

Supplement No. 1
To Gazette No. 71 of 15th December, 1989

Money Lenders Order, 1989

Order No. 25 of 1989

Published by the Authority of His Majesty the King
On the advice of the Military Council

MONEY LENDERS ORDER, 1989**ARRANGEMENT OF SECTIONS****SECTION****PART I – PRELIMINARY**

1. Short title and Commencement
- 2 Interpretation

PART II – MONEY LENDER’S LICENCE

- 3 Application for and grant of a money-lender’s licence
- 4 Licences to be taken out by money-lenders

PART III – RATE OF INTEREST, CONTRACTS

- 5 Rate of Interest, contracts
- 6 Harsh and unconscionable interest rate
- 7 Form of money-lender’s contract

PART IV – OBLIGATIONS OF MONEY-LENDER

- 8 Obligation to supply information to borrower
- 9 Money-lender to give receipts

PART V – LEGAL PROCEEDINGS

- 10 Powers of Court
- 11 Limitation of time for proceedings

PART VI – PENAL PROVISIONS

- 12 Failure to comply with provisions of Order
- 13 Re-opening transactions of Money-Lender
- 14 Unlawful use of money-lender’s licence
- 15 Prohibition of unauthorised dealings in money
- 16 Restrictions of money lending advertisements

-
- 17 False statements and representations
 - 18 Notice and information on assignment of money- lenders
 - 19 Prohibition of compound interest and provision as defaults
 - 20 Prohibition of charge for expenses on loans
 - 21 Names to be stated on documents issued by money-lenders
 - 22 Taking promissory note where amount is left blank or not truly stated

PART VII – SUPPLEMENTARY AND TRANSITIONAL PROVISIONS

- 23 Application in respect of assignees
- 24 Insolvency proceedings for money-lenders' loans
- 25 Exemptions
- 26 Savings
- 27 Regulations

ORDER NO. 25 OF 1989
MONEY-LENDERS ORDER, 1989
ORDER

To make provision for the regulation of money-lending and for purposes connected therewith.

Part I – Preliminary

- | | |
|---|------------------------------------|
| 1. This Order may be cited as the Money-lenders Order, 1988 and shall come into operation on a date of its publication in the gazette. | Short title
and
commencement |
| 2. In this Order, unless the context otherwise requires, “assigned” means assigned by any assignment inter vivos other than an assignment by operation of law; | Interpretation |

“authorised address” means the address at which a money-lender is authorised by a licence granted under this Order to carry on business as a money-lender;

“authorised name” means the name under which a money-lender is authorised by a licence granted under this Order to carry on business as a money-lender;

“business name” means the name and style under which any business is carried on, whether in partnership or otherwise;

“firm” means an unincorporate body of one or more individuals, and one or more corporations, who have entered into partnership with one another with a view to carrying on business for profit;

“interest” includes any amount, by whatever name called in excess of the principal, paid or payable to a money-lender in consideration or otherwise in respect of a loan;

“licence” means a money-lender’s licence granted under section 3:

“Minister” means the Minister responsible for Finance;

“money-lender” includes every person whose business is that of money-lending or who advertises or announces himself or holds out in any way as carrying on that business whether or not that person also possesses or earn property or money derived from sources other than the lending of money and whether or not that person carries on the business as principal or agent; but shall not include,

- (a) any person **bona fide** carrying on financial, banking business or insurance or **bona fide** carrying on any business not having for its primary object the lending of money, in the course of which and for the purpose whether he lends money;
- (b) any society registered under the Co-operative Societies Proclamation, 1948
- (c) anybody corporate, incorporated or empowered by special enactment to lend money in accordance with that enactment;
- (d) any credit institution defined in terms of the Financial Institutions Act, 1973; or
- (e) any person exempted from the provisions of this Order by the Minister under section 25;

P. 47 of
1948

“principal” means in relation to a loan the amount actually lent to the borrower.

PART II – Money-Lender’s Licence

A. 23 of
1973

(2) An application for a money-lender’s licence shall be in the prescribed form and shall be accompanied by such information, documents and fees as may be prescribed.

(3) A person wishing to carry on the business of money-lending shall make an application to the Commissioner of Financial Institutions for the grant of a money-lender’s licence.

Application
for and grant
of a money-
lender’s
licence

(3). A money-lender’s licence shall not authorise a money-lender to carry on business,

-
- (a) at more than one address;
- (b) under more than one name;
- (c) under the name which includes the word “bank” or otherwise implies that he carries on banking or financial business under any name except,
- (i) his true name;
 - (ii) the name of a firm in which he is a partner, other than a firm exempted by the Minister in terms of section 25; or
 - (iii) under a business name, whether of an individual or a firm in which he is a partner under which he or the firm has, the coming into operation of this Order has been registered for not less than three years, under the Companies Act, 1967, or any law relating to business names.
- (4) A money-lender’s licence shall remain in force for a period of one year beginning on the day when it is issued and may be renewed from time to time, and shall be subject to such conditions as may be attached thereto. A. 25 of 1967
- (5) The Commissioner of Financial Institutions shall not refuse to grant a money-lender’s licence except on one or more of the following grounds;
- (a) that satisfactory evidence has not been produced of the good character of the applicant, and in the case of a company, of the person responsible for the management thereof;
 - (b) that satisfactory evidence has been produced that the applicant, or any person responsible or proposed to be responsible as a money-lender is not a fit and proper person to hold the money-lender’s licence;
 - (c) that the applicant has not complied with any regulations made under this Order with respect to a money lender’s licence.
- (6) A person aggrieved by the decision of the Commissioner of Financial Institutions to refuse to grant a money-lender’s licence may appeal in writing to the Minister and the

decision of the Minister shall be final.

4. (1) Save as otherwise provided in this Order, every money-lender shall take out annually a money-lender's licence in respect of every address at which he carries his business.

Licences to be taken out by money-lenders

(2). Where one partner in a firm of money-lenders has duly taken out a money-lender's licence, every other partner in the firm shall, subject to section 3, be issued with a money-lender's licence free of charge for the business of the firm for such time as he shall remain a member of the firm.

(3). A money-lender's licence shall be taken out by a money-lender in his true name, and shall be void if it is taken out in any other name, but every money-lender's licence shall also show the money-lender's authorised name and authorised address.

PART III – Rate of Interest, Contracts

Rate of interest

5. Where by a contract for the loan of money by a money-lender the interest charged on the loan is not expressed in terms of a rate,

- (a) any amount paid or payable to the money-lender under the contract, other than simple interest charged in accordance with section 19(2) (a) shall be appropriate to principal; and
- (b) interest in the proportion that the principal bears to the total amount of the interest and the rate per centum represented by the interest charged as calculated in accordance with the Schedule shall be deemed to be the rate of interest charged on the loan.

Schedule

6. (1) Where in any proceedings in respect of,
- (a) any money lent by a money-lender after the coming into operation of this Order; or
 - (b) any agreement or security made or taken after the coming into operation of this Order in respect of money lent either before or after the coming into operation of this Order,

Harsh and unconscionable interest rates

it is found that the interest charged exceeds the rate of 25% per annum, or the corresponding rate in respect of any other period, the court shall presume for the purposes of section 13 that the interest charged is excessive and that the transaction is harsh and unconscionable, but this subsection is without prejudice to the powers of the court under section 13 where the court is satisfied that the interest charged, although not exceeding 25% per annum, is excessive.

- (2) The powers of the court under section 13.2 may,
- (a) in the event of insolvency of the borrower, be exercised, at the instance of the trustee in insolvency, notwithstanding that he may not be a person liable in respect of the transaction; and
 - (b) be exercised notwithstanding the money-lender's right of action for the recovery of money lent is barred.
7. (1) No contract for the repayment by a borrower of money lent to him or to any agent on his behalf by a money-lender or for the payment by him of interest on money so lent, and no security given by the borrower or by any such agent in respect of any such contract shall be enforceable, unless
- Form of money-lenders contracts
- (a) a note or memorandum in writing of the contract is made and signed personally by the borrower; and
 - (b) a copy thereof is delivered or sent to the borrower within seven days of the making of the contract, and no such contract or security shall be enforceable if it is proved that the note or memorandum was not signed by the borrower before the money was lent or before the security was given, as the case may be.
- (2) The note or memorandum shall contain all the terms of the contract and in particular shall show,
- (a) the date on which the loan is made;
 - (b) the amount of the principal of the loan; and

(c) either the interest charged on the loan expressed in terms of a rate per centum per annum or the rate per centum per annum represented by the interest charged as calculated in accordance with the Schedule.

PART IV – Obligations of Money-Lender

8. (1) In respect of every contract for the repayment of money lent by a money-lender, whether made before or after the coming into operation of this Order, the money-lender shall, on any reasonable demand in writing being made by the borrower at any time during the continuance of the contract supply free of charge to the borrower or, if the borrower so requires, to any person specified in that behalf in the demand, a statement signed by the money-lender or his agent showing,
- Obligation to supply information to borrower
- (a) the date on which the loan was made;
 - (b) the amount of the principal of the loan and the rate per centum per annum of the interest charged;
 - (c) the amount of any payment already received by the money-lender in respect of the loan and the date on which it was made;
 - (d) the amount of any payment already received by the money-lender in respect of the loan and the date on which it was made;
 - (e) the amount of every sum due to the money-lender but unpaid and the date upon which it became due, and the amount of interest accrued, due and unpaid in respect of every such sum; and
 - (f) the amount of every sum not yet due which remains outstanding and the date upon which it will become due.
- (2) A money-lender shall, on any reasonable demand in writing by the borrower, and on payment of M1.00 (one Loti) for expenses, supply a copy of any document relating to a loan made by him or any security thereof, to the borrower, or if the borrower so requires, to any person specified in that behalf in the demand.

-
- (3) If a money-lender to whom a demand has been made under this section fails without reasonable excuse to comply therewith within one month after the demand has been made,
- (a) he shall not, so long as the default continues, be entitled to sue for, or recover any sum due under the contract on account either of principal or interest; and
 - (b) interest shall not be charged in respect of the period of the default
9. (1) A money-lender shall give a receipt for every payment made to him on account of a loan or of interest thereon and every such receipt shall be given immediately the payment is made.
- Money – lender to give receipts and keep records
- (2) A money-lender shall keep a book, which shall be securely bound and paged so that leaves cannot be removed or inserted without apparent damage, in which he shall enter in connection with every loan made by him,
- (a) the date on which the loan was made;
 - (b) the amount of the principal;
 - (c) the rate of interest; and
 - (d) all the sums received in respect of the loan or the interest thereon with the dates of payment thereof, and shall produce such book when required to do so by any court.
- (3) The entries in the said book shall be made on the making of the loan or on the receipt of sums paid in respect thereof, as the case may be.
- (4) A money-lender who fails to comply with any of the requirements of this section shall not be entitled to enforce any claim in respect of any transaction in relation to which the default

shall have been made.

Part V – Legal Proceedings

10. (1) Where proceedings are taken in any court by any person. Powers of court
- (a) for the recovery of any money lent; or
 - (b) for the enforcement of any agreement or security made or taken in respect of money lent, the plaintiff shall produce a statement of his account as prescribed in section 8.
- (2) Where in any such proceedings,
- (a) there is evidence which satisfies the court that default in payment of any sum due to the plaintiff under a contract for the loan of money has been made by the borrower; and
 - (b) it is proved that any further amount is outstanding under the contract but not yet due, the court may determine the contract and order the principal outstanding to be paid to the plaintiff with such interest thereon, if any, as the court may allow up to the date of payment.
- (3) Subsections (1) and (2) shall apply to any transaction which, whatever its form may be is substantially one of money-lending.
- (2) Nothing in this section shall,
 - (a) affect the rights of any bona fide assignee or holder for value without notice; or
 - (b) be construed as derogating from the existing powers of jurisdiction of any court.
11. (1) Subject to subsection (2), and to section 23 (2) © no proceedings shall lie for the recovery by a money lender, Limitation of time for proceedings
- (a) of any money lent by him after the coming into operation of this Order or of any interest in respect thereof, or
 - (b) for the enforcement of any agreement made or security taken after the coming into operation of this Order, in respect of any loan made by him,

unless the proceedings are commenced before the expiration of twelve months from the date on which the cause of action is accrued.

(2) Notwithstanding subsection (1)

- (a) if during the period of twelve months referred to in subsection (1) or at any time within any subsequent period during which proceedings may, by virtue of this subsection be brought, the debtor acknowledges in writing the amount due and gives a written undertaking to the money-lender to pay that amount the proceedings for the recovery of the amount due may be brought at any time within a period of twelve months from the date of the acknowledgement and undertaking;
- (b) the time limited by subsection (1) for the commencement of proceedings shall not begin to run in respect of any payments from time to time becoming due to a money-lender under a contract for the loan of money until a cause of action accrues in respect of the last payment becoming due under the contract;
- (c) if at the date on which the cause of action accrues or on which any such acknowledgement and undertaking is given by the debtor, the person entitled to take the proceedings in *non compos mentis*, the time limited by subsection (1) for the commencement of the proceedings shall not begin to run until that person ceases to be *non compos mentis* or dies, whichever first occurs; and
- (d) if at the date on which the cause of action accrues or on which any such acknowledgement and undertaking is given by the debtor, the debtor is out of Lesotho, the time limited by subsection (1) for the commencement of proceedings shall not begin to run until he return to Lesotho.

- (4) Without prejudice to the powers of court under section 13, if

at the time when proceedings are taken by a money-lender in respect of a default in the payment of any sum due to him under contract for the loan of money, any further amount is outstanding under the contract but not yet due, the court may determine the contract and order the principal outstanding to be paid to the money-lender with such interest thereon, if any, as the court may allow up to the date of payment.

Part VI – Penal Provisions

- | | |
|--|---|
| <p>12. A money-lender</p> <p>(a) without reasonable cause, defaults to supply information to the borrower or to a person authorized by the borrower relating to a loan made by him or any security thereof, to the borrower as required by section 8, and if such default is made or continued after proceedings have ceased to lie in respect of the loan;</p> <p>(b) fails to comply with any of the requirements of section 9, commits an offence and is liable on conviction to a fine of M2,000 or to imprisonment for a period of 2 years.</p> | <p>Failure to comply with provisions of Order</p> |
| <p>13. (1) Where,</p> <p>(a) proceedings are taken in any court by a money-lender for the recovery of any money lent after the coming into operation of this Order, or the enforcement of any agreement, or security made or taken after the coming into operation of this Order; and</p> <p>(b) there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals or any other charges, are excessive, and that, in either case, the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief.</p> | <p>Re-opening transactions of money-lenders</p> |

The court may,

- (i) reopen the transaction, and take an account between the money-lender and the person sued;
- (ii) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken between them;
- (iii) relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest and charges, as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable; and
- (iv) if any such excess has been paid or allowed in account by the debtor, may order the creditor to repay it and may set aside either wholly or in part, or revise or alter any security given or agreement made in respect of money lent by the money-lender and if the money-lender has parted with the security, may order him to indemnify the borrower or other person sued.

(2) Any court in which proceedings might be taken for the recovery of money lent by a money-lender may,

- (a) at the instance of the borrower or surety or other person liable, exercise the like powers as may be exercised under this section, where proceedings are taken for the recovery of the money lent; and
- (b) notwithstanding any provision or agreement to the contrary, entertain any application under this Order by the borrower or surety, or other person liable, notwithstanding that the time for repayment of the loan, or any installment, thereof, may not be due.

(3) Where a court reopens a transaction of a money-lender under

subsection (1), the court may,

- (a) require the money-lender to produce the licence granted to him in accordance with this Order; and
- (b) cause such particulars as the court thinks desirable to be endorsed on any such licence, and a copy of the particulars to be sent to the Commissioner of Financial Institutions.

(3) Where a court reopens a transaction of a money-lender under subsection (1), the court may,

- (a) require the money-lender to produce the licence granted to him in accordance with this Order; and
- (b) cause such particulars as the court thinks desirable to be endorsed on any such licence, and a copy of the particulars to be sent to the Commissioner of Financial Institutions.

(4) On any application relating to the admission or amount of proof by a money-lender in any insolvency proceedings, the court may exercise the like powers as may be exercised under this section when proceedings are taken for recovery of money.

(5) Subsections (1) to (4) shall apply to any transaction which, whatever its form may be is substantially one of money-lending by a money-lender.

(6) Nothing in this section shall,

- (a) affect the rights of any bona-fide assignee or holder for value without notice; or
- (b) be construed as derogating from the existing powers or jurisdiction of any court.

14. A person who

- (a) takes out a money-lender's licence in any name other than his true name;
- (b) carries on business as a money-lender without having in force a money-lender's licence authorizing him to do so;
- (c) being licensed as a money-lender
 - (i) carries on business as such in any name other than his authorized name, or at any

-
- other place than his authorized address;
 - (ii) enters into any agreement in the course of his business as a money-lender with respect to the advance or repayment of money otherwise than in his authorized name; or
 - (iii) takes any security for money in the course of his business as a money-lender, otherwise than in his authorized name,
- commits an offence and is liable.
- (a) on a first conviction to a fine of R500 or to imprisonment for a period of 6 months; and
 - (b) on a second or subsequent conviction, to a fine of M2,000 or to imprisonment of 2 years.

15. A person who deals in or participates in any business or activity by way of obtaining from or advancing money to the general public which business or activity is not specifically authorized by this Order or any other written law commits an offence and is liable on conviction to a fine of M2,000 or to imprisonment for a period of 2 years.

16.(1) No person shall knowingly send or deliver or cause to be sent or delivered to any person except in response to his written request any circular or other document advertising the name, address or telephone number of a money-lender, or containing an invitation.

- (a) to borrow money from a money-lender;
- (b) to enter into any transaction involving the borrowing of money from a money-lender; or
- (c) to apply to any place with a view to obtaining information or advice as to borrowing any money from a money-lender

Unlawful
use of
money-
lender's
licence

(2) Save as hereinafter provided, no person shall publish or cause to be published in any newspaper or other printed paper issued periodically for public circulation, or by means of any poster or placard, an advertisement advertising any such particulars, or containing any such invitations, as mentioned in subsection (1):

Provided that, an advertisement in conformity with the requirements of this Order relating to the use of names on money-lenders' documents may be published by or on behalf of a money-lender,

- (a) in any newspaper or in any such paper as aforesaid; or
- (b) by means of a poster or placard exhibited at any authorized address of the money-lender,

if it contains no addition to the particulars necessary to comply with the said requirements except any of the following particulars,

- (i) any authorized address at which he carries on business as a money-lender; the telegraphic address and telephone number thereof;
- (ii) the address at which he formerly carried on business;
- (iii) a statement that he lends money with or without security, and of the highest and lowest sums that he is prepared to lend; and
- (iv) a statement of the date on which the business carried on by him was first established.

Prohibition of unauthorized dealings in money

Restrictions on money-lending ads.

(3) No money-lender or any person on his behalf shall employ any agent or canvasser for the purpose of inviting any person to borrow money or to enter into any transaction involving the borrowing of money from a money-lender, and no person shall act as such agent or canvasser, or demand or receive, directly or indirectly any sum or other valuable consideration by way of commission or otherwise for introducing or undertaking or to introduce to a money-lender any person desiring to borrow money.

(4) Where any document issued or published by or on behalf of a money-lender purports to indicate the terms of interest upon which he is willing to make loans or any particular loan, the document shall express the interest proposed to be charged in terms of a rate per centum per annum or show the rate per centum per annum represented by the interest proposed to be charged as calculated in accordance with the Schedule.

(5) A person who contravenes this section commits an offence and is, in respect of each offence for which he is convicted, liable to a fine of M2,000 or to imprisonment for a period of 2 years.

(6) Where it is shown that a money-lending transaction was brought about by a contravention of any provision of this section, the transaction shall, notwithstanding that the money-lender was duly licensed under this Order, be void and unenforceable unless the money-lender proves that the contravention occurred without his consent or connivance.

17.If

- (a) any money-lender or any manager, agent or clerk of a money-lender; or
- (b) any person being a director, manager or other officer of any corporation carrying on the business of a money-lender,

by a false, misleading, or deceptive statement, representation or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money to agree to the terms on which money is or is to be borrowed, he commits an offence and is liable on conviction to a fine of M2,000 or to imprisonment for a period of 2 years.

18.(1) Where any debt in respect of money lent by a money-lender whether before or after the coming into operation of this Order or in respect of interest on any such debt or the benefit or any agreement made or security taken in respect of any such debt or interest is assigned to any assignee, the assignor, whether he is the money-lender by whom the money was lent or any person to whom the debt has been previously assigned shall, before the assignment is made,

- (a) give to the assignee notice in writing that the debts, agreement or security is affected by the operation of this Order; and
- (b) supply to the assignee all information necessary to enable him to comply with the provisions of this Order in relation to the obligation to supply

information as to the state of loans and copies of documents relating thereto.

(2) A person who contrives any of the provisions of subsection (1) is liable to indemnify any other person who is prejudiced by the contravention and, in addition, commits an offence and is liable on conviction to a fine of M2,000 or to imprisonment for a period of 2 years.

19.(1) Save as otherwise provided in this Order, any contract made after the coming into operation of this Order for the loan of money by a money-lender shall be void and unenforceable in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount, of interest being increased by reason of default in the payment of sums due under the contract.

(2) Provision may however be made by any such contract that if default is made in the payment upon the due date of any sum payable to the money-lender under the contract, whether in respect of the principal or interest,

- (a) the money-lender shall be entitled to charge simple interest on that sum from the date of the default until the sum is paid, at a rate not exceeding the rate payable in respect of the principal part from any default; and
- (b) any interest so charged shall not be reckoned for the purposes of this Order as part of the interest charged in respect of the loan.

(3). A person who contravenes any of the provisions of this section commits an offence and is liable on conviction to a fine of M2,000 or to imprisonment for a period of 2 years.

Prohibition
of charge for
expenses on
loans

20. (1) Any agreement between a money-lender and borrower or intending borrower to the money-lender or any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be void and unenforceable.

(2) if a sum is paid to a money-lender by a borrower or intending borrower as for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly.

(3) A person who contravenes any of the provisions of this section commits an offence and is liable on conviction to a fine or M2,000 or to imprisonment for a period of 2 years.

21. (1) Without prejudice to the provisions of the Companies Act, 1967, or any law relating to the registration of business-names, a money-lender shall not, for the purpose of his business, issue or publish, cause to be issued or published any advertisement, circular, business letter or other similar document which does not show in such manner as to be not less conspicuous than the other name, the authorized name of the money-lender.

(2) A money-lender who contravenes subsection (1) commits an offence and is liable on conviction to a fine of M550 or to imprisonment for a period of 6 months in respect of each offence.

(3) If a money-lender, for the purposes of his business, issues, publishes, or causes to be issued or published, any advertisement, circular or document of any kind whatsoever containing expressions which might reasonably be held to imply that he carries on banking or financial business, he is guilty of an offence and is liable on a first conviction,

- (a) on a first conviction to a fine of M550 or to imprisonment for a period of 6 months; and
- (b) on a second or subsequent conviction to a fine of M2,000 or to imprisonment for a period of 2 years.

22. A money-lender who takes, as security for any loan, a promissory note or other contract for the repayment of money lent in which the principal is, to the knowledge of the lender, not truly stated, or is left blank, commits an offence and is liable,

Names to be stated on documents issued by money-lenders A 25 of 1967

Taking promissory note where amount is left blank of note truly stated

-
- (a) on a first conviction to a fine of M550 or to imprisonment for a period of 6 months; and
 - (b) for a second time or subsequent conviction, to a fine of M2,000 or to imprisonment for a period of 2 years.
- Application
in respect of
assignee

Part VII – Supplementary and Transitional Provisions

23. (1) Save as hereinafter provided, this Order shall apply in respect of,

- (a) any debt to a money-lender for money lent by him after the coming into operation of this Order; or
- (b) interest on money so lent or of the benefit of any agreement made or security taken,

in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and except where the contest otherwise requires, reference in this Order to a money-lender shall accordingly be construed as including any such assignee as aforesaid.

(2) Notwithstanding anything in this Order,

- (a) any agreement with, or security taken by a money-lender in respect of money lent by him after the coming into operation of this Order shall be valid in favour of any bona fide assignee or holder for value without notice of any defect due to the operation of this Order and of any person deriving title under him;
- (b) any payment or transfer of money or property made bona fide by any person whether acting in a fiduciary capacity or otherwise, on the faith of the validity of any such agreement or security, without notice of any such defect shall, in favour of that person, be as valid as it would have been if the agreement or security had been valid; and
- (c) the provisions of Section 11 limiting the time for proceedings in respect for money lent shall not apply to

any such agreement or security commenced by a bona fide assignee or holder for value without notice that the assignment or security was affected by the operation of this Order, or by any person deriving title under him,

but in every such case, the money-lender shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this section, and nothing in this subsection shall render valid an agreement or security in favour of, or apply to proceedings commenced by an assignee or holder for value who is himself a money-lender.

Insolvency
proceedings
for money-
lenders
loans
P.57 of 1957

(3) Nothing in this section shall render valid for any purpose any agreement, security, or other transaction, which would, but for this Order, have been void or unenforceable.

A

24. (1) Where a debt due to a money-lender in respect of a loan made by him after the coming into operation of this Order includes interest, that interest shall, for the purpose of the provisions of the Insolvency Proclamation, 1957 relating to,

- (a) the presentation of a petition for sequestration of estates;
- (b) voting at meetings;
- (c) composition and schemes of arrangement and dividend, be calculated at a rate not exceeding 25% per annum.

P. 51 of
1957

(2) Nothing in this section shall prejudice the right of the creditor to receive out of the estate after all the debts proved in the estate have been paid in full, any higher rate of interest to which he may be entitled.

(3).Subsections (1) and (2) shall, in relation to such a debt, have effect in substitution for section 50 (1) of the Insolvency Proclamation, 1957.

(4). No proof of a debt due to a money-lender in respect of a loan made by him shall be admitted for any of the purposes of the Insolvency Proclamation 1957, unless the affidavit verifying the debt is accompanied by a statement showing in detail.

- (a) the amount of the sums actually lent to the debtor, the

dates on which they were lent, the amount of every payment already received by the money-lender in respect of the loan and the date on which every such payment was made;

- (b) the amount of the balance remaining unpaid, distinguishing the amount of the principal from the amount of interest included therein, the appropriation between principal and interest being made in accordance with this Order where the interest is not expressed by the contract for the loan in terms of a rate; and Exemption
- (c) where the amount of interest included in unpaid balance represents a rate per centum per annum exceeding 25%, the amount of interest which would be so included if it were calculated at the rate of 25% per annum. Savings

(5). For the purposes of this section, regulations made under section 158 of the Insolvency Proclamation, 1957 shall apply **mutatis mutandis**.

25. The Minister may, by notice in the gazette, in consultation with the Commissioner of Financial Institutions, exempt any person from the provisions of this Order.

26. (1) This Order shall not apply to,

- (a) any money-lending transaction where the security for repayment of the loan and interest thereon is effected by execution of a chattels transfer in which the interest provided for is not in excess of 25 per centum per annum;
- (b) any transaction where a bill of exchange is discounted at a rate of interest not exceeding 25 per centum per annum;
- (c) Any money-lending transaction where the security for repayment of the loan and interest thereon is effected by execution of a legal or equitable mortgage upon immovable property or of a charge upon immovable property or of any bona fide transaction of money-lending upon such mortgage or charge. Regulations

(2) The exemption provided for in this section shall apply whether the transactions referred to are effected by a money-lender or not.

(3). A person who lends money only by means of the type of transaction set out in subsection (1) and by means of no other type of transaction shall be deemed not to be a money-lender for the purpose of this Order.

27. The Minister may make regulations,

- (a) prescribing the procedure to be followed and forms to be completed by applicants for money-lender's licenses granted under this Order;
- (b) prescribing the fees payable under this order;
- (c) prescribing the information to be given or the documents to be produced under this Order
- (d) providing for any other matter necessary for carrying into effect the objects of this Order.

SCHEDULE (Section 5(b))

Calculation of Interest Where the Interest Charged on Loan is not Expressed in terms of a rate

1. The amount of principal outstanding at any time shall be taken to be the balance remaining after deducting from the principal the total of the portions of any payments appropriated to the principal in accordance with this Order.

2. Several amounts taken to be outstanding by way of principal during the several periods ending on the dates on which payments are made shall be multiplied in each case by the number of calendar months during which those amounts are taken to be respectively outstanding and there shall be ascertained the aggregate amount of the sum so produced.

3. The total amount of the interest shall be divided by one

twelfth part of the aggregate amount mentioned in paragraph 2, and the quotient, multiplied by one hundred, shall be taken to be the rate of interest per centum per annum.

4. If, having regard to the intervals between successive payments it is desired so to do, the calculation of interest may be made by reference to weeks instead of months, and in such case, paragraphs 1 to 3 shall have effect as if in paragraph 2 the word "weeks" were substituted for the words "calendar months", and in paragraph 3 the words "one fifty-second" were substituted for the words "one-twelfth".

5. When any interval between successive payments is not a number of complete weeks or complete months, this Schedule shall have effect as if one day were one-seventh part of a week or one thirtieth part of a month, as the case may be.