

DEBTOR AND CREDITOR

USURY ACT 73 OF 1968

[ASSENTED TO 20 JUNE 1968] [DATE OF COMMENCEMENT: 1 APRIL 1969]

(Signed by the President)

as amended by

Limitation and Disclosure of Finance Charges Amendment Act 76 of 1970
Limitation and Disclosure of Finance Charges Amendment Act 62 of 1974
Limitation and Disclosure of Finance Charges Amendment Act 90 of 1980
Limitation and Disclosure of Finance Charges Amendment Act 42 of 1986
Usury Amendment Act 62 of 1987
Usury Amendment Act 100 of 1988
Usury Amendment Act 91 of 1989
Usury Amendment Act 1 of 2000
Namibia Financial Institutions Supervisory Authority Act 3 of 2001

ACT

To provide for the limitation and disclosure of finance charges levied in respect of money lending transactions, credit transactions and leasing transactions and for matters incidental thereto; and to repeal the Usury Act, 1926.

[Long title substituted by sec 21 of Act 90 of 1980.]

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1 Definitions

In this Act, unless the context otherwise indicates-

"annual add-on rate" means a rate calculated by expressing the annual finance charges as a percentage of the principal debt;

[Definition of "annual add-on rate" inserted by sec 1(a) of Act 90 of 1980.]

"annual finance charge rate" means a rate calculated by multiplying the finance charge rate per period by the number of such periods in one year;

"book value" means, in relation to movable property leased in terms of a leasing transaction, the money value of such property at the expiry of the lease, as determined by the lessor at the time of the conclusion of such transaction;

[Definition of "book value" inserted by sec 1(b) of Act 90 of 1980.]

"borrower" means any person to whom a moneylender has granted 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 have passed;

"credit card" means any document of identification, irrespective of the form thereof, issued in connection with a credit card scheme by a manager to a credit card holder;

[Definition of "credit card" inserted by sec 1(c) of Act 90 of 1980.]

"credit card holder" means a credit card holder referred to in the definition of credit card scheme;

[Definition of "credit card holder" inserted by sec 1(c) of Act 90 of 1980.]

"credit card scheme" means any arrangement or scheme under which-

(a) any person (in this definition referred to as a manager) carrying on such arrangement or scheme-

(i) authorizes any person (in this definition referred to as a credit card holder) in terms of and on the conditions of, an agreement between the manager and the credit card holder-

(aa) to purchase any goods or obtain any services on the strength of a valid credit card issued to him by such manager from any person (in this definition referred to

as a supplier) authorized by such manager in terms of, and on the conditions of, an agreement between such manager and the supplier to sell goods or render services to any such credit card holder on the strength of a valid credit card issued to him by such manager;

- (bb) to obtain an amount of cash from such manager on the strength of a valid credit card issued to him by such manager;
- (ii) in terms of and on the conditions of an agreement between himself and a supplier, undertakes to pay for any goods purchased or services obtained from such supplier by a credit card holder, or for any rights in any agreement for the purchase or obtaining of such goods or services, on the strength of a valid credit card issued to him by such manager;

[Subpara (ii) substituted by sec 1(a)(i) of Act 42 of 1986.]

- (b) a supplier in terms of, and on the conditions of, an agreement between himself and a manager undertakes to sell goods or render services to a credit card holder on the strength of a valid credit card issued to him by such manager;

- (c) a credit card holder in terms of, and on the conditions of, an agreement between himself and a manager undertakes-

- (i) to pay to such manager any amount paid by such manager to a supplier in respect of goods sold or services rendered by such supplier to such credit card holder, or in respect of any rights in any agreement for the purchase or obtaining of such goods or services, on the strength of a valid credit card issued to him by such manager;

[Subpara (i) substituted by sec 1(a)(ii) of Act 42 of 1986.]

- (ii) to repay to such manager any amount of cash obtained by such credit card holder from such manager on the strength of a valid credit card issued to him by such manager;

[Definition of "credit card scheme" inserted by sec 1(c) of Act 90 of 1980.]

"credit grantor" means any person who is granting or has granted credit to a prospective credit receiver or to a credit receiver in terms of a credit transaction, or any person to whom, whether by delegation, cession or otherwise, the rights or the rights and obligations of a credit grantor in respect of a credit transaction have passed;

"credit receiver" means any person to whom a credit grantor has granted credit in terms of a credit transaction, or any person to whom, whether by delegation, cession or otherwise, the rights and obligations of a credit receiver in respect of a credit transaction have passed;

[Definition of "credit receiver" substituted by sec 1(d) of Act 90 of 1980.]

"credit transaction" means any transaction, whatever its form may be, and whether or not it forms part of another transaction, by which-

- (a) a credit grantor sells or supplies to a credit receiver movable property or services against payment by the credit receiver to the credit grantor of a sum of money; or

- (b) a credit grantor transfers or grants to a credit receiver the use or enjoyment of movable property or services against payment by the credit receiver to the credit grantor of a sum of money;

[Definition of "credit transaction" substituted by sec 1(e) of Act 90 of 1980 and by sec 1(a) of Act 100 of 1988.]

"debenture" means-

- (a) a debenture created and issued in terms of and in respect of which the person issuing it has complied with, the provisions of the Companies Act, 1973 (Act 61 of 1973);
- (b) a security as defined in section 1(1) of the Exchequer and Audit Act, 1975 (Act 66 of 1975);
- (c) any bill, bond, security or any other document issued as evidence of the borrowing of money by any institution, council or body contemplated in section 84(1)(f) of the Republic of South Africa Constitution Act, 1961 (Act 32 of 1961), or by the Electricity Supply Commission or the Rand Water Board or by any other institution, council or body designated for the purposes of this paragraph by the Registrar by notice in the *Gazette*;

[Definition of "debenture" inserted by sec 1(f) of Act 90 of 1980.]

"deeds registry" means, in relation to an instrument of debt, the registry in which such instrument of debt may properly be registered; and "registrar of deeds" used in that connection has a corresponding meaning;

"finance charges" means the total of any valuable consideration, which a borrower or credit receiver or lessee has given or is owing, whether as part of the principal debt or otherwise, directly or indirectly, to a moneylender or credit grantor or lessor or to or on behalf of any intermediary between himself and a moneylender or credit grantor or lessor in terms of a money lending transaction or a credit transaction or a leasing transaction and includes, in the case of an agreement in terms of which goods are sold under a condition of repurchase of such goods at a higher price, the difference between the higher price at which the goods are repurchased and the lower price at which the goods are sold, but does not include-

- (a) a ledger fee;
- (b) any amount referred to in section 5(1)(b);
- (c) the costs referred to in section 5(1)(e) or (f);
- (d) the costs of repair and maintenance of the movable property leased in terms of a leasing transaction;
- (e) any valuable consideration specifically included in the principal debt by this Act;
- (f) any underwriting fee;
- (g) any amount or costs referred to in section 5A(1)(a) or (c);

[Para (g) added by sec 1(b) of Act 100 of 1988.]

[Definition of "finance charges" amended by sec 1(a) of Act 76 of 1970 and substituted by sec 1(g) of Act 90 of 1980.]

"finance charge rate per period" means the rate at which finance charges are levied at the end of a period on the balance of the principal debt then owing;

"instrument of debt" includes a negotiable instrument, bond, written contract or agreement or other document containing the terms and conditions of any contract or agreement in connection with a money lending transaction or a credit transaction or a leasing transaction, but does not include any covering bond in so far as it purports to convey security for future advances;

[Definition of "instrument of debt" substituted by sec 1(h) of Act 90 of 1980.]

"intermediary" means any director, manager or employee of and any person who acts on behalf of, a moneylender or a credit grantor or a lessor and any person, except the moneylender or the credit grantor or the lessor concerned, who receives an application from any person who intends to borrow money in terms of a money lending transaction or to obtain credit in terms of a credit transaction or to lease movable property in terms of a leasing transaction, or who in any manner acts on behalf of any person so intending in any negotiation relating to such loan, obtaining or lease;

[Definition of "intermediary" inserted by sec 1(i) of Act 90 of 1980.]

"leasing transaction" means any transaction, whatever its form may be, and whether or not it forms part of another transaction, by which-

- (a) a lessor leases movable property to a lessee; and
- (b) the amount which is owing or will be owed by a lessee to a lessor in connection with a transaction referred to in paragraph (a), is payable or will be payable after the date of the conclusion of the said transaction;

[Definition of "leasing transaction" inserted by sec 1(i) of Act 90 of 1980 and substituted by sec 1(c) of Act 100 of 1988.]

"ledger fee" means a fee charged by-

- (a) a banking institution as defined in section 1(1) of the Banks Act, 1965 (Act 23 of 1965), for keeping on behalf of a client a cheque account from which withdrawals may be made by such client by means of a cheque which is eligible for clearing through the clearing house system of the clearing banks of South Africa and which is so charged whether the account shows a debit balance or a credit balance; or
- (b) a banking institution contemplated in paragraph (a) (or its wholly-owned subsidiary) for the issue and use of a credit card in terms of a credit card scheme operated by such banking institution or wholly-owned subsidiary as manager of such scheme;

[Para (b) substituted by sec 1 of Act 62 of 1987.]

[Definition of "ledger fee" inserted by sec 1(b) of Act 76 of 1970 and substituted by sec 1(j) of Act 90 of 1980 and by sec 1(b) of Act 42 of 1986.]

"lessee" means any person who leases movable property in terms of a leasing transaction, and includes any person to whom, whether by delegation, cession or otherwise, the rights and obligations of a lessee in respect of a leasing transaction, have passed;

[Definition of "lessee" inserted by sec 1(k) of Act 90 of 1980.]

"lessor" means any person who leases or has leased movable property to a lessee in terms of a leasing transaction, and includes any person to whom, whether by delegation, cession or otherwise, the rights or the rights and obligations of a lessor in respect of a leasing transaction have passed;

[Definition of "lessor" inserted by sec 1(k) of Act 90 of 1980.]

"manager", in relation to a credit card scheme, means a manager referred to in the definition of credit card scheme;

[Definition of "manager" inserted by sec 1(k) of Act 90 of 1980.]

"Minister" means the Minister of Finance;

"money lender" means-

- (a) any person who is granting or has granted a loan of a sum of money to a prospective borrower or to a borrower in terms of a money lending transaction;
- (b) any person to whom, whether by delegation, cession or otherwise, the rights or the rights and obligations of a moneylender in respect of a money lending transaction have passed;
- (c) the holder of an instrument of debt executed in respect of a money lending transaction;
- (d) any manager;

[Definition of "moneylender" substituted by sec 1(l) of Act 90 of 1980.]

"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, and includes-

- (a) any agreement in terms of which goods are sold under a condition of repurchase of such goods at a higher price, in which case the lower price at which the goods are sold shall for the purposes of this Act be deemed to be a sum of money lent;
- (b) any transaction under which goods are purchased by or services are rendered to or any amount of cash is obtained by a credit card holder in terms of a credit card scheme, in which case the price at which the goods are so purchased or such services are so rendered or such amount of cash is so obtained shall for the purposes of this Act be deemed to be a sum of money lent by the manager concerned to such credit card holder;
- (c) any transaction under which immovable property is sold against payment by the purchaser to, or to any person on behalf of, the seller of a sum of money at a stated or determinable future date or in whole or in part in instalments over a period in the future, in which case such sum, excluding finance charges, shall for the purposes of this Act be deemed to be a sum of money lent by the seller to the purchaser, but does not include a transaction under which immovable property is sold and in terms of which-
 - (i) no finance charges are levied by the seller on the purchase price;
 - (ii) the full purchase price is payable against registration of the immovable property in the name of the purchaser or a transferee nominated by the purchaser; and
 - (iii) no interim instalment is payable by the purchaser between the date of the sale and such registration, save for an initial deposit

payable in one amount by the purchaser to a practising attorney or an estate agent to be held in trust pending such registration, and rent or occupational interest constituting a reasonable compensation for the use and enjoyment by the purchaser of the immovable property in question;

[Para (c) substituted by sec 1(c) of Act 42 of 1986 and substituted by sec 1(m) of Act 100 of 1988.]

- (d) any transaction in terms of which a sum of money owing for alterations or improvements to immovable property is to be paid by a debtor at a stated or determinable future date or in whole or in part in instalments over a period in the future, in which case such sum of money shall for the purposes of this Act be deemed to be a sum of money lent to the debtor;

[Definition of "money lending transaction" substituted by sec 1(m) of Act 90 of 1980.]

"non-variable finance charge rate" means a single annual finance charge rate agreed upon at the conclusion of a money lending transaction, credit transaction or leasing transaction and which remains unaltered for the whole duration of the transaction concerned;

[Definition of "non-variable finance charge rate" inserted by sec 1(d) of Act 100 of 1988.]

"period" means, where the parties to an agreement in connection with a money lending transaction or a credit transaction or a leasing transaction have agreed that the sum of money payable in connection with the transaction-

- (a) must be paid at a stated or determinable future date, the time that must elapse between the date upon which the transaction was concluded and the date upon which payment of the said sum of money must be made; or
- (b) must be paid in whole or in part in instalments over a period in the future, the time that must elapse between the date upon which the transaction was concluded and the date upon which the first instalment is payable or the time that must elapse between the dates upon which two consecutive instalments are payable;

[Definition of "period" amended by sec 1(n) of Act 90 of 1980.]

"present value of book value" means, in relation to a leasing transaction an amount which, if invested on the date of the commencement of such transaction for the duration of the transaction at the annual finance charge rate stipulated in the instrument of debt executed in connection with such transaction, shall equal on the date of expiry of such transaction the book value on such last-mentioned date of the property leased in terms of such transaction;

[Definition of "present value of book value" inserted by sec 1(o) of Act 90 of 1980.]

"principal debt" means, in relation to-

- (a) a money lending transaction-
- (i) the cash amount in money actually received by or on behalf of a borrower in terms of the said transaction; plus
- (ii) the costs in respect of stamp duties actually paid or to be paid by the moneylender in connection with the said transaction and which are owing to him by the borrower; plus

(iii) if the moneylender is authorized thereto in terms of an agreement in writing between himself and the borrower-

(aa) where the money loan is wholly or partly secured by a mortgage bond over immovable property or a notarial bond over movable property-

- (aaa) the costs actually paid or to be paid by the moneylender in respect of the preparation, execution and registration of the mortgage bond;
- (bbb) taxes, other fiscal charges and licence fees and any compulsory charge in respect of any sectional title scheme to a body corporate constituted in terms of section 28 of the Sectional Titles Act, 1971 (Act 66 of 1971), actually paid or to be paid by the moneylender in respect of the property concerned;
- (ccc) premiums actually paid or to be paid by the moneylender to an insurer registered in terms of the Insurance Act, 1943 (Act 27 of 1943), including an underwriter at Lloyds authorized in terms of the said Act to carry on insurance business in the Republic, in respect of an insurance policy in terms of which the property concerned is insured against loss or damage caused by fire, riot, civil disturbance, earthquake and loss of income and against any other loss or damage against which such property is ordinarily insured;

(ddd)

[Subpara (ddd) deleted by sec 1(d)(i) of Act 42 of 1986.]

- (bb) premiums actually paid or to be paid by the moneylender to an insurer registered in terms of the Insurance Act, 1943, as agreed between the insured and such insurer in respect of a life policy which is ceded to the moneylender as security for the repayment of the loan;
- (cc) premiums actually paid or to be paid by the moneylender to an insurer registered in terms of the Insurance Act, 1943, including an underwriter at Lloyds authorized in terms of the said Act to carry on insurance business in the Republic, in respect of an insurance policy over movable property in terms of which such property is insured against loss or damage caused by fire, riot, civil disturbance, earthquake and loss of income and against any other loss or damage against which such property is ordinarily insured and which property serves as security for the repayment of the loan;
- (dd) premiums actually paid by a moneylender on behalf of a borrower for insurance in terms of the Compulsory Motor Vehicle Insurance Act, 1972 (Act 56 of 1972);
- (ee) amounts expended in respect of fiscal charges, stamp and transfer duties;
- (ff) the costs actually paid by the money-lender to a person who practises as an attorney on his own account or as a partner in a firm of attorneys or as a member of a professional company in respect of the preparation of the

documents, including the instrument of debt in question and other documents for the security of the loan, embodying the money-lending transaction in question;

[Subpara (ff) added by sec 1(d)(ii) of Act 42 of 1986.]

(gg) where the money loan is not wholly or partly secured by a mortgage bond over immovable property or a notarial bond over movable property, the taxes, charges, fees and premiums of the kind referred to in subparagraphs (a)(iii)(aa), (bbb) and (ccc) relating to the property which is the subject of the money loan and which were actually paid or are to be paid by the money-lender on behalf of the borrower; or

[Subpara (gg) added by sec 1(d)(ii) of Act 42 of 1986.]

(b) a credit transaction-

- (i) the selling price of movable property or services or, if applicable, the difference between the selling price of movable property or services and the cash amount in money paid or to be paid or the reasonable value, agreed upon, of goods delivered or to be delivered by the credit receiver to the credit grantor for application in reduction of the said selling price; or
- (ii) the difference between the total sum of money, excluding finance charges, charged by the credit grantor for the use or enjoyment of movable property or services and the cash amount in money paid or to be paid or the reasonable value, agreed upon, of goods delivered or to be delivered by the credit receiver to the credit grantor for deduction from the said sum of money; plus
- (iii) the costs in respect of stamp duties actually paid or to be paid by the credit grantor in connection with the said transaction and which are owing to him by the credit receiver; plus
- (iv) if the credit grantor is authorized thereto in terms of an agreement in writing between himself and the credit receiver-
 - (aa) where property is pledged under notarial bond or hypothecated under a mortgage bond over immovable property to the credit grantor as security in connection with the transaction, the costs actually paid or to be paid by the credit grantor in respect of the preparation, execution and registration of the bond;
 - (bb) premiums actually paid or to be paid by the credit grantor to an insurer registered in terms of the Insurance Act, 1943, including an underwriter at Lloyds authorized in terms of the said Act to carry on insurance business in the Republic, in respect of an insurance policy in terms of which the property sold and any other property serving as security in connection with the said transaction are insured against loss or damage caused by fire, riot, civil disturbance, earthquake and loss of income and against any other loss or damage against which such property is ordinarily insured;

- (cc) premiums actually paid or to be paid by the credit grantor to an insurer registered in terms of the Insurance Act, 1943, as agreed between the insured and such insurer in respect of a life policy which is ceded to the credit grantor as security in connection with the said transaction;
- (dd) premiums actually paid by a credit grantor on behalf of a credit receiver for insurance in terms of the Compulsory Motor Vehicle Insurance Act, 1972;
- (ee) taxes, other fiscal charges, and licence fees which may be payable in connection with the said transaction and which were actually paid or to be paid by the credit grantor;
- (ff) the costs actually paid by the credit grantor to a person who practises as an attorney on his own account or as a partner in a firm of attorneys or as a member of a professional company in respect of the preparation of the documents, including the instrument of debt in question and other documents for the security of the debt, embodying the credit transaction in question; or

[Subpara (ff) substituted by sec 1(d)(iii) of Act 42 of 1986.]

(c) a leasing transaction-

(i) the difference between-

- (aa) the cash price at which the movable property leased in terms of such transaction is normally sold by the lessor on the date on which such transaction is entered into, or where the lessor is not a trader normally selling such movable property, the market value of such movable property or, when applicable, the money value determined in terms of section 6K in respect of such movable property; and

[Subpara (aa) substituted by sec 1(e) of Act 100 of 1988.]

(bb) the sum of-

- (aaa) the cash amount in money paid or to be paid on the date of such transaction by or on behalf of the lessee to or on behalf of the lessor; and
- (bbb) the reasonable value agreed upon of property delivered or to be delivered by the lessee to the lessor for application in reduction of the cash price, market value or money value referred to in paragraph (i)(aa); and

[Subpara (bbb) substituted by sec 1(f) of Act 100 of 1988.]

(ccc) the present value of the book value of the property leased in terms of such transaction; plus

- (ii) the costs in respect of stamp duties actually paid or to be paid by the lessor in connection with such transaction and owing to him by the lessee; plus
- (iii) if the lessor is authorized thereto in terms of an agreement in writing between himself and the lessee-

- (aa) where property is pledged in terms of a notarial bond or hypothecated under a mortgage bond over immovable property to the lessor as security in connection with such transaction, the costs actually paid or to be paid by the lessor in respect of the preparation, execution and registration of the bond;
- (bb) premiums actually paid or to be paid by the lessor to an insurer registered in terms of the Insurance Act, 1943, including an underwriter at Lloyds authorized in terms of the said Act to carry on insurance business in the Republic, in respect of an insurance policy in terms of which the property leased and any other property serving as security in connection with the said transaction are insured against loss or damage caused by fire, riot, civil disturbance, earthquake and loss of income and against any other loss or damage against which such property is ordinarily insured;
- (cc) premiums actually paid or to be paid by the lessor to an insurer registered in terms of the Insurance Act, 1943, as agreed between the insured and such insurer in respect of a life policy which is ceded to the lessor as security in connection with the said transaction;
- (dd) premiums actually paid by a lessor on behalf of a lessee for insurance in terms of the Compulsory Motor Vehicle Insurance Act, 1972;
- (ee) taxes, other fiscal charges and licence fees payable in connection with the said transaction actually paid or to be paid by the lessor;
- (ff) the costs actually paid by the lessor to a person who practises as an attorney on his own account or as a partner in a firm of attorneys or as a member of a professional company in respect of the preparation of the documents, including the instrument of debt in question and other documents for the security of the debt, embodying the leasing transaction in question;

[Subpara (ff) substituted by sec 1(d)(iv) of Act 42 of 1986.]

[Definition of "principal debt" substituted by sec 1(p) of Act 90 of 1980.]

"Registrar" means the person appointed in terms of section 5 of the Namibia Financial Institutions Supervisory Authority Act, 2001, as the chief executive officer of the Namibia Financial Institutions Supervisory Authority or a person appointed as registrar by the Minister, subject to the provisions of the Public Service Act, 1995 (Act 13 of 1995);

[Definition of "Registrar" substituted by sec 37 of Act 3 of 2001.]

"regulation" means a regulation in force under this Act;

"regular payments" means payments made by way of a series of equal instalments at the end of equal consecutive periods, not longer than one year each, as from the date upon which a money lending transaction or a credit transaction or a leasing transaction was concluded: Provided that for the purposes of this definition-

- (a) the instalments shall be deemed to be equal if all the instalments in the series of instalments are equal except one which-

- (i) does not exceed any of the other instalments by more than ten percent; or
- (ii) is smaller than any of the other instalments; and

[Para (a) substituted by sec 1(c) of Act 76 of 1970.]

- (b) the periods shall be deemed to be equal if all the periods are of the same duration except the first period if the first period does not differ by more than one half of the duration of any of the other periods where those other periods are not longer than one month each and by not more than one month where those other periods are longer than one month each;

[Definition of "regular payments" amended by sec 1(q) of Act 90 of 1980.]

"Republic" includes the territory;

[Definition of "Republic" inserted by sec 1 of Act 62 of 1974.]

"supplier", in relation to a credit card scheme, means a supplier referred to in the definition of credit card scheme;

[Definition of "supplier" inserted by sec 1(r) of Act 90 of 1980.]

"territory" means the territory of South West Africa;

[Definition of "territory" inserted by sec 1 of Act 62 of 1974.]

"this Act" includes the regulations and any notice issued thereunder;

[Definition of "this Act" substituted by sec 1(g) of Act 100 of 1988.]

"underwriting fee" means any fee charged by a person in terms of an agreement in writing between such person and any person issuing debentures in terms of which the first-mentioned person undertakes to subscribe to any debentures so issued having an aggregate issued price of not less than R250 000 if such debentures are not subscribed to by any other person, and which fee is charged and payable when all such debentures have been subscribed to;

[Definition of "underwriting fee" inserted by sec 1(s) of Act 90 of 1980.]

"variable finance charge rate" means a single finance charge rate agreed upon at the conclusion of a money lending transaction, credit transaction or leasing transaction, and which may be altered during the duration of the transaction concerned.

[Definition of "variable finance charge rate" added by sec 1(h) of Act 100 of 1988.]

2 Maximum annual finance charge rates which may be charged in connection with a money lending transaction, a credit transaction and a leasing transaction

(1)(a) No moneylender shall in connection with any money lending transaction stipulate for, demand or receive finance charges at an annual finance charge rate greater than the percentage determined by the Registrar by notice in the *Gazette* in accordance with the directions of the Minister.

(b) Different percentages may be determined under paragraph (a) for money lending transactions where the total amount of money lent by a moneylender to a borrower within any period of three months, including disbursements made by him within the said period and recoverable as part of the principal debt, is different.

[Subsec (1) substituted by sec 2(a) of Act 62 of 1987.]

(2)(a) No credit grantor shall in connection with any credit transaction stipulate for, demand or receive finance charges at an annual finance charge rate greater than

the percentage determined by the Registrar by notice in the *Gazette* in accordance with the directions of the Minister.

(b) Different percentages may be determined under paragraph (a) for credit transactions of different money values of the principal debt.

[Subsec (2) substituted by sec 2(1)(a) of Act 42 of 1986 and by sec 2(a) of Act 62 of 1987.]

(3)(a) No lessor shall in connection with any leasing transaction stipulate for, demand or receive finance charges at an annual finance charge rate greater than the percentage determined by the Registrar by notice in the *Gazette* in accordance with the directions of the Minister.

(b) Different percentages may be determined under paragraph (a) for leasing transactions of different money values of the principal debt.

[Subsec (3) substituted by sec 2(1)(b) of Act 42 of 1986 and by sec 2(a) of Act 62 of 1987.]

(4) The Minister shall publish tables in the *Gazette* from which may be ascertained-

(a) the annual add-on rate equal to the annual finance charge rate at which finance charges may be levied in respect of a money lending transaction or a credit transaction or a leasing transaction in connection with which it has been agreed that payment of the principal debt and finance charges must be effected by way of regular payments;

(b) in the case of, a leasing transaction, the present value of the book value of the leased property.

(5) Where in connection with a money lending transaction or a credit transaction or a leasing transaction it is agreed that payment of the principal debt and finance charges must 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 owing from time to time by the borrower or credit receiver or lessee to the moneylender or credit grantor or lessor.

(6) No moneylender or credit grantor or lessor shall-

(a) calculate finance charges according to shorter or more periods than those according to which instalments or the outstanding balance of the principal debt must be paid in terms of an agreement in connection with the money lending transaction or the credit transaction or the leasing transaction concerned;

(b) in respect of a life policy ceded to a moneylender as security for the repayment of a loan or to a credit grantor or a lessor as security in connection with a credit transaction or a leasing transaction-

(i) include in the principal debt, or stipulate for, demand or receive finance charges in respect of premiums paid in advance for more than 12 months at a time by such moneylender or credit grantor or lessor;

(ii) pay or undertake to pay premiums, or stipulate for, demand or receive finance charges on premiums paid, on the portion by which the sum payable under such policy exceeds the aggregate amount of the principal debt on the date of the transaction and finance charges thereon for a period of not more than 12 months:

Provided that the limitation to the aggregate amount of the principal debt shall not apply to a policy which at the date of cession has a surrender value;

- (c) in connection with an insurance policy over movable or immovable property and of which the premiums qualify for inclusion in the principal debt of a money lending transaction or a credit transaction or a leasing transaction, pay or undertake to pay, or stipulate for, demand or receive finance charges in respect of premiums on the portion by which the sum insured under such policy exceeds the reasonable value of the property insured as agreed at the time the transaction was concluded.

(7) The provisions of subsection (6)(a) 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 transaction in respect of which the period between instalment payments or the period between the date upon which the principal debt was incurred and the date upon which it must be paid, is longer than one month.

(8) No lessor shall in respect of a leasing transaction calculate the present value of the book value of the leased property according to shorter or more periods than those according to which instalments or the outstanding balance of the principal debt must be paid in terms of an agreement in connection with the leasing transaction concerned.

(9) Save in respect of a debit balance in a cheque account with a banking institution as defined in section 1(1) of the Banks Act, 1965 (Act 23 of 1965), and subject to the provisions of sections 4, 5 and 5A, no person shall in respect of a money lending transaction or a credit transaction or a leasing transaction stipulate for, demand or receive from a borrower or credit receiver or lessee finance charges not disclosed in an instrument of debt.

[Subsec (9) substituted by sec 2(1)(d) of Act 42 of 1986 and by sec 2 of Act 100 of 1988.]

(10) An intermediary shall not in respect of a money lending transaction, a credit transaction or a leasing transaction or in respect of an application by any person to borrow an amount of money in terms of a money lending transaction or to obtain credit in terms of a credit transaction or to lease movable property in terms of a leasing transaction, demand, receive or recover, directly or indirectly, on his own account or on behalf of any person other than the moneylender or credit grantor or lessor concerned, any valuable consideration from the borrower or credit receiver or lessee concerned or from any person so applying.

(11) The provisions of subsection (10) shall not be construed as prohibiting-

- (a) a moneylender or a credit grantor or a lessor from paying an intermediary for services rendered by him in connection with any such transaction;
- (b) any person who practises as an attorney on his own account or as a partner in a firm of attorneys or as a member of a professional company or any person who is registered as an accountant and auditor in terms of the Public Accountants and Auditors' Act, 1951 (Act 51 of 1951), and who is engaged in public practice as an accountant or auditor or any person falling within such category of persons as the Minister may designate by notice in the *Gazette*, on such conditions as he may specify in such notice, for the purposes of this paragraph from stipulating for, demanding or receiving from a borrower or a credit receiver or a lessee payment not exceeding an amount equal to such percentage as may be prescribed by regulation for the purposes of this paragraph for services rendered by him to such borrower, credit receiver or lessee in

connection with the money lending transaction or credit transaction or leasing transaction concerned: Provided that different percentages may be so prescribed in respect of money lending transactions or credit transactions or leasing transactions having different money values;

- (c) any person who issued a debenture from remunerating an intermediary who acted on behalf of such person in any negotiation with a subscriber to a debenture so issued.

(12) If any borrower or credit receiver or lessee is required by a moneylender or credit grantor or lessor to pay-

- (a) any portion of the principal debt on the date of the transaction concerned; or

- (b) in respect of such transaction finance charges for more than three months in advance,

such moneylender or credit grantor or lessor shall reduce the principal debt in question by the amount of such portion or the amount exceeding the amount of finance charges for three months, and he shall not be entitled to stipulate for, demand or receive any finance charges in respect of the amount so exceeding.

(13) A notice referred to in subsections (1), (2) and (3) may be withdrawn or amended at any time.

[Sec 2 amended by sec 2 of Act 76 of 1970 and by sec 2(1) of Act 62 of 1974 and substituted by sec 2 of Act 90 of 1980.]

[Subsec (13) added by sec 2(b) of Act 62 of 1987.]

2A Limitation of finance charges in respect of money lending transactions secured by certain mortgage bonds

(1) If a loan of a sum of money in terms of a money lending transaction is to be secured by a mortgage bond over immovable property and such bond is in terms of an agreement between the moneylender and borrower concerned, to be registered in a deeds registry before such sum of money is to be paid by such moneylender to or on behalf of such borrower, the moneylender shall be entitled to stipulate for, demand or receive finance charges in connection with such money lending transaction-

- (a) from the date on which such money-lender approved such loan until the date immediately preceding the date on which such sum of money is paid to or on behalf of the borrower, at an annual finance charge rate not exceeding the difference between the annual finance charge rate stipulated in the instrument of debt relating to such money-lending transaction and the treasury bills rate applicable on the date on which such loan is approved: Provided that where the money-lender is required to furnish any guarantees on behalf of the borrower and for such purpose to deposit any money with the institution issuing the guarantee, he may recover the difference between the annual finance charge rate stipulated in the instrument of debt and the rate recoverable by him from such institution;

[Para (a) substituted by sec 3 of Act 42 of 1986.]

- (b) from the date on which such sum of money or any portion thereof is paid to or on behalf of the borrower and in respect of such sum or portion, as the case may be, at the annual finance charge rate disclosed in the instrument of debt relating to such money lending transaction.

(2) If in any proceedings, whether by way of provisional sentence, summary judgment or otherwise, finance charges referred to in subsection (1) are claimed in respect of the period from the date on which the loan concerned was approved until the date on which such loan was secured by a mortgage bond over immovable property, and the borrower alleges that the registration of such bond or the payment of the loan after such registration was effected, was delayed by the moneylender concerned or any person acting on his behalf, judgment in respect of such finance charges shall not be granted in such proceedings unless such moneylender satisfies the court that the said allegations are without any substance.

(3) An allegation referred to in subsection (2) shall not be made in any proceedings referred to in that subsection unless the borrower concerned objected in writing with the moneylender concerned within 12 months from the date on which the loan concerned was paid to him or on his behalf to the delay by such moneylender of the registration of the mortgage bond concerned or of the payment of such loan after such registration.

[Sec 2A inserted by sec 3 of Act 90 of 1980.]

2B Limitation of finance charge rate at conclusion of contract

(1) No money lender, credit grantor or lessor shall conclude a money lending transaction, credit transaction or leasing transaction in connection with which finance charges are stipulated for, demanded or received at any other rate than a variable finance charge rate or a non-variable finance charge rate.

(2)(a) If a moneylender, credit grantor or lessor and a borrower, credit receiver or lessee have at the conclusion of a money lending transaction, credit transaction or leasing transaction agreed in accordance with the provisions of this Act upon a non-variable finance charge rate, the moneylender, credit grantor or lessor may recover finance charges at the rate so agreed upon.

(b) The provisions of paragraph (a) shall also apply to a money lending transaction, credit transaction or leasing transaction already concluded at the commencement of the Usury Amendment Act, 1988.

(3) If a moneylender, credit grantor or lessor and a borrower, credit receiver or lessee have at the conclusion of a money lending transaction, credit transaction or leasing transaction agreed upon a variable finance charge rate, the moneylender, credit grantor or lessor may not for any period during the duration of the transaction concerned stipulate for, demand or receive finance charges at an annual finance charge rate exceeding the relevant rate determined for that period in terms of section 2(1), (2) or (3) in respect of the transaction concerned.

[Sec 2B inserted by sec 3 of Act 100 of 1988.]

[Subsec (3) substituted by sec 1 of Act 91 of 1989.]

3 Compulsory disclosure of finance charges

(1) A money-lender carrying on the business of money-lending or his authorized representative shall, on demand before the conclusion of any money-lending transaction in connection with which finance charges are or will be payable, furnish separately, distinctly and in writing to the prospective borrower, and, whether or not any such demand is made, shall set out separately and distinctly in every instrument of debt executed in respect of any such transaction, in so far as the same may be known and determinable, the following particulars:

(a) The cash amount in money actually received by or on behalf of the borrower or which will be received by or on behalf of the borrower or prospective borrower;

- (b) all other charges, shown separately, forming part or which will 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 rand and cents of the finance charges calculated at the annual finance charge rate mentioned in paragraph (e);

[Para (d) substituted by sec 3(a) of Act 62 of 1987.]

- (e) the annual finance charge rate; and

[Para (e) substituted by sec 3(a) of Act 62 of 1987.]

- (f) as the case may be, the date upon which or the number of instalments in which the principal debt together with the finance charges must be paid, the amount of each instalment and the date upon which each instalment must be paid or the manner in which that date is determined.

[Subsec (1) amended by sec 4(a) of Act 42 of 1986.]

(2) A credit grantor who transacts credit transactions in the normal course of his business or his authorized representative shall, on demand before the conclusion of any credit transaction in connection with which finance charges are or will be payable, furnish separately, distinctly and in writing to the prospective credit receiver, and, whether or not any such demand is made, shall set out separately and distinctly in every instrument of debt executed in connection with any such transaction, in so far as the same may be known and determinable, the following particulars:

- (a) The selling price of the goods sold or to be sold or the sum of money charged or which will be charged for the use or enjoyment of the goods;
- (b) all other charges, shown separately, forming part or which will form part of the principal debt;
- (c) the cash amount in money or the reasonable value of goods deducted or which will be deducted at the conclusion of the transaction from the amount referred to in paragraph (a);
- (d) the principal debt, that is, the sum of the amounts referred to in paragraphs (a) and (b) less the amount referred to in paragraph (c);
- (e) the amount in rand and cents of the finance charges calculated at the annual finance charge rate mentioned in paragraph (f);

[Para (e) substituted by sec 3(b) of Act 62 of 1987.]

- (f) the annual finance charge rate; and

[Para (f) substituted by sec 3(b) of Act 62 of 1987.]

- (g) as the case may be, the date upon which or the number of instalments in which the principal debt together with the finance charges must be paid, the amount of each instalment and the date upon which each instalment must be paid or the manner in which that date is determined.

[Subsec (2) amended by sec 4(b) of Act 42 of 1986.]

(2A) A lessor who transacts leasing transactions in the normal course of his business or his authorized representative shall, on demand before the conclusion of any leasing transaction, furnish separately, distinctly, and in writing to the

prospective lessee and, whether or not any such demand is made, shall set out separately and distinctly in every instrument of debt executed in connection with any such transaction the following particulars:

- (a) The cash price at which the movable property leased or to be leased is normally sold by the lessor on the date on which such transaction is concluded or, where the lessor is not a trader normally selling any such movable property, the market value of such movable property or, when applicable, the money value determined in terms of section 6K in respect of such movable property;
- (b)
- (c) the cash amount in money or the reasonable value of property deducted or to be deducted at the conclusion of the transaction from the cash price, market value or money value referred to in paragraph (a);
- (d) the present value of the book value of the leased property deducted or to be deducted at the conclusion of the transaction from the cash price, market value or money value referred to in paragraph (a);
- (e) the book value of the leased property;
- (f) in so far as the same is known and determinable-
 - (i) all other charges forming part or which will form part of the principal debt;
 - (ii) the principal debt, that is, the sum of the amounts referred to in paragraph (a) and subparagraph (i) less the sum of the amounts referred to in paragraphs (c) and (d);
 - (iii) the amount in rand and cents of the finance charges calculated at the annual finance charge rate stated in subparagraph (iv);
 - (iv) the annual finance charge rate;
 - (v) the date with effect from which finance charges are to be paid by the lessee; and
 - (vi) as the case may be, the date upon which or the number of instalments in which the principal debt together with the finance charges must be paid, the amount of each instalment and the due date of each instalment or the manner in which the date is determined.

[Subsec (2A) inserted by sec 4(a) of Act 90 of 1980, amended by sec 4(c) of Act 42 of 1986 and by sec 3(c) of Act 62 of 1987 and substituted by sec 4(a) of Act 100 of 1988.]

(3) The provisions of subsections (1), (2) and (2A) shall not apply to or in respect of-

- (a) a bill of exchange when such bill is executed or discounted by the South African Reserve Bank, the Corporation for Public Deposits or a banking institution as defined in section 1(1) of the Banks Act, 1965 (Act 23 of 1965);

[Para (a) substituted by sec 4(d) of Act 42 of 1986.]

- (b)

[Para (b) deleted by sec 4(b) of Act 100 of 1988.]

- (c) a debit balance in an account with a banking institution as defined in section 1(1) of the Banks Act, 1965, out of which withdrawals may be made by cheque or on other instructions of clients;
- (d) a money loan given by a life insurer to the owner of a policy in terms of which such insurer is subject to any obligation, where such loan is secured by the pledge of that policy;
- (e) a money loan given by a banking institution as defined in section 1(1) of the Banks Act, 1965, or a building society registered in terms of the Building Societies Act, 1965 (Act 24 of 1965), to any person holding a fixed deposit with such institution or society or to any shareholder of any such society where such loan is secured by the pledge of that deposit or the share concerned; and
- (f) a debenture in respect of which the particulars referred to in subsection (1) are specified in an instrument of debt executed in connection with such debenture by the person who issued such debenture.

[Subsec (3) amended by sec 3(a) of Act 76 of 1970 and by sec 3 of Act 62 of 1974 and substituted by sec 4(b) of Act 90 of 1980.]

(4) Where the particulars referred to in subsection (1), (2) or (2A) are furnished in a document which also contains other information, such particulars shall be furnished in writing not less conspicuous than the writing in which such other information is furnished.

[Subsec (4) substituted by sec 4(c) of Act 90 of 1980.]

(5) The provisions of subsections (1), (2) and (2A) shall not be construed as prohibiting any moneylender or credit grantor or lessor from charging a borrower or credit receiver or lessee in respect of a money lending transaction or a credit transaction or a leasing transaction, finance charges at a lesser rate than the annual finance charge rate disclosed in the instrument of debt relating to such a transaction.

[Subsec (5) substituted by sec 3(b) of Act 76 of 1970 and by sec 4(d) of Act 90 of 1980.]

(6) Any person who makes or executes or is a party to the making or execution of, or as cessionary or otherwise accepts or holds, an instrument of debt which does not comply with the provisions of subsections (1), (2) or (2A) and (4), knowing that it does not so comply, shall be guilty of an offence.

[Subsec (6) substituted by sec 4(e) of Act 90 of 1980.]

(7) Any person who wilfully makes or executes, or is knowingly a party to the making or execution of an instrument of debt which contains a statement which is false as to any of the particulars required to be inserted therein by subsection (1), (2) or (2A), and any person who utters any such instrument of debt knowing that it contains any such false statement, shall be guilty of an offence.

[Subsec (7) substituted by sec 4(f) of Act 90 of 1980.]

(8) Notwithstanding anything in this section contained, but subject to the provisions of section 5, no instrument of debt shall be deemed to be invalid or defective merely by reason of the fact that it does not comply with any provision of subsection (1), (2) (2A) or (4) of this section.

[Subsec (8) substituted by sec 4(g) of Act 90 of 1980.]

(9) Where separate instruments of debt are concluded by the same moneylender or credit grantor or lessor and the same borrower or credit receiver or lessee in respect of the same money lending transaction or credit transaction or leasing

transaction, such separate instruments of debt, including an instrument of debt relating to insurance premiums paid on behalf of a credit receiver or borrower or lessee, shall for the purposes of this Act be deemed to be a single instrument of debt containing the provisions of such separate instruments of debt, and such single instrument of debt shall not include-

- (a) any valuable consideration not specifically included in the principal debt by this Act;
- (b) any finance charges which may not be stipulated for, demanded or received in terms of this Act.

[Subsec (9) added by sec 4(h) of Act 90 of 1980.]

(10)

[Subsec (10) added by sec 4(c) of Act 100 of 1988 and deleted by sec 2 of Act 91 of 1989.]

3A Particulars in instrument of debt relating to payment of outstanding principal debt and finance charges before due date

(1) Subject to the provisions of subsection (2) every instrument of debt, except a debenture, in terms of which the principal debt and finance charges which are owing by the borrower or credit receiver or lessee concerned, are to be paid over a period in the future in instalments, including finance charges, shall provide the following, namely-

- (a) the period, not exceeding 90 days, or, if any longer period is prescribed by regulation for the purposes of this paragraph, not exceeding the period so prescribed from time to time, which shall lapse from the date on which a borrower or a credit receiver or a lessee in writing notified the moneylender or credit grantor or lessor concerned of his intention to pay the outstanding balance of the principal debt and finance charges thereon in one amount before the due date thereof to such moneylender or credit grantor or lessor, before such borrower or credit receiver or lessee shall be entitled to so pay such outstanding balance and finance charges;
- (b) the minimum period, not exceeding 90 days, which shall lapse after the date of such transaction before any notice referred to in paragraph (a) may be given by or on behalf of a borrower or a credit receiver or a lessee;
- (c) that any notice referred to in paragraph (a) shall state the date on which the borrower or credit receiver or lessee concerned intends to pay the outstanding balance and finance charges referred to in that paragraph in one amount;
- (d) that, notwithstanding anything to the contrary contained in the instrument of debt concerned, the date stated in accordance with paragraph (c) in a notice referred to in paragraph (a), shall be deemed to be the date on which the outstanding balance of the principal debt concerned and finance charges thereon shall be paid by such borrower or credit receiver or lessee in terms of such instrument of debt:

Provided that for the purposes of paragraph (a) different periods may be prescribed for transactions of different money values.

(2) In any agreement in connection with-

(a) a money lending transaction or a credit transaction where on the date of such transaction the principal debt exceeds R50 000 or such other amount, whether greater or smaller, as may be prescribed by regulation for the purposes of this subsection;

(b) a leasing transaction,

the parties may agree that such transaction shall remain in force and that finance charges be levied until the expiry of the term of such transaction.

[Sec 3A inserted by sec 5 of Act 90 of 1980.]

4 Limitation of sum recoverable on default or deferment of payment

If a borrower or credit receiver or lessee fails to pay any amount which is owing by him to a moneylender or credit grantor or lessor in connection with a money lending transaction or a credit transaction or a leasing transaction, upon the date when such amount is payable, or if a borrower or credit receiver or lessee enters into an agreement with a money-lender or a credit grantor or a lessor to defer the payment of an amount which is owing by him as aforesaid to the money-lender or credit grantor or lessor, the money-lender or credit grantor or lessor shall thereupon be entitled to recover from the borrower or credit receiver or lessee an additional amount in respect of finance charges, which shall be calculated by reference to the total amount which is payable but is unpaid, the period during which the default continues or the period for which payment is deferred as aforesaid, as the case may be, and the annual finance charge rate at which finance charges on the outstanding balance of the principal debt are, in terms of the instrument of debt, calculated during such period.

[Sec 4 substituted by sec 6 of Act 90 of 1980 and by sec 5 of Act 42 of 1986.]

4A Sum recoverable on expiry of period of notice by moneylender, credit grantor or lessor

For the purposes of section 4 a borrower or a credit receiver or a lessee shall be deemed to have failed to pay an amount which is owing by him to a moneylender or a credit grantor or a lessor in connection with a money lending transaction or a credit transaction or a leasing transaction upon the date on which such amount is payable, if such borrower or credit receiver or lessee-

(a) in accordance with a provision, as contemplated in section 3A(1)(a), in the instrument of debt concerned, in writing notified such moneylender or credit grantor or lessor that he intended to pay the outstanding balance of the principal debt and finance charges thereon in one amount before the due date thereof on a date as contemplated in section 3A(1)(c); and

(b) failed to pay such outstanding balance and finance charges in one amount on such date so contemplated.

[Sec 4A inserted by sec 7 of Act 90 of 1980.]

5 Limitation of sum recoverable from borrower, credit receiver or lessee

(1) No moneylender or credit grantor or lessor shall in connection with a money lending transaction or a credit transaction or a leasing transaction obtain judgment for or recover from a borrower or credit receiver or lessee an amount exceeding the sum of-

(a) the principal debt owing to him by the borrower or credit receiver or lessee;

- (b) in the case of a money loan secured wholly or partly by a mortgage bond over immovable property and if the moneylender is authorized thereto in terms of an agreement between himself and the borrower, any amount actually disbursed by the moneylender after the conclusion of the transaction concerned in respect of the maintenance and repair of and renewal premiums on a fire insurance policy over the said immovable property;
- (c) finance charges on the principal debt and, if applicable, in terms of section 2A(1)(a) and on the amount referred to in paragraph (b) at an annual finance charge rate not exceeding the relevant rate determined by or in terms of section 2(1), (2) or (3) or contemplated in section 2A(1) in respect of the money lending transaction or credit transaction or leasing transaction;

[Para (c) substituted by sec 4 of Act 62 of 1987.]

- (d) additional finance charges calculated in the manner prescribed by section 4;
- (e) if judgment is obtained for the payment of the principal debt or finance charges owing thereon by the borrower or credit receiver or lessee, legal costs awarded in terms of such judgment: Provided that-
 - (i) the court in awarding such legal costs may disregard the provisions of any agreement relating to costs between the parties concerned;
 - (ii) such legal costs shall not include any costs incurred by or on behalf of a moneylender or a credit grantor or a lessor before the instructions to institute legal proceedings for the payment of such principal debt or finance charges were given;
- (f) legal costs actually incurred by him after legal proceedings were instituted by him for the payment of the principal debt or of finance charges owing thereon and where payment of such principal debt or finance charges is made by or on behalf of the borrower, credit receiver or lessee concerned without judgment being obtained by virtue of such proceedings;
- (g) reasonable ledger fees, if applicable;

[Para (g) added by sec 6 of Act 42 of 1986.]

- (h) reasonable underwriting fees, if incurred;

[Para (h) added by sec 6 of Act 42 of 1986.]

- (i) subject to the provisions of sections 6K(3) and 11A, the cost of repair and maintenance of movable property leased in terms of a leasing transaction;

[Para (i) added by sec 6 of Act 42 of 1986.]

- (j) an amount payable for services rendered as contemplated in section 2(11)(b).

[Para (j) added by sec 6 of Act 42 of 1986.]

(2) No moneylender or credit grantor or lessor shall in any proceedings against a borrower or credit receiver or lessee in respect of loss, damage or expense alleged to

have been incurred in connection with a money lending transaction or a credit transaction or a leasing transaction, obtain judgment for any sum not included in the amount recoverable in respect of such money lending transaction or credit transaction or leasing transaction, as the case may be, under subsection (1).

(3) In any proceedings in terms of the Insolvency Act, 1936 (Act 24 of 1936), or any other law, no moneylender or credit grantor or lessor shall prove a claim in respect of a money lending transaction or a credit transaction or a leasing transaction for any sum for which in terms of this section he cannot obtain judgment.

(4) For the purposes of subsection (1)(a) and (c) the amount of the principal debt and finance charges owing by a lessee in terms of a leasing transaction, shall be calculated, if applicable, in the manner specified in sections 6E, 6F, 6G, 6H, 6I, 6J and 6K, as the case may be.

[Sec 5 substituted by sec 8 of Act 90 of 1980.]

5A Recovery of certain moneys not permitted by section 5

(1) In addition to the amounts which a moneylender, credit grantor or lessor is entitled to obtain judgment for or recover under section 5, he may, under a mortgage on immovable property or on any right to such property, or under any subsequent written agreement under the mortgage, obtain judgment for or recover the following amounts, namely-

- (a) any amount disbursed by the moneylender, credit grantor or lessor on behalf of the borrower, credit receiver or lessee in respect of-
 - (i) the installation of sewerage on the property or the property to which the right is attached;
 - (ii) the provision of electricity or water on the property or the property to which the right is attached;
 - (iii) the cost incurred in converting such property from leasehold to freehold;
 - (iv) the cost of the division of the property in accordance with a sectional plan in terms of the Sectional Titles Act, 1986 (Act 95 of 1986); and
 - (v) rates, taxes and licence fees in respect of the property or right;
- (b) finance charges on any amount referred to in paragraph (a) at an annual finance charge rate not exceeding the rate at which finance charges are payable on the principal debt which is secured by the mortgage; and
- (c) legal costs incurred by the moneylender, credit grantor or lessor in respect of legal proceedings instituted against a borrower, credit receiver or lessee, and also against a mortgagor if the borrower, credit receiver or lessee is not the mortgagor, for the recovery of any amount or charges referred to in paragraph (a) or (b).

(2) The provisions of sections 5(2) and (3) and 6L shall *mutatis mutandis* apply to any amount recoverable in terms of subsection (1).

(3) The provisions of subsections (1) and (2) shall also apply to a money lending transaction, credit transaction or leasing transaction already concluded at the commencement of the Usury Amendment Act, 1988.

[Sec 5A inserted by sec 5 of Act 100 of 1988.]

6 Reduction of instalments in the event of advanced payment, refinancing or consolidation of debt

(1) Where the principal debt and finance charges owing by a borrower or a credit receiver in connection with a money lending transaction or credit transaction concluded before the date of commencement of the Limitation and Disclosure of Finance Charges Amendment Act, 1980, have, in terms of an agreement between himself and the moneylender or credit grantor concerned, to be paid in instalments over a period in the future and the finance charges form part of the said instalments, the borrower or credit receiver shall at all times be entitled to pay any instalment before it is due, and shall, if he pays all instalments still unpaid (not being the final instalment) in one amount, be entitled to a reduction of every instalment not due on the date upon which payment is thus effected, by an amount calculated at the rate of 7,5% per annum on such instalment in respect of the period by which the payment of the said instalment is advanced.

[Subsec (1) substituted by sec 9(a) of Act 90 of 1980.]

(2) Where the principal debt and finance charges owing by a borrower or a credit receiver in connection with a money lending transaction or a credit transaction concluded before the date of commencement of the Limitation and Disclosure of Finance Charges Amendment Act, 1980, have, in terms of an agreement between himself and the moneylender or credit grantor concerned, to be paid in instalments over a period in the future and the finance charges form part of the said instalments, the borrower or credit receiver shall, if he enters into an agreement with the moneylender or credit grantor concerned in terms of which the said principal debt and finance charges have as from a stated date to be paid by way of smaller or larger instalments than the instalments agreed upon at the time of the conclusion of the transaction concerned, be entitled, for the purpose of the calculation of the amount still outstanding, to a reduction of every instalment which has to be paid in terms of the first-mentioned agreement but which is not due on the said date, by an amount calculated on the basis prescribed by subsection (1).

[Subsec (2) substituted by sec 9(b) of Act 90 of 1980.]

(3) The provisions of subsection (2) relating to the calculation of the amount still outstanding shall *mutatis mutandis* apply also where a borrower and a moneylender or a credit receiver and a credit grantor agree, as from a fixed date and for the purpose of payment, to treat as a single debt two or more amounts which are owing and have to be paid in instalments as contemplated in the said subsection in respect of principal debt and finance charges in connection with various money lending transactions or credit transactions concluded before the date of commencement of the Limitation and Disclosure of Finance Charges Amendment Act, 1980.

[Subsec (3) substituted by sec 9(c) of Act 90 of 1980.]

(4) A borrower or a credit receiver shall not be entitled to any reduction referred to in subsection (1) or (2) where finance charges are not levied-

(a) for the period by which the payment of an instalment is advanced; or

(b) in respect of an instalment which is not due on the date an arrangement is made in terms of subsection (2) or (3).

[Subsec (4) inserted by sec 4 of Act 76 of 1970.]

6A Payment of portion of principal debt and finance charges before due date

Subject to the provisions of section 3A a borrower or a credit receiver or a lessee shall be entitled to pay any portion of the principal debt and finance charges-

- (a) owing by him in terms of a money lending transaction or a credit transaction or a leasing transaction; and
- (b) which are to be paid over a period in the future in instalments including finance charges,

before the due date thereof but any payment in the said manner of any such portion shall not derogate from any right of such borrower or credit receiver or lessee in terms of the transaction concerned.

[Sec 6A inserted by sec 10 of Act 90 of 1980.]

6B Consequence of notice relating to payment before due date of outstanding principal debt and finance charges in terms of certain money lending transactions or credit transactions

(1) Where-

- (a) the principal debt and finance charges owing by a borrower or a credit receiver in connection with a money lending transaction or a credit transaction have, in terms of an agreement between himself and the moneylender or credit grantor concerned, to be paid in instalments, including finance charges, over a period in the future; and
- (b) such borrower or credit receiver by notice in writing in accordance with a provision, as contemplated in section 3A(1)(a), in the instrument of debt concerned, has notified such moneylender or credit grantor of his intention to pay the outstanding balance of the principal debt and finance charges thereon (not being the final instalment) in one amount before the due date thereof and on or before the date, as contemplated in section 3A(1)(c), stated in such notice,

such money lending transaction or credit transaction shall be deemed to be a transaction in respect of which payment of the principal debt and finance charges thereon has to be made in a manner other than by way of regular payments, and such moneylender or credit grantor shall recalculate the finance charges payable in respect of such transaction-

- (i) in accordance with the provisions of section 2(5) at the annual finance charge rate provided for in such instrument of debt; and
- (ii) as from the date of such transaction until the date on which such borrower or credit receiver intends to pay the said outstanding balance and finance charges in one amount,

and the finance charges so recalculated, notwithstanding anything to the contrary contained in such instrument of debt but subject to the provisions of section 4A, shall be the maximum finance charges which may be demanded, received or recovered in respect of such transaction by such moneylender or credit grantor.

(2) The provisions of subsection (1) shall apply *mutatis mutandis* where a borrower or credit receiver pays the outstanding balance of the principal debt and finance charges thereon (not being the final instalment)-

- (a) owing by him in connection with a money lending transaction or a credit transaction; and
- (b) which in terms of an agreement between himself and the moneylender or credit grantor concerned, have to be paid in instalments, including finance charges, over a period in the future,

before the due date thereof in one amount without notifying in writing such moneylender or credit grantor in accordance with a provision, as contemplated in section 3A(1)(a), in the instrument of debt concerned of his intention so to pay such outstanding balance and finance charges, and the date on which-

- (i) such outstanding balance and finance charges are so paid or the minimum period, as contemplated in section 3A(1)(b), provided for in the instrument of debt concerned, has expired, whichever date is the later date, shall be deemed to be the date on which notice was so given; and
- (ii) the period, as contemplated in section 3A(1)(a), provided for in the instrument of debt concerned, would have expired if such period had commenced on the applicable date referred to in paragraph (i), shall be deemed to be the date on which such period expired.

[Sec 6B inserted by sec 10 of Act 90 of 1980.]

6C Consequence of certain agreement relating to change of amount of instalments payable in terms of certain money lending transactions or credit transactions

(1) Where the principal debt and finance charges owing by a borrower or a credit receiver in connection with a money lending transaction or a credit transaction, not secured by a mortgage bond over immovable property or a notarial bond over movable property, have, in terms of an agreement between himself and the moneylender or credit grantor concerned, to be paid in instalments, including finance charges, over a period in the future, and such moneylender or credit grantor and such borrower or credit receiver concluded an agreement in terms of which such principal debt and finance charges as from a stated date are to be paid by way of instalments greater or smaller than the instalments agreed upon at the conclusion of such money lending transaction or credit transaction, such money lending transaction or credit transaction shall be terminated as from such date and a new money lending transaction or credit transaction shall be concluded between such moneylender or credit grantor and such borrower or credit receiver as from such date in respect of the balance of such principal debt and finance charges thereon still unpaid on such date.

(2) For the purposes of subsection (1) the balance of the principal debt and finance charges thereon which on the date on which the money lending transaction or credit transaction concerned is terminated in terms of that subsection, are still unpaid in respect of that transaction, shall be calculated in accordance with the provisions of section 6B(1) as if-

- (a) such balance and finance charges had been paid in one amount before the due date thereof and on the date on which such transaction was so terminated;
- (b) the date on which such transaction was so terminated, were the date, as contemplated in section 3A(1)(c), stated in a notice referred to in section 6B(1)(b).

(3) A moneylender or credit grantor shall not recover finance charges in connection with a money lending transaction or a credit transaction concluded in terms of subsection (1) at an annual finance charge rate exceeding the maximum rate which on the date on which such transaction was concluded, could have been stipulated for, demanded or received in terms of section 2 in respect of such transaction.

(4) Any insurance premiums, taxes and other fiscal charges, licence and other fees actually paid or payable by the moneylender or credit grantor concerned in respect of a money lending transaction or a credit transaction terminated under subsection (1), shall be deemed to have been paid or be payable in respect of a money lending transaction or a credit transaction concluded in terms of that subsection.

(5) If a money lending transaction or a credit transaction is concluded in terms of subsection (1), the moneylender or the credit grantor shall be entitled to recover from the borrower or credit receiver the costs in respect of stamp duties, taxes and other fiscal charges actually paid or payable in connection with the execution of the instrument of debt in respect of such transaction.

(6) Where the principal debt and finance charges owing by a borrower or a credit receiver in connection with a money lending transaction or a credit transaction, secured by a mortgage bond over immovable property or a notarial bond over movable property, have, in terms of an agreement between himself and the moneylender or credit grantor concerned, to be paid in instalments, including finance charges, over a period in the future, and such moneylender or credit grantor and such borrower or credit receiver concluded an agreement, which shall be in writing, in terms of which such principal debt and finance charges thereon are to be paid as from a stated date by way of instalments greater or smaller than the instalments agreed upon at the conclusion of such money lending transaction or credit transaction, the balance of the principal debt and finance charges thereon still unpaid on such date in respect of such transaction, shall be calculated in accordance with the provisions of section 6B(1) as if-

- (a) such balance and finance charges had been paid in one amount before the due date thereof and on such stated date; and
- (b) such stated date where the date, as contemplated in section 3A(1)(c), stated in a notice, as contemplated in section 3A(1)(a), given in accordance with a provision of the instrument of debt concerned.

(7) An agreement concluded in terms of subsection (6) shall contain the following particulars, namely-

- (a) the aggregate amount of the principal debt and finance charges thereon, as calculated in terms of that subsection, still unpaid on the stated date referred to in that subsection;
- (b) the amount of the new principal debt and finance charges thereon which are to be paid in instalments over a period in the future;
- (c) the period over which the principal debt and finance charges thereon are to be paid;
- (d) the rate at which finance charges are to be calculated with effect from the stated date referred to in that subsection;
- (e) the date on which or the number of instalments in which the principal debt together with the finance charges must be paid, the amount of each

instalment, and the due date of each instalment or the manner in which that date is determined.

(8) The provisions of subsections (3), (4) and (5) shall apply *mutatis mutandis* in respect of an agreement concluded in terms of subsection (6).

[Sec 6C inserted by sec 10 of Act 90 of 1980.]

6D Consequence of certain agreement relating to consolidation of principal debts and finance charges payable in terms of several money lending transactions or credit transactions

Where a borrower and a moneylender or a credit receiver and a credit grantor concluded an agreement to treat, as from a stated date and for the purposes of payment, as one debt two or more than two amounts owing and payable in respect of principal debt and finance charges in connection with various money lending transactions or credit transactions, such transactions shall be deemed to have been terminated on such stated date, and thereupon the provisions of section 6C regarding a transaction which has been terminated and the calculation of the outstanding balance of the principal debt and finance charges thereon in respect of a transaction so terminated, shall apply *mutatis mutandis* in respect of any such agreement.

[Sec 6D inserted by sec 10 of Act 90 of 1980.]

6E Replacement of property in terms of certain leasing transactions and change of amount of instalments payable in terms of certain leasing transactions

(1) Where the principal debt and finance charges owing by a lessee in connection with a leasing transaction have, in terms of an agreement between himself and the lessor concerned, to be paid in instalments, including finance charges, over a period in the future, and such lessee and lessor concluded an agreement in terms of which-

- (a) the movable property leased in terms of such transaction is to be replaced by any other movable property; or
- (b) such principal debt and finance charges as from a stated date are to be paid by way of instalments greater or smaller than the instalments agreed upon at the conclusion of such transaction,

such transaction shall be terminated as from the date on which such movable property is replaced or the stated date referred to in paragraph, and a new leasing transaction shall be concluded by such lessee and lessor.

(2) If a leasing transaction has been terminated in terms of subsection (1), the principal debt and finance charges owing by the lessee concerned in connection with such transaction shall be calculated in accordance with the provisions of section 6F.

[Sec 6E inserted by sec 10 of Act 90 of 1980.]

6F Termination of leasing transactions before expiry of lease

(1) Where a leasing transaction is terminated in terms of section 6E before the expiry of the lease agreed upon at the time of the conclusion of such transaction, such transaction shall be deemed to be a transaction in respect of which payment of the principal debt and of finance charges thereon is to be made in a manner other than by way of regular payments, and the lessor shall not in respect of such transaction demand, receive or recover from the lessee a sum of money which in the aggregate exceeds the difference between-

- (a) the aggregate amount of the principal debt still unpaid on the date on which such transaction is terminated and of finance charges owing thereon, which finance charges shall, as from the date on which such transaction was concluded to the date on which it is terminated, be calculated in accordance with the provisions of section 2(5) at the annual finance charge rate disclosed in the instrument of debt executed in connection with such transaction; and
- (b) the money value of the movable property leased in terms of the transaction concerned, on the date on which such transaction was terminated, as determined by the lessor in terms of section 6K(1) and (2).

(2) For the purposes of subsection (1) the principal debt on the date on which the transaction concerned was terminated, shall be calculated as follows, namely-

- (a) the amount of the principal debt stated in the instrument of debt executed in connection with such transaction; plus
- (b) the present value of the book value of the movable property leased in terms of such transaction as calculated by the lessor in determining the amount of the principal debt stated in the instrument of debt executed in connection with such transaction; less
- (c) the total amount, excluding finance charges, paid since the conclusion of such transaction by the lessee to the lessor.

[Sec 6F inserted by sec 10 of Act 90 of 1980.]

6G Consequence of notice relating to payment before due date of outstanding principal debt and finance charges in terms of certain leasing transactions in the event of termination of such transactions

The provisions of section 6F shall apply *mutatis mutandis* where the principal debt and finance charges owing by the lessee in connection with a leasing transaction have, in terms of an agreement between himself and the lessor, to be paid in instalments, including finance charges, over a period in the future, and the lessee by notice in writing in accordance with a provision, as contemplated in section 3A(1)(a), of the instrument of debt concerned, has notified the lessor of his intention to pay the outstanding balance of the principal debt and finance charges thereon (not being the final instalment) in one amount before the due date thereof on the date, as contemplated in section 3A(1)(c), stated in such notice, and such transaction is to be terminated by such payment.

[Sec 6G inserted by sec 10 of Act 90 of 1980.]

6H Consequence of payment before due date without notice of outstanding principal debt and finance charges in terms of certain leasing transactions in the event of termination of such transactions

The provisions of section 6F shall apply *mutatis mutandis* where the principal debt and finance charges owing by a lessee in connection with a leasing transaction have, in terms of an agreement between himself and the lessor, to be paid in instalments, including finance charges, over a period in the future, and the lessee pays such principal debt and finance charges (not being the final instalment) in one amount before the due date thereof without notifying the lessor in writing in accordance with a provision, as contemplated in section 3A(1)(a), of the instrument of debt

concerned of his intention so to pay such principal debt and finance charges, and such transaction is terminated by such payment: Provided that the date on which-

- (a) such transaction is terminated or the minimum period, as contemplated in section 3A(1)(b), provided for in the instrument of debt concerned, has expired, whichever date is the later date, shall be deemed to be the date on which notice was so given; and
- (b) the period, as contemplated in section 3A(1)(a), provided for in the instrument of debt concerned, would have expired if such period had commenced on the applicable date referred to in paragraph (a), shall be deemed to be the date on which such period expired.

[Sec 6H inserted by sec 10 of Act 90 of 1980.]

6I Consequence of notice relating to payment before due date of outstanding principal debt and finance charges in terms of certain leasing transaction if such transactions not terminated

(1) Where the principal debt and finance charges owing by a lessee in connection with a leasing transaction have, in terms of an agreement between himself and the lessor concerned, to be paid in instalments, including finance charges, over a period in the future, and the lessee by notice in writing in accordance with a provision, as contemplated in section 3A(1)(a), of the instrument of debt concerned, has notified the lessor of his intention to pay the outstanding balance of the principal debt and finance charges thereon (not being the final instalment) in one amount before the due date thereof on the date, as contemplated in section 3A(1)(c), stated in such notice, and such transaction is not to be terminated by such payment, such transaction shall be deemed to be a transaction in respect of which payment of the principal debt and finance charges thereon has to be made in a manner other than by way of regular payments, and such lessor shall recalculate the finance charges payable in respect of such transaction-

- (a) in accordance with the provisions of section 2(5) at the annual finance charge rate provided for in such instrument of debt; and
- (b) as from the date of such transaction until the date as stated in the notice contemplated in section 3A(1)(c) or the date on which the minimum period, as contemplated in section 3A(1)(b), provided for in the instrument of debt concerned, expired, whichever date is the later date,

and the finance charges so recalculated, notwithstanding anything to the contrary contained in such instrument of debt, shall be the maximum finance charges which may be demanded, received and recovered in respect of such transaction by such lessor.

(2) The provisions of section 6K relating to the duties of a lessor shall apply *mutatis mutandis* to a leasing transaction in respect of which the outstanding balance of the principal debt and finance charges thereon have been paid in the manner referred to in subsection (1).

[Sec 6I inserted by sec 10 of Act 90 of 1980.]

6J Consequence of payment before due date without notice of outstanding principal debt and finance charges in terms of certain leasing transactions if such transactions not terminated

The provisions of section 6I shall apply *mutatis mutandis* where a lessee pays the outstanding balance of the principal debt and finance charges thereon (not being the final instalment)-

- (a) owing by him in connection with a leasing transaction; and
- (b) to be paid, in terms of an agreement between himself and the lessor concerned, in instalments, including finance charges, over a period in the future,

before the due date thereof in one amount without terminating the transaction and without notifying such lessor in writing in accordance with a provision, as contemplated in section 3A(1)(a), in the instrument of debt concerned of his intention so to pay such balance and finance charges, and the date on which-

- (i) such balance and finance charges are so paid or the minimum period, as contemplated in section 3A(1)(b), provided for in the instrument of debt concerned, expired, whichever date is the later date, shall be deemed to be the date on which notice was so given; and
- (ii) the period, as contemplated in section 3A(1)(a), provided for in the instrument of debt concerned, would have expired if such period had commenced on the applicable date referred to in paragraph (i), shall be deemed to be the date on which such period expired.

[Sec 6J inserted by sec 10 of Act 90 of 1980.]

6K Money value of leased property at expiry of lease or termination of leasing transaction

(1) If a leasing transaction in respect of which finance charges are levied, expires or is terminated for reasons other than the failure of the lessee to meet his obligations in terms of such transaction, the lessor shall, notwithstanding anything to the contrary contained in the instrument of debt concerned or in any other agreement between the lessor and lessee-

- (a) not more than 30 days before the date on which such transaction expires or is so terminated, determine the money value, as at that date, of the movable property leased in terms of such transaction; and
- (b) not later than 14 days before that date, in writing notify the lessee of the money value so determined,

and thereupon the lessor shall be obliged to sell or, in terms of a new leasing transaction, lease such property to the lessee at such money value if the lessee before that date in writing notified the lessor that he intends to buy or again lease such property.

(2) Where a leasing transaction in respect of which finance charges are levied is terminated by a lessor on account of the failure of the lessee to meet his obligations in terms of such transaction, the lessor shall determine the money value, as at the date on which such transaction is so terminated, of the movable property leased in terms of such transaction, and notify the lessee in writing within 14 days after the lessor obtains access to the property to enable a valuation to be made.

[Subsec (2) substituted by sec 7(a) of Act 42 of 1986.]

(3) If-

- (a) on expiry of the leasing transaction in respect of which finance charges are levied the money value, as determined in terms of subsection (1), of the movable property leased in terms of the leasing transaction concerned,

exceeds the book value thereof or if such property is sold or leased to a person other than the lessee in terms of such transaction, at a price or money value, not including finance charges, exceeding such book value, the lessor in terms of such transaction, shall pay to the lessee, after deducting any amount owing by the lessee to the lessor, in cash the amount by which the money value so determined or the price or money value, not including finance charges, at which such property is sold or leased to such other person, whichever is the greater, exceeds such book value; or

- (b) a leasing transaction in respect of which finance charges are levied is terminated before the expiry of the lease agreed upon at the conclusion of such transaction, and the movable property leased in terms of such transaction is sold or leased to a person other than the lessee in terms of such transaction, at a price or money value, not including finance charges, exceeding the money value thereof as determined in terms of subsection (1) or (2), the lessor shall pay to the lessee, after deducting any amount owing by the lessee to the lessor, in cash the amount by which the price or money value, not including finance charges, at which such property is sold or leased to such other person exceeds the money value so determined in terms of subsection (1) or (2):

Provided that the lessor shall, if he after such expiry or termination repaired or caused to be repaired such property, be entitled to reduce for the purposes of calculating the amount to be paid as aforesaid to the lessee in cash, the price or money value at which such property was sold or leased to a person other than the lessee by the costs actually incurred by such lessor in respect of such repair.

[Subsec (3) substituted by sec 7(b) of Act 42 of 1986.]

(3A)(a) The provisions of subsections (1) and (3) shall not apply in respect of a leasing transaction which expires and in respect of which the book value of the movable property leased in terms of such transaction, is nil.

(b) If on expiry of the leasing transaction referred to in paragraph (a), the movable property in question is leased by the former lessor to the former lessee in terms of a new leasing transaction, the provisions of this Act shall not apply to such new transaction.

[Subsec (3A) inserted by sec 5 of Act 62 of 1987.]

(4) Two or more amounts owing and to be paid by the same lessee in connection with several leasing transactions to the same lessor as principal debts and finance charges. shall not be treated by the lessor as a single debt.

[Sec 6K inserted by sec 10 of Act 90 of 1980.]

6L Position regarding recovery of additional finance charges and other costs

The provisions of section 6B to 6K shall not be construed so as to prohibit a moneylender or a credit grantor or a lessor from recovering any amount paid in terms of section 5(1)(b) or 5A(1)(a) or any additional finance charges or legal costs referred to in section 5(1)(d), (e) or (f) or 5A(1)(b) or (c).

[Sec 6L inserted by sec 10 of Act 90 of 1980 and substituted by sec 6 of Act 100 of 1988.]

7 Recovery of amount overpaid in connection with money lending transaction credit transaction or leasing transaction

Any borrower or credit receiver or lessee who in connection with a money lending transaction or a credit transaction or a leasing transaction has paid an amount which exceeds the amount which in terms of this Act could lawfully have been recovered from him in connection with such transaction, may, at any time within a period of three years as from the date of such payment, recover from the person to whom he made the payment, a sum equal to the amount overpaid by him.

[Sec 7 substituted by sec 11 of Act 90 of 1980.]

8 Position of *bona fide* holder for value of instrument of debt

Any person who becomes a *bona fide* holder for value before maturity, of any instrument of debt discounted by a previous holder at an annual finance charge rate exceeding that authorized by this Act or in respect of which finance charges have been stipulated for, demanded or received at an annual finance charge rate exceeding the rate so authorized, may nevertheless recover the amount owing in terms of the instrument of debt, but the party from whom the said amount is so recovered, may reclaim from the said previous holder or from any person who has received finance charges in respect thereof at an unauthorized annual finance charge rate, an amount equal to the amount stipulated for, demanded or received in respect of finance charges in excess of the amount allowed by this Act.

9 Lower rate under another law not affected

The provisions of this Act shall not be construed as conferring authority to stipulate for, demand or receive finance charges or interest at a rate exceeding the rate that may be recovered in any case where by law the rate is fixed at less than the rate allowed by this Act, and shall not derogate from any power or jurisdiction which any court may have to refuse an order for the payment of finance charges or interest or to reduce the rate of finance charges or interest so claimed in any proceedings for the recovery of finance charges or interest even when such rate is less than the relevant rate set forth in section 2 of this Act.

9A Effect of Act on other statutes

The provisions of this Act shall not be construed as limiting, amending, repealing or otherwise altering any provision of any other Act or as exempting any person from any duty or obligation imposed by such other Act or prohibiting any person from complying with any provision of such other Act.

[Sec 9A inserted by sec 12 of Act 90 of 1980.]

10 Moneylender, credit grantor or lessor to furnish borrower, credit receiver or lessee with copy of instrument of debt and with certain information

(1) A moneylender carrying on the business of money lending or a credit grantor or lessor who, as the case may be, transacts credit transactions or leasing transactions in the normal course of his business shall, within 14 days after the date on which a money lending transaction or a credit transaction or a leasing transaction was concluded, deliver or send through the post to the borrower or credit receiver or lessee, as the case may be, a duplicate or true copy of the instrument of debt executed in connection with the transaction, or if no instrument of debt was so executed, a duplicate or true copy of a document which has been signed, as the case may be, by the moneylender and borrower or the credit grantor and credit receiver or the lessor and lessee or by their duly authorized representatives and wherein the relevant particulars specified in section 3(1) or (2) or (2A) are set forth.

(2) On a written demand by a borrower or a credit receiver or a lessee and against payment of an amount prescribed by the Minister, a moneylender, excluding the holder of a debenture, or credit grantor or lessor shall, at any time during the currency of an agreement in connection with a money lending transaction or a credit transaction or a leasing transaction, furnish to such borrower or credit receiver or lessee or to any person named in such demand, a true copy of the instrument of debt concluded in connection with such transaction and a statement signed by the moneylender or credit grantor or lessor or his duly authorized representative, setting forth-

- (a) the amount of the principal debt which was owing by the borrower or credit receiver or lessee at the time of the conclusion of the transaction;
- (b) if applicable, the sum of any amounts referred to in section 5(1)(b) or 5A(1) actually paid out;
[Para (b) substituted by sec 7(a) of Act 100 of 1988.]
- (c) the amount of the finance charges levied in respect of the transaction;
- (d) the sum of the amounts referred to in paragraphs (a), (b) and (c);
- (e) the annual finance charge rate at which finance charges are payable;
- (f) the total amount paid off in respect of the principal debt and finance charges and, if applicable, in respect of the amounts referred to in paragraph (b), and the date and amount of every separate payment made by the borrower or credit receiver or lessee in connection with the transaction:

Provided that in the case of a money lending transaction in terms of a credit card scheme the moneylender concerned shall not be obliged to set forth in such statement any information in respect of any loan already repaid in full on the date of the written demand for such statement.

(3) A moneylender or a credit grantor or a lessor shall within three months after the date on which the transaction in question has been concluded and thereafter at intervals not exceeding three months or, if payments in terms of such transaction are payable at the end of periods exceeding three months, at the end of every such period, deliver or by post send to the borrower or credit receiver or lessee at the address stated on the agreement or such other address as may be notified in writing by the borrower or credit receiver or lessee from time to time a statement mentioning the total amount already paid in connection with such transaction since the last statement was furnished and the amount then still payable in connection with such transaction: Provided that the provisions of this subsection shall not apply in respect of any bill of exchange, debit balance, money loan or debenture referred to in section 3(3), or any transaction referred to in subsection (5)(a).

[Subsec (3) amended by sec 7(b) of Act 100 of 1988.]

(4) If a moneylender or a credit grantor or a lessor to whom a demand has been made in terms of subsection (2), fails without reasonable cause to comply therewith within seven days after the demand has been received by him, he shall be guilty of an offence.

(5) The provisions of subsection (1) shall not apply to or in respect of-

- (a) a money lending transaction or a credit transaction or a leasing transaction where the obligation of the borrower or credit receiver or

lessee, as the case may be, is secured wholly by a bond over movable or immovable property registered in a deeds registry;

- (b) a debit balance in an account with a banking institution as defined in the Banks Act, 1965 (Act 23 of 1965), from which withdrawals may be made by cheque;
- (c) a money lending transaction where the borrower is a banking institution aforesaid.

(6) If agreement has been reached upon a variable finance charge rate in terms of section 2B(3) and no notice in writing of any alteration of such rate and the date upon which that alteration shall commence has in advance been delivered or sent through the post by a moneylender, credit grantor or lessor to a borrower, credit receiver or lessee, the moneylender, credit grantor or lessor shall at the first reasonable opportunity but not later than three months after the date upon which the alteration of the finance charge rate has commenced, deliver or send through the post to the borrower, credit receiver or lessee a written notice of such alteration and the date upon which that alteration has commenced.

[Sec 10 amended by sec 5 of Act 76 of 1970 and substituted by sec 13 of Act 90 of 1980.]

[Subsec (6) added by sec 5 of Act 91 of 1989.]

11 Legal proceedings for recovery of debt incurred in connection with a money lending transaction, a credit transaction or a leasing transaction

If in any proceedings, whether by way of provisional sentence, summary judgment or otherwise, for the recovery of a debt in pursuance of a money lending transaction or a credit transaction or a leasing transaction, the defendant alleges that payment of finance charges is claimed by, or has been made to, the plaintiff at a rate exceeding the maximum annual finance charge rate allowed by this Act, and the defendant requests that the plaintiff be called as a witness to prove his claim, no judgment shall be granted in such proceedings until the court has afforded the defendant or his legal representative an opportunity to examine the plaintiff in regard to his claim unless it appears to such court that such examination is impracticable or that the defendant's allegation is *prima facie* without foundation.

[Sec 11 substituted by sec 14 of Act 90 of 1980.]

11A Legal proceedings for recovery of costs for repair or maintenance of leased property

A lessor shall not demand or receive any costs incurred by him in connection with the repair or maintenance of movable property leased in terms of a leasing transaction, unless such costs are reasonable and were incurred in terms of an agreement in writing between him and the lessee concerned.

[Sec 11A inserted by sec 15 of Act 90 of 1980.]

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[Sec 12 repealed by sec 16 of Act 90 of 1980.]

13 Powers of inspection

(1) An inspector appointed under section 2 of the Inspection of Financial Institutions Act, 1984 (Act 38 of 1984), may at any time at the direction of the Registrar inspect the affairs of a moneylender or a credit grantor or a lessor for the purposes of this Act.

[Subsec (1) substituted by sec 17(a) of Act 90 of 1980 and amended by sec 8 of Act 42 of 1986.]

(2) The provisions of the Inspection of Financial Institutions Act, 1984, shall apply *mutatis mutandis* in respect of an inspection carried out in terms of subsection (1).
[Subsec (2) amended by sec 8 of Act 42 of 1986.]

(3) For the purposes of the application of the provisions of the Inspection of Financial Institutions Act, 1984, to an inspection under this section, any reference in that Act to a financial institution shall be construed as a reference to a moneylender or a credit grantor or a lessor and any reference therein to the registrar shall be construed as a reference to the Registrar.

[Subsec (3) substituted by sec 17(b) of Act 90 of 1980 and amended by sec 8 of Act 42 of 1986.]

14 Furnishing of information to Registrar

The Registrar may at any time require any moneylender or credit grantor or lessor to furnish him with any information, duly certified as correct by any person registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), if the Registrar requires such certification, relating to any of such moneylender's money lending transactions or credit grantor's credit transactions or lessor's leasing transactions, and if the moneylender or credit grantor or lessor fails to furnish the Registrar within 30 days after receipt of a written request from the Registrar, or within such further period thereafter as the Registrar may allow, with any information demanded by the Registrar, such moneylender or credit grantor or lessor shall be guilty of an offence.

[Sec 14 substituted by sec 18 of Act 90 of 1980.]

15 Exemptions from the provisions of this Act

The provisions of this Act, as amended by the Limitation and Disclosure of Finance Charges Amendment Act, 1980, shall not apply to-

- (a) any money lending transaction or any credit transaction or any leasing transaction entered into before, or any instrument of debt existing at, the commencement of that Amendment Act: Provided that the said provisions, so amended, shall apply to or in respect of any increase in an existing principal debt or the renewal of every such transaction or instrument effected on or after the date of commencement of that Amendment Act;

[Para (a) substituted by sec 19(b) of Act 90 of .1980.]

- (b)

[Para (b) deleted by sec 19(c) of Act 90 of 1980.]

- (c) the Land and Agricultural Bank of South Africa;

- (d) the South African Reserve Bank;

- (e)

[Para (e) deleted by sec 1 of Act 1 of 2000.]

- (f) a sum of money deposited with or lent to a banking institution as defined in section 1(1) of the Banks Act, 1965 (Act 23 of 1965), or a building society registered in terms of the Building Societies Act, 1965 (Act 24 of 1965);

[Para (f) added by sec 19(d) of Act 90 of 1980.]

- (g) a money lending transaction or a credit transaction or a leasing transaction in terms of which the principal debt exceeds, on the date on which such transaction is entered into, R100 000 or any such other

amount, whether greater or smaller, as may be prescribed by regulation for the purposes of this paragraph, or in terms of which the principal debt, on the date on which such transaction is entered into, together with the aggregate amount of the principal debt owing on that date by the same borrower or credit receiver or lessee to the same moneylender or credit grantor or lessor in respect of another transaction or other transactions of the same kind, exceeds R100 000 or the amount so prescribed;

[Para (g) added by sec 19(d) of Act 90 of 1980.]

(h) a leasing transaction-

- (i) which expires, within three months from the date of the conclusion of such transaction, in terms of the instrument of debt executed in connection therewith;
- (ii) which is not renewed by the lessor on expiry of the lease agreed upon at the conclusion of such transaction; and
- (iii) in respect of which the principal debt and finance charges thereon are to be paid by the lessee to the lessor before or on the date of expiry of the lease referred to in subparagraph (ii);

[Para (h) added by sec 19(d) of Act 90 of 1980.]

(i) a debenture quoted on a stock exchange in the Republic.

[Sec 15 substituted by sec 4 of Act 62 of 1974 and amended by sec 19(a) of Act 90 of 1980.]

[Para (i) added by sec 19(d) of Act 90 of 1980.]

15A Exemptions by Minister

The Minister may from time to time by notice in the *Gazette* exempt the categories of money lending transactions, credit transactions or leasing transactions which he may deem fit, from any of or all the provisions of this Act on such conditions and to such extent as he may deem fit, and may at any time in like manner revoke or amend any such exemption.

[Sec 15A inserted by sec 8 of Act 100 of 1988 and substituted by sec 6 of Act 91 of 1989.]

16 Regulations

The Minister may make regulations with regard to all matters which, in terms of any provision of this Act, are required or permitted to be prescribed, or which he deems it necessary or expedient to prescribe in order to achieve the objects of this Act.

17 Penalties

Any person who contravenes any provision of this Act or fails to comply with any provision of this Act with which it is his duty to comply, shall be guilty of an offence and liable on conviction to a fine not exceeding ten thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

[Sec 17 substituted by sec 9 of Act 100 of 1988.]

18 Jurisdiction of magistrate's court

Notwithstanding anything to the contrary in any law contained, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

18A Statement of question of law for opinion of Supreme Court

(1) If a question of law arises between the Registrar and any other person concerning the application of any provision of this Act to any money lending transaction or credit transaction or leasing transaction to which such person is a party, the Registrar or such person who is a party to the transaction may state such question of law in the form of a special case for the opinion of any division of the Supreme Court of South Africa having jurisdiction, and shall transmit that special case to the registrar of that court.

(2) A question of law referred to in subsection (1) may be argued before the court in question and such court may call for such further information as it may deem necessary.

(3) Any person who is a party to the transaction in question and the Registrar shall be entitled to appear at the arguing of the question of law concerned.

(4) The court may give such opinion as it may deem fit in respect of the special case, as supplemented by the information referred to in subsection (2), if any, and may make such order as to the costs of the proceedings before it, as it may deem fit.

(5) The Registrar or any person who is a party to the transaction concerned, shall have a right of appeal to the appellate division of the Supreme Court against an opinion referred to in subsection (4).

[Sec 18A inserted by sec 20 of Act 90 of 1980.]

19 Application of Act to South-West Africa

(1) The provisions of this Act and any amendment thereof shall apply also in the territory of South-West Africa, including the area known as the Eastern Caprivi Zipfel and referred to in section 3(3) of the South-West Africa Affairs Amendment Act, 1951 (Act 55 of 1951), and also in relation to all persons in that portion of the territory of South-West Africa known as the "Rehoboth Gebiet" and defined in the First Schedule to Proclamation 28 of 1923, of the Administrator of the said territory.

(2) For the purposes of the said application any reference in this Act-

(a) to the Insolvency Act, 1936 (Act 24 of 1936), shall be construed as a reference to that Act as applied to the said territory by section 158ter of the said Act; and

(b) to a registrar of deeds shall be construed as a reference to the Registrar of Deeds of the said territory.

20 Repeal of existing laws

(1) The Usury Act, 1926 (Act 37 of 1926), the Usury Amendment Act, 1933 (Act 1 of 1933), and section 23 of the Banks Act, 1965 (Act 23 of 1965), are hereby repealed.

(2) Notwithstanding any repeal effected by this section, the law in force immediately before the commencement of this Act shall, subject to the provisions of the proviso to section 15(a), continue to apply to every money lending transaction entered into before, and to every instrument of debt executed in connection with a money lending transaction and existing at, such commencement.

21 Short title and date of commencement

This Act shall be called the Usury Act, 1968, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

[Sec 21 amended by sec 9 of Act 42 of 1986.]

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