



Tonga

# **MONEYLENDERS ACT 2018**

**Act 2 of 2018**





## MONEYLENDERS ACT 2018

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# **MONEYLENDERS ACT 2018**

**Act 2 of 2018**

**AN ACT FOR THE REGULATION AND CONTROL OF THE BUSINESS OF MONEYLENDING, THE PROTECTION OF BORROWERS OF THE MONIES LENT IN THE COURSE OF SUCH BUSINESS, AND MATTERS CONNECTED THEREWITH**

I assent,  
TUPOU VI,  
21<sup>st</sup> June 2018.

**BE IT ENACTED** by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

## **PART I - PRELIMINARY**

### **1 Short Title and Commencement**

- (1) This Act may be cited as the Moneylenders Act 2018.
- (2) This Act shall come into force on a date proclaimed by Cabinet and published in a notice in the gazette.

### **2 Interpretation**

In this Act, unless the context otherwise requires —

**"annual percentage rate"** means aggregate rate per annum in percentage consisting of interest, processing fees, service charges and any other charges or fees realised by the moneylender on any loans provided to any customer;

**"authorised name"** and **"authorised address"** mean respectively the name under which and the address at which a moneylender may by a licence granted under this Act to carry on business as a moneylender;

**"bank"** means any company engaged in banking business and other financial activities, as determined in the licence granted by the Reserve Bank under the Financial Institutions Act 2004;

**"borrower"** means a person to whom money is lent by a moneylender;

**"company"** means any body corporate being a moneylender;

**"declining balance calculation method"** means that the interest charged on any loan payment is to be calculated based on the current outstanding principal and accounting for all payments made in previous periods;

**"firm"** means an unincorporated body of two or more individuals or one or more individuals and one or more corporations or two or more corporations who have entered into partnership with one another with a view to carrying on business for profit;

**"interest"**, in relation to a loan, means any amount by whatsoever name called in excess of the principal paid or payable to a moneylender in consideration of or otherwise in respect of the loan, but does not include any permitted fee payable under this Act or any other written law;

**"licence"** means a moneylender's licence issued under this Act;

**"moneylender"** means any person who carries or holds himself out in any way as carrying on the business of moneylending, whether or not he carries on any other business;

**"moneylending"** means the lending of money at interest, with or without security, by a moneylender to a borrower;

**"moneylending agreement"** means an agreement made in writing between a moneylender and a borrower for the repayment, in lump sum or instalments, of money borrowed by the borrower from the moneylender;

**"person"** means any individual or company, partnership, syndicate, association or body of persons, incorporated or unincorporated;

**"notice"** means notice in writing;

**"notify"** means notify in writing, and **"notification"** has a corresponding meaning;

**"prescribed"** means prescribed by directives made under this Act;

**"principal"** means, in relation to a loan, the amount actually lent to and received by the borrower; and

“**Reserve Bank**” means the National Reserve Bank of Tonga as defined in the National Reserve Bank of Tonga Act (Cap 102).

## **PART II - LICENSING OF MONEYLENDERS**

### **3 Moneylenders to be licensed**

- (1) No person can carry on or hold himself out in any way as carrying on the business of moneylending in Tonga unless he is licensed under this Act.
- (2) Any person who carries on or holds himself out in any way as carrying on the business of moneylending without a valid licence, or who continues to carry on such business after a licence has been suspended or revoked, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding three years or both.
- (3) A moneylender may only engage in the business of lending money at an interest, with or without security to a borrower.
- (4) A moneylender shall apply to the Reserve Bank to engage in activities of a financial nature other than moneylending.

### **4 Application for licence**

- (1) Any person may apply for a licence under this Act to operate a moneylending business for which a licence is required, as determined by the Reserve Bank.
- (2) An application for a licence under this section shall be —
  - (a) made in writing to the Reserve Bank in the prescribed form; and
  - (b) accompanied by the prescribed application fee.
- (3) Every person who makes an application under subsection (2)(a) shall furnish such information, and documents, as the Reserve Bank may specify.
- (4) Any person who knowingly furnishes false or misleading information or document, in connection with an application under this Act, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.
- (5) Application for a licence by a moneylending business shall apply immediately and within 30 days from the commencement of this Act and during such period shall not conduct any moneylending business until a licence is granted.

### **5 Consideration of a licence**

The Reserve Bank shall, in considering any application for a licence made under section 4, have regard to —

- (a) the adequacy, structure, sources, and proposed beneficial owners of the applicant's capital;
- (b) the ability of the applicant to carry on the proposed business, the character and experience of its management;
- (c) the establishment of an operating account in its name with a bank licenced under the Financial Institutions Act 2004; and
- (d) such other matters as the Reserve Bank considers relevant.

## **6 Duration of licence**

Notwithstanding section 13, a licence shall remain valid unless revoked or suspended under this Act.

## **7 Annual licence fees**

- (1) The Reserve Bank may charge and collect a licence fee for each year that a licence is in effect and which shall be paid by the moneylender on the anniversary of the date of its licence being granted.
- (2) The annual fee is to be considered as a debt due to the Reserve Bank and a moneylender who fails to pay the fee by the due date is liable to a surcharge equivalent to 100% of the prescribed fee.
- (3) A licence is deemed suspended for the period when a moneylender fails to pay the annual fee by the due date to the date the annual fee and any surcharge has been paid to the Reserve Bank.

## **8 Moneylenders licence to be published**

- (1) The Reserve Bank shall publish in the Gazette and its website all licenced moneylenders for the purposes of this Act.
- (2) Notwithstanding the provisions of any other law, a notice by the Reserve Bank shall be published in the Gazette and its website to add or remove a licenced moneylender.

## **9 Conditions attached to licence**

- (1) The Reserve Bank may stipulate in the licence such conditions as the Reserve Bank may think fit and may, at any time during the duration of the licence, add to, suspend, cancel or vary any of the conditions.
- (2) Any person who fails to comply with any of the conditions of the licence commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

## 10 Requirement to display licence

- (1) A moneylender shall at all times display his original licence in a conspicuous place at the premise where the moneylender carries out or operates the business.
- (2) A moneylender who contravenes this section commits an administrative offence and shall be liable to an administrative fine not exceeding \$10,000 for each day of the contravention which shall be imposed by the Reserve Bank.

## 11 Offences

If a moneylender —

- (a) takes out a licence using any false, misleading or deceptive statement or representation or by any dishonest concealment of material facts;
- (b) being licensed as a moneylender, carries on business as such in any name other than the authorised name or at any other place than the authorised address or addresses; or
- (c) in the course of business as a moneylender enters into any moneylending agreement with respect to any advance or repayment of money or takes any security for money otherwise than in the authorised name,

such person commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding three years or both.

## 12 Disqualified persons

- (1) No person shall be appointed or elected as a director or to the management of a moneylender who —
  - (a) has acted in a financial institution in Tonga or elsewhere which has had its licence revoked or which has been wound up by a court;
  - (b) has been sentenced by a court in any country for an offence involving dishonesty;
  - (c) is or becomes bankrupt or enters into a scheme of arrangement with his creditors;
  - (d) has been disqualified or suspended from practicing a profession on grounds of personal misconduct;
  - (e) does not possess sufficient financial competence and expertise;
  - (f) is an officer or employee of another moneylending business unless both entities are commonly owned;
  - (g) does not reside in the place where the moneylending business is located except as otherwise authorised by the Reserve Bank;
  - (h) the person does not meet the criteria for a fit a proper person as prescribed by the Reserve Bank; or

- (i) falls under such other criterion or criteria as may be established by the Reserve Bank in a directive, or other acts or decisions.
- (2) Any person who accepts an appointment in contravention of subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a period not exceeding three years or both.
- (3) Any person appointed or elected as a director or to the management of a moneylending business shall cease to hold such office if he is disqualified under subsection (1).

### **13 Revocation or suspension of licence**

- (1) If a moneylender —
  - (a) has been carrying on his business, in the opinion of the Reserve Bank, in a manner detrimental to the interest of the borrower or to any member of the public;
  - (b) has contravened any of the provisions of this Act or any regulations, directives, notices or guidelines made under this Act;
  - (c) has been licensed as a result of a fraud, mistake or misrepresentation in any material particular; or
  - (d) has failed to comply with any of the conditions of the licence,the Reserve Bank may, subject to section 14, revoke the licence issued to the moneylender or suspend the licence for such period as the Reserve Bank thinks fit.
- (2) A revocation or suspension of a licence under this section shall not affect any moneylending agreement entered into before such revocation or suspension, other than that in respect of which such revocation or suspension is made.
- (3) Where a licence has been revoked or suspended, such licence shall have no effect from the date of revocation of the licence or during the period of suspension of the licence, as the case may be.

### **14 Opportunity of being heard**

- (1) Before revoking or suspending a licence under section 13, the Reserve Bank shall give the moneylender a notice of its intention to do so and require the moneylender to submit reasons why the licence should not be revoked or suspended within fourteen days after having being notified of the decision.
- (2) After considering the reasons submitted by the moneylender, the Reserve Bank shall decide whether to revoke or suspend the licence, or to take no further action, and the Reserve Bank shall notify the moneylender of its decision.

**15 Surrender of licence**

- (1) Upon the revocation of the licence under section 13, the moneylender shall, within 14 days from the date of the notice of revocation, being served on him, surrender his licence to the Reserve Bank.
- (2) Any moneylender who fails to surrender his licence as required under subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding three years or both.
- (3) A moneylender may surrender his licence on his own initiative by forwarding the licence to the Reserve Bank with a written notice of the surrender of the licence.
- (4) The surrender of the licence under subsection (3) shall take effect 14 days from the date the Reserve Bank receives the licence and the written notice or such other date as may be specified by the Reserve Bank.

**16 Transfer or assignment of licence prohibited**

- (1) A moneylender shall not transfer or assign a licence to –
  - (a) another person;
  - (b) cause or permit another person to use the licence; or
  - (c) provide the services authorised in the licence.
- (2) Any purported transfer or assignment shall be null and void.

**17 Approval and notification of change of profile**

- (1) A moneylender shall obtain the prior approval of the Reserve Bank for –
  - (a) a change of the business name;
  - (b) the employment, appointment or admission of any person who will be responsible for the management of the moneylender's business of moneylending; or
  - (c) any person becoming a director or partner of the moneylender.
- (2) A moneylender shall notify the Reserve Bank within 14 days –
  - (a) of any person becoming a shareholder of the moneylender; or
  - (b) of any shareholder of the moneylender increasing or reducing his shareholding in the moneylender.
- (3) A moneylender shall notify the Reserve Bank –
  - (a) of any person ceasing to be a director, partner or shareholder of the moneylender; or

- (b) of any person ceasing to be responsible for the management of the business of moneylending of the moneylender,  
no later than 14 days after the cessation.
- (4) A moneylender shall notify the Reserve Bank of a liquidation order against the moneylender, or any director, partner or shareholder of the moneylender, no later than 14 days after the liquidation order is made.
- (5) A moneylender who contravenes subsections (1), (2), (3) or (4) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding three years or both.

## PART III - INSPECTIONS

### 18 Inspection by the Reserve Bank

- (1) The Reserve Bank may –
- (a) conduct an inspection with or without notice;
  - (b) require explanations and the production of books, accounts and documents and such information as may be required to conduct the inspection;
  - (c) make copies of and take any papers or electronically stored data from the moneylender's premises; and
  - (d) require that copies of documents be certified as “true” copies of the originals retained by the moneylender.

Provided that, for the purpose of this section, if there is need for entry into premises not under the control of the moneylender, the Reserve Bank shall obtain a search warrant from the Court for that purpose.

- (2) Any person who knowingly and with the intent to deceive -
- (a) makes a false entry on a record, report, or statement of a moneylender; or
  - (b) in connection with an examination or investigation of a moneylender by the Reserve Bank, exhibits a false paper, instrument, or security or gives a false answer to a question directly related to the examination or investigation asked of the person by the Reserve Bank's representative, commits an offence.
- (3) Any person who knowingly removes, destroys, or conceals a record of the moneylender for the purpose of concealing a fact or information from the Reserve Bank's representative, commits an offence.
- (4) Any person who refuses, on request, to make available for examination the records of the moneylender or refuses to permit an examination into the affairs of the moneylender, commits an offence.

- (5) Any person who commits an offence under this section shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding three years or both.

## **PART IV - CONDUCT OF MONEYLENDING BUSINESS**

### **19 Moneylender and borrower shall enter into a moneylending agreement**

- (1) A moneylender who intends to lend money to a borrower shall enter into a moneylending agreement with the borrower, and that agreement shall be in the prescribed form.
- (2) Any moneylender who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.
- (3) Any moneylending agreement which does not comply with the prescribed form shall be void and unenforceable.

### **20 Contract by unlicensed moneylender unenforceable**

Any moneylending agreement in respect of money lent after the coming into force of this Act by an unlicensed moneylender is unenforceable.

### **21 Moneylending agreement to be given to the borrower**

- (1) A moneylending agreement is enforceable where the agreement has –
  - (a) been signed by all the parties to the agreement; and
  - (b) a copy of the agreement is delivered to the borrower by the moneylender before the money is lent.
- (2) A moneylender who executes a moneylending agreement which does not comply with this section commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

### **22 Interest and fees for secured and unsecured loans**

- (1) For the purposes of this Act, after taking into consideration the moneylenders' cost of funds, profit margin, borrower's credit risk, administrative costs and other loan related costs, the interest rate of a loan whether secured or unsecured shall be linked to the policy rate set by the Reserve Bank from time to time.
- (2) A moneylending agreement may impose a default interest fee and default payment fee not exceeding an amount as prescribed by the Reserve Bank.
- (3) The maximum annual percentage rate which may be charged by a moneylender shall not exceed the rate prescribed by the Reserve Bank.

- (4) In calculating instalment payments for credit transactions, the moneylender shall use the declining balance calculation method and the interest shall be compounded on a monthly basis.
- (5) Notwithstanding subsections (1) and (2), interest and fees shall not at any time be recoverable by a moneylender of an amount in excess of the sum then due as principal unless a Court, having regard to all the circumstances, otherwise orders.
- (6) Where in a moneylending agreement the interest charged for a secured loan or an unsecured loan, as the case may be, is more than that specified in subsections (1), (2) and (3), that agreement is void and unenforceable.
- (7) Where in a moneylending agreement the securities are realised, the moneylender shall realise the securities at the current market value for the repayment of a loan and any excess money shall be paid to the borrower.
- (8) A moneylender who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

### **23 Duty to keep original copy of moneylending agreement and accounts**

- (1) A moneylender shall keep and maintain –
  - (a) such original copy of the moneylending agreement for each loan in which the moneylender is or has been concerned;
  - (b) regular accounts of each loan including accounting records;
  - (c) management information system information; and
  - (d) other related records,for a period of seven years from the date in which the loan is made.
- (2) A person who fails to comply with this section –
  - (a) is not entitled to enforce any claim in respect of any transaction in relation to a default; and
  - (b) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

### **24 Obligation to supply information**

- (1) A moneylender shall make available to the borrower without charge monthly statements of account during the period of the moneylending agreement, or upon notice by the borrower showing –
  - (a) the particulars of the lending agreement, including –
    - (i) the date on which the loan was made;
    - (ii) the amount of the principal of the loan; and
    - (iii) the rate per centum per annum or the amount of interest charged;

- (b) the payments received by the moneylender, including –
    - (i) the amount; and
    - (ii) the date on which it was made;
  - (c) the sums due to the moneylender, including –
    - (i) the amount for principal;
    - (ii) the dates they became due; and
    - (iii) the amount of interest due and unpaid in respect of each such sum; and
  - (d) the sums not yet due, including –
    - (i) the amount which remains outstanding; and
    - (ii) the date upon which it will become due.
- (2) A statement of account given in the form prescribed by the Reserve Bank shall comply with the requirements of this section.
- (3) A moneylender shall, upon notice by the borrower, supply a copy of any document relating to a loan made by him or any security for that purpose to the borrower or to any person specified in the notice.
- (4) A moneylender who fails to comply within one month of a notice made under this section, so long as the contravention continues –
- (a) is not entitled to sue for or recover any sum due under the moneylending agreement either of principal or interest;
  - (b) shall not charge interest in respect of the period of the default; and
  - (c) commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000 for each day of the contravention.
- (5) A moneylender receiving any payment of money from a borrower under a moneylending agreement shall give a receipt to the borrower, and any person acting in contravention of this subsection commits an offence and shall be liable to a fine not exceeding \$10,000.

## **25 Laws against abuse of financial services**

A moneylender shall comply with the Money Laundering and Proceeds to Crime Act 2000 and any legislation, policies, directives or notices that provide for financial consumer protection.

## **PART V - MISCELLANEOUS**

### **26 False statements or representations to induce borrowing an offence**

If —

- (a) a moneylender or employee of the moneylender;
- (b) any person being a director, general manager, manager or other officer of a company, being a moneylender;
- (c) any person being a president, vice-president, secretary, treasurer or other officer of a society, being a moneylender; or
- (d) any person being a partner or member, or other officer of a firm or other body of persons, being a moneylender,

by any 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 or to agree to the terms on which money is or is to be borrowed, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or imprisonment of a term not exceeding three years or both.

## **27 General offences and penalties**

- (1) A moneylender who —
  - (a) makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular;
  - (b) furnishes any particulars or documents in relation to an application for a licence which to his knowledge are false or incorrect or misleading in any material respect;
  - (c) makes any entry in a register, record, return, account or any other document required to be kept, maintained or furnished under this Act, which is false or incorrect or misleading in any material respect;
  - (d) alters, tampers with, defaces or mutilates any licence or other document which is required to be exhibited on a moneylender's premises;
  - (e) lends or allows a licence or document to be used by another person;
  - (f) forges, or has in his possession with intent to deceive a document that so closely resembles a licence, record, return, account or any other document that is required to be kept, maintained, or furnished under this Act;
  - (g) alters any entry made in a register, licence, record, return, account or any other document that is required to be kept, maintained or furnished under this Act;
  - (h) displays on a moneylender's premises a licence or any other document that is required, where such licence or document has been altered, tampered with, defaced or mutilated;
  - (i) displays on a moneylender's premises an imitation of a licence or other document that is required to be displayed on those premises;

- (j) prepares, maintains or authorises the preparation or maintenance of false records, returns, accounts or any other documents that are required to be furnished under this Act;
- (k) falsifies or authorises the falsification of records, returns, accounts or any other documents that are required to be furnished under this Act; or
- (l) demands or accepts security for a loan in any form prohibited by directives made under section 30,

commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or made subject to enforce action taken by the Reserve Bank under section 28.

- (2) Notwithstanding that a moneylender or person has been convicted and sentenced for an offence under this Act, the Reserve Bank may in addition to such sentence impose administrative penalties not exceeding \$1,000 for each day during which the contravention occurred.

## 28 Enforcement actions

- (1) The enforcement actions that the Reserve Bank may take, include and not limited to –
  - (a) issuing written warnings;
  - (b) imposing an administrative penalty on the moneylender or the directors, officers and employees of the moneylender;
  - (c) issuing a direction to cease and desist from a practice, contravention or non compliance;
  - (d) issuing a direction to require the moneylender to comply with the whole or part of this Act, regulation, or directives, notices or prudential statements;
  - (e) conclude a written agreement with the moneylender providing for a program of remedial action;
  - (f) issuing a direction to remove or suspend a person from his position;
  - (g) revoking, suspending or imposing conditions on the licence; and
  - (h) to take any other action necessary for correcting the ground of such action.
- (2) The measures and penalties provided in this section shall not preclude application of other civil penalties or criminal penalties as provided under applicable law.
- (3) The action that the Reserve Bank takes pursuant to subsection (1) shall be proportionate to the misconduct of the moneylender or of its directors, officers or employees.
- (4) Warnings, orders, agreements or other documents specifying the action to be taken against a moneylender shall –

- (a) be in writing;
- (b) be served; and
- (c) state the effective date of the action.

## **29 Harassment or intimidation of borrower**

Any person who, with the intention of coercing another person to pay money claimed from the other as a debt due under a moneylending agreement –

- (a) harasses the other with demands for payment which, in respect of –
  - (i) their frequency or the manner or occasion of making any such demand; or
  - (ii) any threat or publicity by which any demand is accompanied,are calculated to subject the borrower or members of the borrower’s family or household to alarm, distress or humiliation;
- (b) falsely represents, in relation to the money claimed, that criminal proceedings lie for failure to pay it;
- (c) falsely represents himself to be authorised in some official capacity to claim or enforce payment; or
- (d) utters a document falsely representing a person to have some official capacity or purporting to have some official capacity which he knows he has not,

commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding three years or both.

## **30 Power to make directives**

- (1) The Reserve Bank may make such directives as may be expedient or necessary for the purpose of giving full effect to the provisions of this Act, or for carrying out or achieving the objects and purposes of this Act.
- (2) Without prejudice to the generality of subsection (1), the Reserve Bank may make directives for or in respect of all or any of the following matters –
  - (a) the procedure to be followed in making an application for a licence and any other procedure and matters to be considered in respect of a licence;
  - (b) the disclosure of interest rates, fees and charges;
  - (c) the form of moneylending agreements to be used by a moneylender and a borrower and other matters relating to such agreements;
  - (d) the procedure of realising securities for the repayment of a loan and the manner for the payment of any excess money to the borrower;
  - (e) the Financial Consumer Protection policy that is to be accepted and observed by a moneylender;

- (f) the form and information required to be in the annual statement, to be sent to the Reserve Bank;
  - (g) the returns, financial accounts or information relating to their moneylending business as may be specified by the Reserve Bank.
- (3) Any directives made under this section may provide that any contravention of the provisions of such directives may provide for the imposition of an administrative fine not exceeding \$10,000.

### **31 Exclusion from liability**

Neither the Reserve Bank nor any director, officer or employee of the Reserve Bank or person authorised to assist the Reserve Bank shall be liable in any manner whatsoever for anything done or omitted to be done in good faith in the discharge or purported discharge of the functions and duties of the Reserve Bank under this Act.

### **32 Transitional**

- (1) A person who is not licenced shall not be regarded as contravening this Act by reason only of collecting money due under a moneylending transaction or a related transaction entered into before the commencement of this Act.
- (2) A person who is not licenced and is carrying on the business of moneylending shall apply for a licence in accordance with the provisions of this Act.

Passed by the Legislative Assembly this **8<sup>th</sup>** day of **March** 2018.