

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Usury Act, 1968, so as to provide for persons other than public service officials to be appointed to inspect the activities of a moneylender, credit grantor or lessor; and to provide for matters connected therewith .

IT ENACTED by the Parliament of the Republic of South Africa, as BE follows:-

Amendment of section 1 of Act 73 of 1968, as amended by section 1 of Act 76 of 1970, section 1 of Act 62 of 1974, section 1 of Act 90 of 1980, section 1 of Act 42 of 1986, **section 2 of Act 62 of 1987, section 1 of Act 100 of 1988, section 1 of Act 67 of 1990, section 29 of Act 97 of 1990, section 1 of Act 30 of 1993 and section 1 of Act 49 of 1996**

1. Section 1 of the Usury Act, 1968 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion after the definition of "borrower" of the following definition:
'chief executive officer' means the person having the executive authority within a regulatory institution;'
- (b) by the insertion after the definition of "housing loan" of the following definition:
'inspector' means any person appointed in terms of section 13;'
- (c) by the substitution for the definition of "Registrar" of the following definition:
"Registrar' means an officer as defined in section 1 of the Public Service Act, [1984 (Act No. 111 of 1984)] 1994 (Proclamation No. 103 of 1994) appointed by the Minister as registrar to perform the functions , and exercise the powers assigned to or conferred upon him or her by this Act and includes a chief executive officer for the poses of sections 12, 13, 14, 17A and 18A;" and
- (d) by the insertion after the definition of "regulation" of the following definition:
"regulatory institution' means legal entity appcvedas such by the Minister in terms of any regulation or notice promulgated under this Act;"

Substitution of section 12 of Act 73 of 1968, as inserted by section 6 of Act 67 of 1990

2. The following section is hereby substituted for section 12 of the principal Act:

"Delegation and assignment of powers and duties

12. The Registrar may, subject to such conditions as he or she may determine, delegate or assign any power or duty conferred upon or assigned to him or her under this Act to any **[officer or employee in the public service] person** but such delegation or assignment shall not prevent the Registrar from exercising or performing the relevant power or duty himself or herself."

Amendment of section 13 of Act 73 of 1968, as amended by section 17 of Act 90 of 1980, section 8 of Act 42 of 1986 and section 6 of Act 30 of 1993

3. Section 13 of the principal Act is hereby amended by—

(a) the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) The Registrar may for the purposes of this section from time to time appoint **[officers as defined in section 1 of the Public Service Act, 1984 (Act No. 111 of 1984),] persons** as inspectors to carry out an inspection contemplated in paragraph (a) or to assist him or her with such an inspection.";

(b) the deletion of subsections (2) and (3); and

(c) the substitution for subsection (4) of the following subsection:

"(4) The Registrar shall issue to every person appointed under subsection (1) ~~or (2)]~~ a certificate to the effect that ~~he]~~ the person has been so appointed ~~[and, in the case of a person appointed for, or to assist with, a particular inspection, that he has been appointed for~~ **such an inspection,** and in the exercise of his or her powers and the performance of his or her duties that person shall on demand produce such certificate."

Amendment of section 18A of Act 73 of 1968, as inserted by section 20 of Act 90 of 1980

4. Section 18A of the principal Act is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

"(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] High~~ court of South Africa having jurisdiction, and shall transmit that special case to the registrar of that court"; and

(b) the substitution for subsection (5) of the following subsection:

"(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~~ of Appeal against an opinion referred to in subsection (4)."

Short title

5. This Act is called the Usury Amendment Act, 2003.

MEMORANDUM ON THE OBJECTS OF THE USURY AMENDMENT BILL, 2003

The purpose of the Bill is to provide for persons other than public service officials to be appointed as inspectors to inspect the activities of moneylenders, credit grantors and lessors. It has consequently become necessary to define an inspector, a chief executive officer and a regulatory institution and to amend the definition of the Registrar. A chief executive officer means the person having the executive authority within an approved regulatory institution. A regulatory institution in turn means a legal entity approved by the Minister in terms of any regulation or notice promulgated under the Usury Act, 1968 (Act No. 73 of 1968). An inspector means any person appointed in terms of section 13 of the Act.

To ensure effectiveness, provision has been made for the delegation and assignment of powers and duties by the chief executive officer to any person. The Registrar and the chief executive officer are being given the power to appoint persons other than civil servants to carry out inspections on a continuous basis and not only as temporary inspectors for particular inspections. All persons appointed by the Registrar and the chief executive officer as inspectors will have the same powers to carry out inspections. For this purpose, the chief executive officer has to have the same power and authority as that of the Registrar. To give effect to this, the definition of the Registrar has been amended to include the chief executive officer and it is made clear that the chief executive officer will for the purposes of sections 12, 13, 14, 17A and 18A have the same power as the Registrar. Section 12 will allow the chief executive officer to delegate any power or duty conferred upon the chief executive officer and section 13 will allow the chief executive officer to appoint inspectors and to issue them with appointment certificates. Sections 14 and 17A will allow the chief executive officer to request any information from any moneylender, credit grantor or lessor and if any moneylender, credit grantor or lessor fails to submit the requested information, *the chief* executive officer may impose a penalty. In terms of section 18A, the chief executive officer will have the right to approach a court of law for a declaratory order.

PARTIES CONSULTED

The Micro Finance Regulatory Council.

FINANCIAL IMPLICATIONS FOR STATE

Revenue obtained from the licence fees paid by regulatory institutions will be utilised to fund the inspectors.

PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Trade and Industry are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedures set out in section 74 or section 76 of the Constitution apply.