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GOVERNMENT NOTICE

DEPARTMENT OF TRADE AND INDUSTRY

No. 713

1 June 1999

NOTICE IN TERMS OF SECTION 15A OF THE USURY ACT, 1968 (ACT NO 73 OF 1968)

In terms of section 15A of the Usury Act, 1968 (Act No 73 of 1968), I Alexander Erwin, Minister of Trade and Industry, hereby exempt the category of money lending transaction referred to in the Schedule from the provisions of the said Act with the exception of sections 13, 14 and 17A of the Act, on the conditions set out in the Schedule.

SCHEDULE

1. Definitions

In this Schedule any word to which a meaning has been ascribed in the Usury Act, 1968, shall have the meaning ascribed to it in the Act, and

- 1.1 "*annual rate for the total charge of credit*" means the total charge of credit in respect of a money lending transaction expressed as a nominal annual percentage rate;
- 1.2 "*category of money lending transaction*" means a money lending transaction in respect of which the loan amount -
 - (a) does not exceed R 10 000.00;
 - (b) together with the total charge of credit which is owing by the borrower, shall be paid to the lender, whether in instalments or otherwise, within a period not exceeding 36 (thirty six) months after the date on which the sum of money has been advanced to the borrower; and
 - (c) is not paid in terms of a credit card scheme or withdrawn from a cheque account with a bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank registered in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993), so as to leave such account with a debit balance;
- 1.3 "*credit bureau*" means a business which records the credit transactions and payment history of individual borrowers;
- 1.4 "*loan amount*" means any money paid over to or on behalf of the borrower;
- 1.5 "*lender*" means an entity whose business includes money lending, who is required to comply with the rules and who is registered with a regulatory institution;

1.6 ***“regulatory institution”*** means a legal entity having a Board of Directors which has, amongst other directors, equal and balanced representation between consumers and the money lending industry and which is approved by the Minister in writing and published in the Government Gazette as having the capacity and the mechanisms in place effectively to -

- (a) manage its business as a regulatory institution with competent management and staff;
- (b) register lenders in accordance with accreditation criteria approved by the Minister;
- (c) ensure adequate standards of training of staff members interacting with the general public;
- (d) require adherence to and monitor and ensure compliance by lenders with this notice;
- (e) fund itself from contributions by lenders or other sources;
- (f) ensure that complaints from the general public are responded to objectively;
- (g) deal with appeals by lenders and borrowers in respect of any decision of the regulatory institution or any committee, ombudsperson or referee instituted by it;
- (h) educate and inform the general public and lenders in relation to their rights and obligations under this notice;
- (i) annually publish information regarding the money lending industry, the services provided, security and/or guarantees required, types of charges and the average annual charges levied by each lender in a comparable format;
- (j) collect and collate information and statistics on lenders and complaints handled by the regulatory institution, including the -
 - (i) number of complaints lodged and details of the complainant;
 - (ii) number of lenders found in breach of this notice and the reasons therefor;
 - (iii) names of lenders against whom substantiated complaints have been lodged and the number and nature of complaints;
 - (iv) response time to resolve complaints;
 - (v) the number of items monitored under each category;
 - (vi) the number of breaches detected through monitoring;
 - (vii) the number and nature of sanctions imposed; and

- (viii) the number of decisions appealed against and the outcome thereof;
 - (k) annually furnish the Minister with a detailed report on lenders, its activities and functions and any other information that the Minister may require;
 - (l) review its own effectiveness and the effectiveness of this notice and to recommend appropriate changes to the Minister;
- 1.7 "rules" means the rules set out in Annexure "A" to this notice;
- 1.8 "this notice" includes Annexure "A"; and
- 1.9 "total charge of credit" means all charges levied in respect of the money lending transaction, including, but not limited to, interest charges, but excluding insurance premiums.

2. Conditions

- 2.1 The category of money lending transaction is exempted on the conditions that -
- (a) the entity concluding the category of moneylending transaction is registered as a lender with a regulatory institution; and
 - (b) the lender shall at all times comply with this notice.

3. General

- 3.1 Insofar as the exemption may be interpreted to impose any obligation on an entity only a part of which conducts business in respect of the category of money lending transaction, such obligations shall apply only in respect of such part of the entity to the extent it shall be capable of being so applied.
- 3.2 The Usury Act, 1968, shall apply to a money lending transaction falling within the category of moneylending transactions should a lender fail to comply in respect of such money lending transaction with the conditions of this notice.
- 3.3 The Minister may withdraw the approval of a regulatory institution should it fail to fulfil the functions contemplated in paragraph 1.6 above and shall publish such withdrawal in the Government Gazette.

4. Commencement of Notice and transitional arrangements

- 4.1 This notice shall come into effect on 1 June 1999 and Government Notice R3451 of 31 December 1992 is hereby repealed with effect from 1 June 1999.

- 4.2 Provided that, notwithstanding the repeal of Government Notice R3451 of 31 December 1992, the provisions of that Notice will be deemed to continue to apply to an entity to whom the provisions of that Notice are applicable, until that entity becomes registered as a lender of a regulatory institution as required by section 2.1(a) of this notice. Provided further that Government Notice R3451 of 31 December 1992 shall in any event have no force or effect after 1 August 1999.

ALEXANDER ERWIN
MINISTER OF TRADE AND INDUSTRY

ANNEXURE "A"**RULES FOR PURPOSES OF EXEMPTION UNDER SECTION 15A
OF THE USURY ACT****1. Confidentiality**

- 1.1 The lender shall not disclose, without the express consent of the borrower, any confidential information obtained in the course of a money lending transaction.
- 1.2 Should the lender wish to obtain from or to disclose to a third party, the borrower's credit record and payment history, the borrower's consent shall be obtained through specific and prominent clauses in the application for the relevant money lending transaction or other documentation signed by the borrower.

2. Disclosure

- 2.1 The lender shall at each of its business premises conducting business in respect of the category of money lending transactions keep available a copy of the rules set by the Minister in Annexure "A". These rules shall be made available to the borrower for perusal prior to entering into the money lending transaction.
- 2.2 The lender shall at each of its business premises conducting business in respect of the category of money lending transactions display prominently -
 - 2.2.1 a copy of the lender's registration certificate issued by the relevant regulatory institution; and
 - 2.2.2 the complaints procedure and the manner in which and where complaints may be lodged.
- 2.3 The lender shall use standard written agreements, as approved by the regulatory institution, containing all the terms and conditions of the money lending transactions and clearly reflecting the rights and obligations of the borrower and the lender.
- 2.4 The lender shall provide the borrower, prior to the conclusion of the money lending transaction and at the conclusion of the agreement, with a schedule setting out -
 - 2.4.1 the loan amount in rands and cents;
 - 2.4.2 the total amount repayable in rands and cents, at the then current interest rate, over the repayment period;
 - 2.4.3 the amount of the total charge of credit in rands and cents, at the then

- current interest rate, over the repayment period and the elements comprising the total charge of credit;
- 2.4.4 the annual rate for the total charge of credit, whether this is fixed or variable, and, if variable, how it may vary;
- 2.4.5 the nature and amount of any insurance, including the name of the insurer;
- 2.4.6 the penalty interest and any additional costs that would become payable in the case of default by the borrower or how that would be calculated;
- 2.4.7 the instalment amount in rands and cents, at the then current interest rate, and the number of instalments;
- 2.4.8 the repayment period in respect of the money lending transaction.
- 2.5 The lender shall in a language understood by the borrower before the conclusion of the agreement explain the essential terms of the money lending agreement to the borrower so as to ensure that the meaning and consequences of the agreement are understood.
- 2.6 The lender shall, before the conclusion of the money lending agreement, allow the borrower an opportunity to read the agreement, or have it read to the borrower in the instance where the borrower is illiterate.
- 2.7 The lender shall provide the borrower with a copy of the signed money lending agreement before or at the time of advancing the loan amount.
- 2.8 The lender shall maintain a proper set of accounting records reflecting full details of all money advanced, interest and other charges raised, repayments received and the amounts outstanding.
- 2.9 The lender shall on demand provide the borrower with a statement setting out all charges levied, all payments made and the balance outstanding. A charge may be levied for the provision of a duplicate copy of a statement, but may not exceed R 3.50 (three rand fifty cents) per page of the statement.
- 2.10 Should the lender decline a money lending application, the lender shall at the request of the borrower provide the main reasons therefor. If such reasons include an adverse credit record recorded with a credit bureau, the name and details of the relevant credit bureau will be provided to the borrower by the lender so as to enable the borrower to check the accuracy of the credit information held by the credit bureau and/or to obtain advice from the credit bureau on how to improve the record.
- 2.11 The lender shall inform the borrower in writing at least 28 (twenty eight) calendar days beforehand, by way of a notice addressed to the *domicilium* of the borrower, of the lender's intention to forward adverse information to any credit bureau, which information is to be accessed by subscribers to the credit bureau, before forwarding any such information to the relevant credit bureau.

- 2.12 Where any amount owing by the borrower is disputed by the borrower, that fact shall be communicated to the credit bureau when providing information to it.

3. Consideration

- 3.1 The lender shall not charge any fee to be paid by the borrower in circumstances where the money lending transaction is not granted or money is not paid out to the borrower in respect of the money lending transaction by the lender. This excludes fees charged for evaluating or preparing business plans.
- 3.2 The borrower may make additional payments or settle the outstanding amount in one payment where the repayment period does not exceed 12 (twelve) months. Where the repayment period exceeds 12 (twelve) months, and where the borrower wishes to settle the outstanding amount in one payment, the lender may require up to 60 (sixty) days written notice of the borrower's intention to settle the outstanding amount in one payment, but only if such period was stipulated in the written agreement and does not exceed 60 (sixty) days. No penalty may be charged for the settlement of the outstanding amount in the case of retrenchment of the borrower.
- 3.3 The lender shall ensure that the annual rate for the total charge of credit stipulated, demanded or received by the lender shall not exceed ten times the average prime overdraft lending rate from time to time of the four banks, registered under the Banks Act, 1990 (Act No. 94 of 1990), from time to time with largest asset base providing cheque services.

4. Cooling-off period

- 4.1 The lender shall, in terms of the provisions of the agreement with the borrower, allow the borrower to terminate the money lending agreement within a period of 3 (three) business days after the date of the signing of the agreement, and, where the loan amount has been advanced, simultaneously to repay the loan amount advanced to the lender.
- 4.2 Should the borrower terminate the money lending agreement within such period after having received the money, the lender shall, upon the borrower offering simultaneously to repay the total amount advanced to the borrower, only be entitled to stipulate for, demand or receive from the borrower, *pro rata* charges of credit at the annual rate for the total charge of credit applicable to the agreement.

5. Collection methods

- 5.1 The lender shall not make use of personal information such as pin codes and bank cards as security or collection arrangements.

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- 5.2 The lender shall not indulge in the use of any process documents signed in blank.
- 5.3 The lender shall not collect or attempt to collect any amounts for costs exceeding costs allowed for in terms of the Magistrates' Court Act, 1944 (Act No. 32 of 1944), the Attorneys Act, 1979, (Act No 53 of 1979) or the Debt Collectors Act, 1998 (Act No.114 of 1998).
- 5.4 The lender shall not make use of any illegal collection methods.
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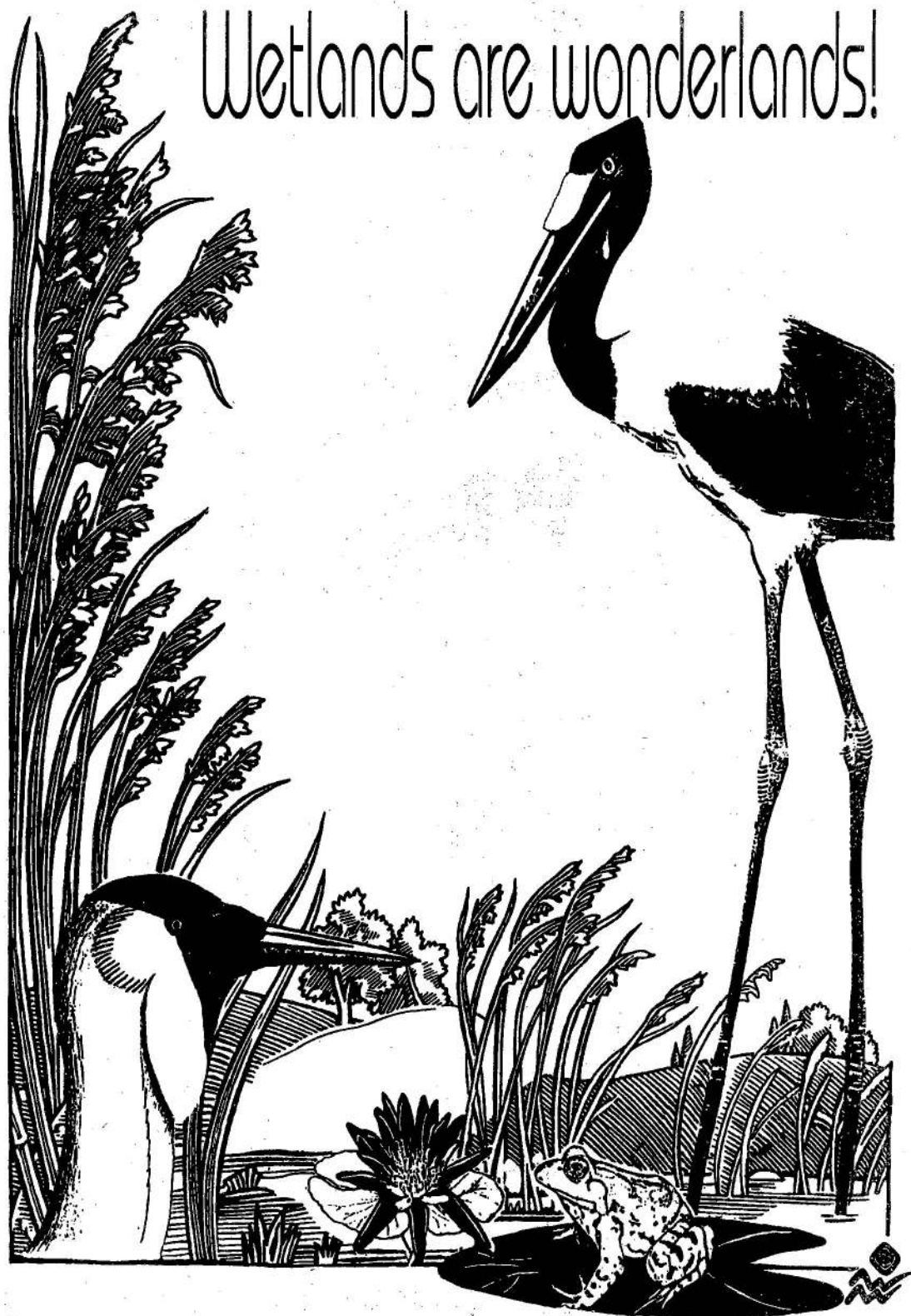


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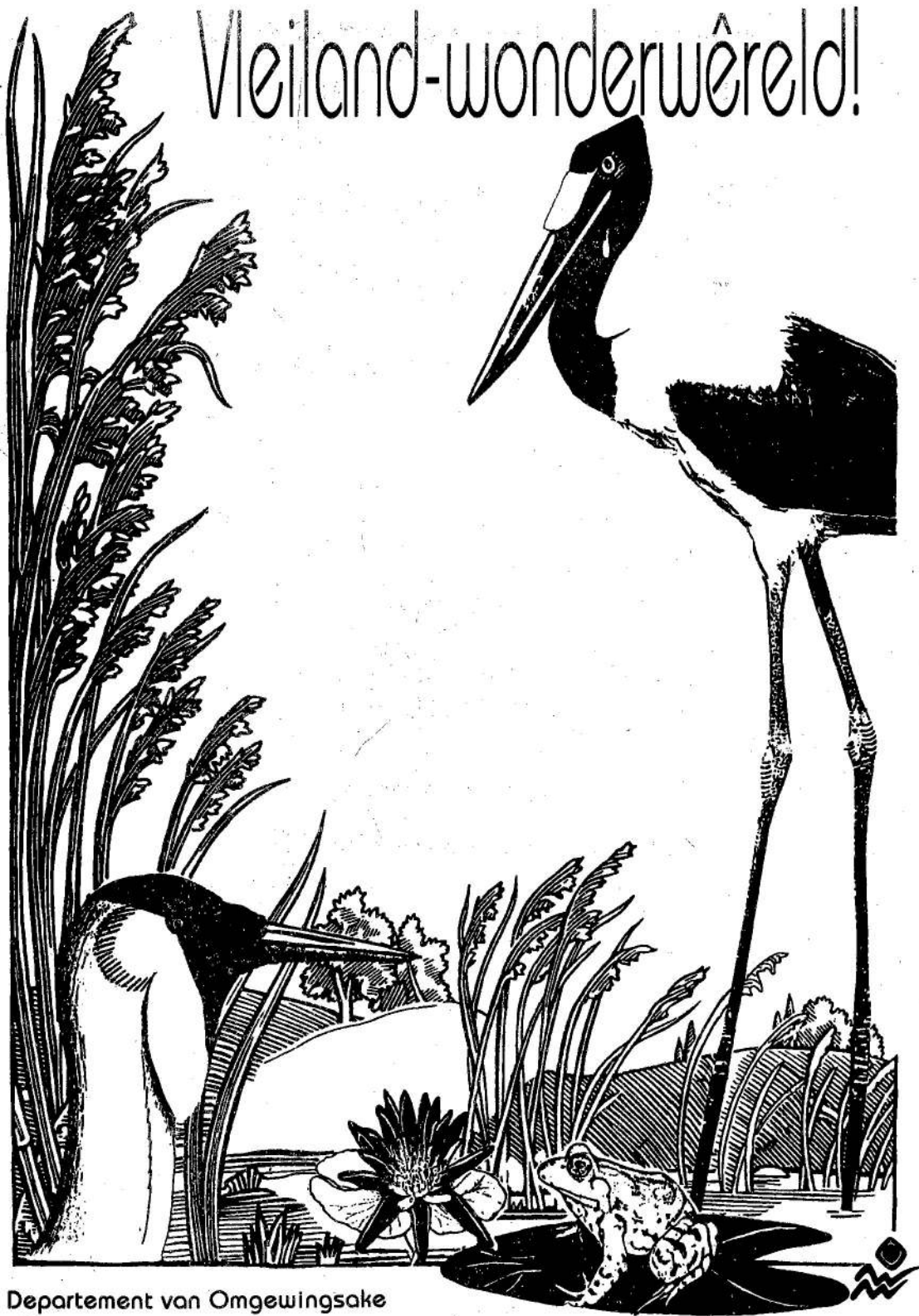
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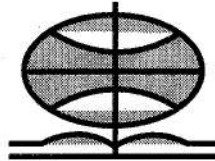
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