

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT No. 179 of 1995

The Banking and Financial Services Act (Act No. 21 of 1994)

The Banking and Financial Services (Cost of Borrowing) Regulations, 1995

In EXERCISE of the powers contained in section *one hundred and twenty-four* of the Banking and Financial Services Act, 1994, as read with section *forty-seven*, and on the recommendation of the Bank of Zambia, the following Regulations are hereby made:

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| 1. These Regulations may be cited as the Banking and Financial Services (Cost of Borrowing) Regulations, 1995. | Title |
| 2. In these Regulations, unless the context otherwise requires-

"borrower" includes a person to whom a loan is proposed to be made;

"cost of borrowing" includes administrative charges for services or transactions and any similar charges, but excludes- | Interpretation |
| (a) a charge for arranging or renewing the loan; | |
| (b) a charge for the issuance of a certificate of search, the provision for examination or the making of copies or a registered document, or the provision of similar services; | |
| (c) a charge for a survey; | |
| (d) a charge or disbursement for the services of a lawyer or notary; | |
| (e) a charge for an appraisal or inspection of assets; | |
| (f) a charge for insurance; | |
| (g) an administrative charge in respect of an overdrawn account, including a charge for honouring a cheque written on an overdrawn account; | |
| (h) a charge for making a pre-payment on the loan; or | |
| (i) a commitment fee as compensation for funds being made available by the lender for use by the borrower and which could be deployed elsewhere. | |

"principal" means the amount of money borrowed and outstanding at any time, but does not include any portion of the cost of borrowing.

3. These Regulations shall not apply to-

Application

- (a) a loan in respect of which the principal amount is less than K250,000 and the cost of borrowing on that loan is disclosed to the borrower as an amount expressed in Kwacha and ngwee;
- (b) a loan made under any Act of Parliament where the rate of interest or the discount that may be charged to the borrower is prescribed under that Act and is disclosed to the borrower;
- (c) a loan resulting from the discount or negotiation by a bank or financial institution of a promissory note or other instrument payable by a person other than the borrower; and
- (d) a loan made pursuant to a letter of credit..

4. (1) For loans obtained through the use of a line of credit, an overdraft, a payment, credit or charge card, a bank or financial institution shall express the rate of interest charged to a customer as "the annual effective rate of interest" or the annual percentage rate (APR).

Determination of annual rate of interest.

(2) The annual percentage rate shall be determined as follows:

$$APR = (1 + \frac{r}{q})^q - 1$$

Where: q = the frequency of compounding in a year, and
r = the nominal rate of interest

5. (1) For loans repayable in equal instalments, the cost of borrowing is determined by the following formula:

Cost of borrowing for loans repayable in equal instalments

$$R = \frac{C}{T \times P}$$

where:

"C" is the total cost of borrowing over the term of the loan, expressed as an amount and includes interest plus all other charges of borrowing;

"P" is the average of the principal of the loan that is outstanding at the end of each interest calculation period before applying any payment due at that time;

"R" is the cost of borrowing over the term of the loan, expressed as a rate per annum; and

"T" is the term of the loan, expressed in years.

(2) For the purpose of the calculation set out in sub-regulation (1)-

- (a) the rate per annum of the cost of borrowing shall be rounded off to the nearest eighth of a per cent; and
 - (b) a year shall be calculated as having 365 days.
6. (1) For the purposes of regulations 7 to 9, where information is to be disclosed by means of a written statement, the information shall be delivered to the borrower personally or sent to the last address of the borrower shown in the records of the bank or financial institution. Disclosure requirements
- (2) The statement through which the disclosure is made shall contain the information set out in the Schedule.
7. (1) A bank or financial institution shall disclose the cost of borrowing to the borrower, at or before the time at which the loan is made. Disclosure of cost of borrowing
- (2) The disclosure referred to in sub-regulation (1) shall-
- (a) in the case of an overdraft, be made by means of a written statement or by a notice displayed in each branch of the bank or financial institution; and
 - (b) in the case of a loan made under the security of a letter of credit or any other arrangement, or where the loan is repayable on demand in amounts that are not fixed or on dates that are not fixed, by means of-
 - (i) a written statement in the loan agreement or proposed loan agreement;
 - (ii) a separate written statement; or
 - (iii) a notation on the promissory note signed or to be signed by the borrower;and
 - (c) in any other case, by means of a written statement disclosing the information set out in the attached Schedule.
- (3) Where a loan referred to in paragraph (b) or sub-regulation (2) is made, the bank or financial institution shall also disclose to the borrower in the manner described in clauses (i) to (iii) of that paragraph-
- (a) the manner of calculating the cost of borrowing and determining it as a rate per annum; and
 - (b) in the case of a loan made pursuant to a line of credit or other arrangement, the maximum principal that can be borrowed under the line of credit or other arrangement.

(4) Where the cost of borrowing in respect of a loan is subject to variation, the bank or financial institution shall by means of a written statement or by a notice displayed in each branch of the bank or financial institution, and within a reasonable time, disclose to the borrower any variation that affects the amount of any periodic payments to be made by the borrower.

8. A bank or financial institution shall disclose to the borrower the information required by sub-section (2) of section forty-seven of the Act, at or before the time at which the loan is made-

Manner of disclosure of information

- (a) by means of a written statement in the loan agreement or proposed agreement between the bank or financial institution and the borrower; or
- (b) through a separate statement in writing,

9. (1) A bank or financial institution shall disclose to each holder of a payment, credit or charge card, at or before the time at which the card is issued-

Payment, credit or charge card

- (a) the particulars of the holder's rights and obligations relating to-
 - (i) the credit limit authorised under the card and the maximum amount of indebtedness that may be outstanding at any time;
 - (ii) the period of time for which each statement of account is issued;
 - (iii) the manner, if any, in which the holder may use the card and avoid any charge;
 - (iv) the minimum amount, if any, that must be paid at the end of each statement period, which amount may be stated as a percentage of the amount outstanding; and
 - (v) the maximum amount of the card-holder's liability for authorised use of the card where it is lost or stolen;
- (b) the amount of any charge for which the holder is responsible by reason of accepting or using the card and the manner in which the charge is calculated;
- (c) the cost of borrowing and the manner in which it is calculated; and
- (d) any charges or penalties to be paid by the borrower as a result of the failure to repay or pay in accordance

with the contract governing the loan.

(2) Where a bank or financial institution intends to change any of the matters disclosed to a card-holder in accordance with sub-regulation (1), other than a disclosure under clause (i) of paragraph (a), the bank or financial institution shall send or deliver to the card-holder a written statement of the change at least fourteen days before the effective date of the change.

10. (1) A bank or financial institution shall not impose on a borrower any charge or penalty as a result of the failure by the borrower to repay or pay in accordance with the contract governing the loan other than-

No charge or penalty for failure to pay

- (a) interest on an overdue payment on a loan;
- (b) legal costs incurred in collecting or attempting to collect a payment on a loan; or
- (c) costs, including legal costs, incurred in protecting or realising the security on a loan.

(2) A bank or financial institution shall not impose a charge or penalty on a borrower for making a pre-payment of the principal or an instalment of the principal before its due date where-

- (a) the amount of the repayment exceeds K50,000 or extinguishes the debt;
- (b) the loan is made to a natural person; and
- (c) the loan is not secured by a mortgage on real property.

11. A bank or financial institution may disclose an estimate of an amount or of other information required to be disclosed under these Regulations instead of the actual amount or information where-

Disclosure of estimates

- (a) at the time of disclosure, the amount or information is unknown or unavailable to the bank or financial institution;
- (b) the bank or financial institution has made all reasonable efforts to ascertain the amount or information;
- (c) the estimate is clearly identified as such; and
- (d) the estimate is based on the best information available.

SCHEDULE
(Regulation 6)

CONTENTS OF DISCLOSURE STATEMENT

1. The name and address of the bank or financial institution.
2. The name and address of the borrower.
3. A description of any property to be used as security and its location.
4. A description of any guarantees and/or other collateral.
5. The date when the first payment on the loan is due.
6. In the case of a mortgage, whether it is first, second, etc.
7. The principal of the loan, including:
 - (a) the total amount of all charges to be financed; and
 - (b) the net amount of money to be paid to the borrower or to be disbursed at the borrower's direction.
8. The rate of interest expressed as a rate per annum, if that rate does not vary.
9. The initial rate of interest expressed as a rate per annum, if the rate varies from time to time.
10. A description of any factors that would cause the rate of interest to vary.
11. The length of the term of the loan.
12. The period during which an offer letter to a customer is valid, before it expires.
13. A description of any factors that would cause the term of the loan to vary.
14. The total cost of borrowing over the term of the loan, expressed as a rate per annum.
15. A list of each charge to be financed.
16. A description of any terms and conditions applicable to pre-payment of the principal.
17. A description of any charge or penalty that would be imposed for failure to make a payment or to repay the loan when due.
18. The date of the statement.
19. The name and signature of the representative of the bank or financial institution.

LUSAKA
6th November 1995
[MF.101/16/95]

R. D. S. PENZA
Minister of Finance