receiver for application in reduction of the selling price; or
 - (ii) the costs in respect of stamp duties and other duties actually paid or payable by the lender in connection with such transaction.

3. Maximum annual interest rates chargeable in respect of money-lending or credit transaction

- (1) Where in respect of any money-lending or credit transaction the principal debt—
 - (a) does not exceed E500 or such amount as may be prescribed from time to time, no lender shall charge an annual interest rate of more than 10 percentage points, or such amount as may be prescribed from time to time, above the rate for discounts, rediscounts or advances announced from time to time by the Central Bank under section 38 of the Central Bank of Swaziland Order, 1974.
 - (b) exceeds E500 or such amount as may be prescribed from time to time, no lender shall charge an annual interest rate of more than 8 percentage points, or such amount as may be prescribed from time to time, above the rate for discounts, rediscounts and advances announced from time to time by the Central Bank under section 38 of the Central Bank of Swaziland Order, 1974.
- (2) No lender shall calculate interest charges according to periods which are shorter or longer than those according to which the instalments or outstanding balance of the principal debt shall be paid in terms of an agreement in connection with the money-lending or credit transaction.
- (3) Where in connection with a money-lending or credit transaction it is agreed by the parties that payment of the principal debt and finance charges shall be effected in any manner other than by way of regular payments, the annual finance charge rate at which finance charges may be levied shall be calculated on the balance of the principal debt owed from time to time by the borrower or credit receiver.
- (4) The provision of subsection (3) shall not be construed as prohibiting the recovery of finance charges according to periods of one month or longer in the case of a money-lending or credit transaction in respect of which the period between instalment payments or the period between the date on which the principal debt was incurred on the one hand and on the other hand the date on which the principal debt is payable, is longer than one month.

4. Compulsory disclosure of interest charges

A lender shall, in connection with any money-lending or credit transaction for which finance charges are payable, state in the instrument of debt executed in respect of any such transaction, the following particulars:

- (a) the cash amount in money, or the value of the use or enjoyment, of movable property or services actually received by or on behalf of the borrower or credit receiver;
- (b) all other charges shown separately but which form part of the principal debt;
- (c) the principal debt, that is, the sum of the amounts referred to in paragraphs (a) and (b);

- (d) the amount in Emalangeni and cents of the finance charges;
- (e) the finance charges expressed at an annual finance charge rate; and
- (f) as the case may be,
 - (i) the date upon which or the number of instalments in which the principal debt together with the finance charges shall be paid;
 - (ii) the amount of each instalment; and
 - (iii) the date on which each instalment becomes due and the manner in which the date is determined.

5. Information to be furnished by lender to borrower or credit receiver

A lender shall, within 14 days after the conclusion of a money-lending or credit transaction, deliver or send by post to the borrower or credit receiver:

- (a) a duplicate or true copy of the instrument of debt executed in connection with the transaction; or
- (b) where no such instrument is executed, a duplicate or true copy of any document signed by the lender and borrower or credit receiver or by their duly authorised representatives as evidence of the transaction.

6. Conditions for sums recoverable from borrower or credit receiver

- (1) Any agreement in connection with any money-lending or credit transaction that is not in conformity with the provisions of this Act shall be null and void, and shall not be enforceable against the borrower or the credit receiver by the lender.
- (2) No lender shall in connection with any money-lending or credit transaction obtain judgement for or recover from a borrower or credit receiver an amount exceeding the sum of—
 - (a) the principal debt owed by the borrower or credit receiver;
 - (b) the interest charges on the principal debt;
 - (c) the additional finance charges calculated in the manner prescribed by [section 7](#);
 - (d) in the case where judgement is obtained for recovery of the principal debt or finance charges due from the borrower or credit receiver, legal costs awarded in terms of such judgement.
- (3) No lender shall in any proceedings against a borrower or credit receiver in respect of any loss, damage or expense alleged to have been incurred by him in connection with a money-lending or credit transaction, obtain judgement for any sum not recoverable under subsection (1) of this section.

7. Conditions for sums recoverable or default or deferment of payment

Where a borrower or credit receiver:

- (a) fails to pay an amount owed by him when such amount becomes due; or
- (b) enters into an agreement with the lender to defer payment of the amount owed by him;

the lender shall be entitled to recover from him in respect of the finance charges an additional amount which shall be calculated by reference to the total amount due but which is unpaid, the annual finance charge rate at which the finance charges were initially levied on the principal debt and, as the case may be, the period during which the default continues or the period for which payment is deferred.

8. Recovery of overpaid principal debt and interest charges

Any borrower or credit receiver who in connection with a money-lending or credit transaction pays an amount in excess of the amount which in terms of this Act is lawfully recoverable from him may, at any time within three years from the date of such payment, recover from the person to whom the payment was made a sum equal to the amount overpaid by him.

9. Regulations

The Minister may, by notice in the *Gazette*, make regulations with regard to all matters which in terms of any provision of this Act are required to achieve the objects of this Act.

10. Exemptions

The provisions of this Act shall not apply to:

- (a) any money-lending or credit transaction to which the Pawnbroking Act, 1894 applies;
- (b) any money-lending or credit transaction to which the Land and Agricultural Loan Act, 1929 applies;
- (c) any institution licensed under the Building Societies Act, 1962 or the Financial Institutions (Consolidation) Order, 1975;
- (d) any hire purchase transaction to which the Hire-Purchase Act, 1969 applies;
- (e) any credit card scheme recognized and adopted by any institution licensed under the Building Societies Act, 1962 or the Financial Institutions (Consolidation) Order, 1975.

11. Existing money-lending and credit transactions

All money-lending and credit transactions entered into and in force before the commencement of this Act shall continue in force subject to the provisions of [section 3](#) of this Act.