**Note: -** **The internet version of this Act is for information only. The authoritative version is the one published in the Government *Gazette* of Mauritius.**

# THE BORROWER PROTECTION ACT 2007

**Act No. 2 of 2007**

*I assent*

SIR ANEROOD JUGNAUTH
*President of the Republic*

6th February 2007

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# An Act

**To regulate credit agreements for a sum not exceeding 2 million rupees and to provide for the establishment of the Office of the Commissioner for the Protection of Borrowers**

ENACTED by the Parliament of Mauritius, as follows -

## PART I - PRELIMINARY

### 1. Short title

This Act may be cited as the Borrower Protection Act 2007.

**2. Interpretation**

In this Act –

"borrower" means any person who is granted a credit facility;

"Commissioner" means the Commissioner appointed under section 3;

"credit agreement" means a written agreement under which a credit facility is granted;

"credit facility" –

(a) means –

(i) lending of money to a borrower; or

(ii) financing the acquisition of movable or immovable property,

by a lending institution for a sum not exceeding the amount specified in the First Schedule; but

(b) does not include lending or advancing of money by a bank for a period not exceeding twelve months;

"extortionate" has the meaning assigned to it by section 18(6);

"guarantor" means a person who gives his immovable property or offers his personal guarantee as security for the repayment of a credit facility by a borrower;

"law practitioner" has the meaning assigned to it by the Law Practitioners Act;

"lender" means any lending institution which grants a credit facility;

"lending institution" -

(a) means a body specified in the Second Schedule; and

(b) includes a moneylender under the Moneylenders Act;

"Minister" means the Minister to whom responsibility for the subject of finance is assigned.

## PART II - ADMINISTRATION

### 3. Establishment of Office of the Commissioner for the Protection of Borrowers

(1) There is established for the purposes of this Act the Office of the Commissioner for the Protection of Borrowers.

(2) The Commissioner shall be a person suitably qualified and experienced in the field of banking, economics, finance or law, or in more than one of those fields, appointed by the Minister on such terms and conditions as the Minister may determine.

(3) The Commissioner shall take before the President the oath specified in the Third Schedule before assuming the duties of his office.

(4) The Secretary to Cabinet and Head of the Civil Service may, on the recommendation of the Financial Secretary, designate such public officers as may be necessary to enable the Commissioner to discharge his functions under this Act.

### 4. Application of Act

Notwithstanding any other enactment, this Act shall apply to every credit agreement for a sum not exceeding the amount specified in the First Schedule.

### 5. Prohibited transactions

(1) No person shall enter into a credit agreement which contravenes this Act.

(2) Any agreement relating to the grant of a credit facility or to the pledging of an immovable property as security for its repayment, which is inconsistent with this Act, shall to the extent of the inconsistency, be void.

### 6. Functions and powers of Commissioner

(1) The Commissioner shall have such functions and powers as are necessary to enable him to effectively discharge his duties, and in particular, shall -

(a) ensure that proper and adequate information is given to borrowers concerning the proper ways and means of obtaining a credit facility;

(b) promote public understanding of credit facilities, including awareness of the benefits and risks associated with them;

(c) ensure that the terms and conditions of a credit agreement referred to him are not extortionate;

(d) strive to strike a fair balance between the rights and obligations of borrowers and of lenders;

(e) deal with complaints received from borrowers; and

(f) cause investigations to be conducted and, where appropriate, convene hearings.

(2) In the discharge of his functions under this Act, the Commissioner may -

(a) request, for the purpose of assisting him in the conduct of an investigation, the Financial Secretary to cause to be enlisted the services of any person having experience in the field of banking, economics, finance or law on such terms and conditions as the Financial Secretary may, after consultation with the Secretary to Cabinet and Head of the Civil Service, determine;

(b) require any lending institution, with the written consent of the borrower or guarantor, if any, and notwithstanding section 64 of the Banking Act 2004, to furnish such information and documents as may be required in respect of the credit facility;

(c) make copies of or extracts from any document furnished pursuant to paragraph (b); or

(d) for the purposes of a hearing –

(i) summon witnesses to appear before him;

(ii) administer an oath and examine witnesses;

(iii) subject to subsection (3), require any witness to produce any document in his control or custody.

(3) Any witness summoned to appear before the Commissioner shall be entitled to the same immunity and privileges applicable to a witness before a court of law.

(4) For the purposes of a hearing, the Commissioner shall, subject to this Act, establish his own procedure and act expeditiously, taking into account the interests of all parties appearing before him.

(5) (a) The Commissioner may issue guidelines relating to the terms and conditions of credit agreements after consultation with relevant regulatory authorities and lending institutions.

(b) Any guidelines issued under paragraph (a) shall be published in the *Gazette.*

**7. Confidentiality**

(1) The Commissioner, every officer designated under section 3(4) and every person whose services are enlisted under section 6(2)(a) shall maintain, during or after their term of office or period of service or assignment in the Office of the Commissioner, as the case may be, the confidentiality of any document or information that comes to their knowledge or possession in the performance of their duties and functions under this Act.

(2) Except for the purposes of this Act, the Commissioner, an officer designated under section 3(4) and a person whose services are enlisted under section 6(2)(a) shall not disclose to any third party any information obtained from a lending institution, a person applying for a credit facility, a borrower or a guarantor.

**8. Immunity**

(1) No action shall lie against the Commissioner or any person whose services are enlisted under section 6(2)(a) in respect of any act done or omitted to be done by him, in the execution in good faith, of his functions under this Act.

(2) This section shall be in addition to and not in derogation from the Public Officers' Protection Act, and for the purposes of that Act, the Commissioner or any person whose services are enlisted under section 6(2)(a) shall be deemed to be a public officer or a person engaged or employed in the performance of a public duty.

## PART III – CREDIT FACILITIES

**9. Obligations of lenders**

(1) Notwithstanding any other enactment, every lender shall, before granting a credit facility to any person -

(a) take all reasonable steps to verify that the person has, or is likely to have, the means to repay the amount;

(b) cause the credit agreement to be read out to the person and to the guarantor, if any;

(c) ascertain whether the person and the guarantor, if any, understand sufficiently the language in which the credit agreement is drawn up;

(d) where the person or the guarantor does not sufficiently understand the language of the credit agreement, cause to be explained the contents of the agreement to that person or to the guarantor in a language which that person understands; and

(e) give a copy of the proposed credit agreement to the person and the guarantor, if any.

(2) Where a lender grants a credit facility to a person, he shall, during the period of the credit agreement, not later than the end of the month immediately following each period of 6 months, forward by registered post to the borrower and to the guarantor, if any, a statement of account showing -

(a) the amounts outstanding, in principal and interest, at the beginning and the end of the 6 month-period;

(b) the payments received, in principal and interest, during the 6 month-period; and

(c) the annual rate of interest applicable during the 6 month-period.

(3) Where a borrower is in default of payment of an instalment in respect of a credit facility, the lender shall, not later than 2 months immediately following the default, send a written notification to the borrower and the guarantor, if any, giving particulars of the instalments in default.

**10. Obligations of borrowers**

(1) Any person applying for a credit facility shall, for the purposes of enabling a lender to assess his capacity to repay, disclose in writing -

(a) all other outstanding credit facilities already granted to him and details of any other liabilities, terms of repayment, amount still outstanding, or any instalments in arrear;

(b) his average monthly expenses;

(c) particulars of his monthly income; and

(d) such other relevant information which the lender reasonably requires of that person.

(2) A borrower shall immediately notify his lender in writing of the particulars of any subsequent credit facility which he obtains from any other lending institution.

(3) Where a borrower is unable to pay any instalment in due time, he shall immediately send a written notification to the lender and the guarantor, if any, informing him of his inability to pay, give reasons therefor and seek the concurrence of the lender regarding arrangements for the payment of the instalment in default.

**11. Credit agreements**

Where a lender grants a credit facility to a person, the credit agreement between the parties shall -

(a) contain, by way of a summary at the beginning or the end of the document, the particulars relating to -

(i) the names, occupation and place of residence or business of the parties;

(ii) the amount of the credit facility and the terms of its repayment, specifying the rate of annual interest chargeable, the periodicity of repayment, the instalment repayable, the amount of interest and the penalty on default payment; and

(iii) the immovable property, if any, to be given as security for the performance by the borrower of his obligations;

(b) be made in accordance with the guidelines issued under section 6(5);

(c) subject to section 16, not contain any provisions for any charge by way of penalty;

(d) not impose on the borrower an obligation to pay to a law practitioner a fee, by whatever name called, other than one of an amount equivalent to what the law practitioner would be entitled to as a result of a claim presented to a Court; and

(e) in respect of a loan, provide that the credit facility may only be recalled on the ground that the borrower has failed to –

(i) effect payment of the instalment due -

(A) where repayment of the loan is effected on a monthly basis, for a period of 3 months following the first default; or

(B) in any other case, for a period of 6 months following the first default; or

(ii) fulfil any other obligation under the credit agreement.

**12. Immovable property given as security**

(1) Where a lending institution requires an immovable property as security for the grant of a credit facility, it shall, notwithstanding articles 216 and 1476 of Code Civil Mauricien but subject to section 12A(b) of the Moneylenders Act, not accept as security an immovable property used as matrimonial home by the spouses unless both spouses give their consent, irrespective of their matrimonial regime.

(2) Where an applicant for a credit facility gives an immovable property as security for the obtention of a credit facility and the lending institution requires the immovable property to be valued, the costs of the valuation shall be met by the lending institution if the loan applied for does not exceed the value of the immovable property as specified in the title deed.

**13. Insurance policy**

(1) Where an immovable property is given as security for the grant of a credit facility, the lender may require the borrower to take out an insurance policy to guarantee the repayment of any amount due to the lender in case the borrower is unable to honour his obligations because of death or permanent disability.

(2) Where an insurer grants a credit facility to a borrower and the latter is required to take out a policy of insurance pursuant to subsection (1), it shall not be lawful for the insurer to require the borrower to take out another life insurance policy in respect of that credit facility.

## PART IV – PROTECTION OF BORROWERS

### 14. Rescheduling of debt by lender

(1) A borrower -

(a) who is unable to meet his obligations under a credit agreement as a result of illness, injury, loss of employment, death of working spouse or other reasonable cause of hardship, which affects his capacity to repay the debt; and

(b) who reasonably expects to be able to discharge his obligations if the terms of the credit agreement are revised in a manner set out in subsection (2),

may request the lender to reschedule the debt.

(2) Where a request is made by a borrower under subsection (1), the terms of the credit agreement may be revised by providing for -

(a) an extension of the term and a corresponding reduction in the amount of each instalment due;

(b) a postponement for a specific period of the dates on which instalments are due; or

(c) a change in the terms of payment in such manner as may be agreed upon by both parties.

(3) The revised terms of the credit agreement pursuant to subsection (2) shall -

(a) be agreed upon in such manner as to enable the borrower to reasonably discharge his obligations;

(b) be fair and reasonable to both the borrower and the lender in all the circumstances; and

(c) be made in writing.

(4) This section shall apply to the heirs of a deceased borrower collectively as it would have applied to a borrower referred to in this section.

**15. Rescheduling of debt by order of Commissioner**

(1) Where a lender does not agree to a revision of the terms of a credit agreement, or the borrower is not agreeable to the revised terms made pursuant to section 14, the borrower may apply to the Commissioner, giving all the relevant information and documents, for an order to reschedule the debt.

(2) The Commissioner may, for the purposes of subsection (1), convene the parties and any other person concerned to a hearing and initiate such other action as he considers appropriate.

(3) The Commissioner may, if he thinks it appropriate in the circumstances, direct the lender to stay any enforcement proceedings under the credit agreement, and make such other order as he thinks fit, until the application is determined.

(4) The Commissioner may, where he is satisfied that the grounds for the rescheduling of the debt are justified, determine the application and issue an order directing the lender to reschedule the credit agreement according to such option specified in section 14(2) as is appropriate for the case.

(5) The Commissioner shall, as far as possible, determine the application within 6 months of the date of the application.

(6) Where the lender and the borrower reach an agreement following an application under subsection (1), the Commissioner shall, within 7 days of the agreement, communicate in writing, by registered post to the parties, the terms of the agreement.

(7) The terms of an order under subsection (4) or an agreement under subsection (6) shall not be altered on more than 2 occasions and no subsequent application under subsection (1) shall, save in exceptional circumstances, be entertained by the Commissioner.

(8) Any party who is dissatisfied with an order under subsection (4) may, within 21 days of the date of the order, apply to a Judge in Chambers to have the order varied or revoked.

**16. Penalty on default payment**

(1) A credit agreement may provide for a penalty by way of interest where a borrower is in default of payment of one or more instalments in respect of a loan.

(2) Any penalty by way of interest under subsection (1) shall -

(a) be at a rate not exceeding 5 per cent per annum; and

(b) be calculated on the default instalment excluding the interest payable thereon and any penalty by way of interest under this section.

**17. Protection of immovable property offered as security**

(1) Where any immovable property has been mortgaged as security for the repayment of any amount due under a credit agreement, the lender shall not issue execution on the security without first reporting the matter to the Commissioner.

(2) Where a report is made to the Commissioner under subsection (1), he -

(a) shall enquire into the matter and, in particular, the financial situation of the borrower and hear the parties;

(b) may determine what, in his opinion, is the most suitable way to avoid the seizure and sale of the immovable property;

(c) may order -

(i) the temporary suspension of the periodicity or amount of any payment to be made;

(ii) where he is of opinion that the credit agreement is extortionate having regard to all the circumstances of the case, the waiving or write off of any interest charged; or

(iii) a rescheduling of the periodicity or amount of the payments; and

(d) may hold a conciliation sitting between the parties, draw up any scheme or arrangement agreed upon and determine that the implementation of such scheme or arrangement be subject to his supervision.

(3) Any lender to whom an order under subsection (2)(c) has been issued may, not later than 21 days of the date of the order, apply to a Judge in Chambers for a decision varying or revoking the order.

**18. Reopening of terms of credit agreement by order of Commissioner**

(1) Where a borrower considers that his credit agreement is extortionate, he may report the matter to the Commissioner giving all the relevant information and documents.

(2) On receipt of a report under subsection (1), the Commissioner shall carry out an enquiry into the matter and hear the parties.

(3) The Commissioner may, where he is satisfied that the credit agreement is extortionate -

(a) make an order directing the lender to -

(i) amend the terms and conditions of the credit agreement which are extortionate;

(ii) repay to the borrower any excess amount paid;

(iii) indemnify the borrower or any other person prejudiced by the agreement in such sum and on such terms as may be imposed by him; or

(b) make such other order as he thinks fit.

(4) Any lender to whom an order has been made under subsection (3) -

(a) shall take immediate action following the order of the Commissioner and notify him forthwith in writing; or

(b) may apply to a Judge in Chambers for a decision varying or revoking the order, within 21 days of the date of the issue of the order.

(5) Where a lender does not apply to a Judge in Chambers under subsection (4)(b), the order of the Commissioner shall be binding on the lender.

(6) A credit agreement is extortionate where it –

(a) requires the borrower to make payments which are exorbitant; or

(b) otherwise contravenes ordinary principles of fair dealing.

(7) In determining whether a credit agreement is extortionate, regard shall be had to such evidence as is adduced regarding –

(a) prevailing interest rates at the relevant time;

(b) the personal circumstances of the borrower and the degree to which he was under financial pressure at the time, having regard to the disclosure made or information given under section 10; and

(c) the lender's relationship to the borrower and the degree of risk accepted by him, having regard to the value of any security provided.

**19. Enforcement of order by Court**

(1) Where a lender fails to comply with an order made under section 18(3)(a), the borrower may apply to the Judge in Chambers for an injunction to enforce the order.

(2) Where a borrower makes an application pursuant to subsection (1), he shall, notwithstanding sections 4(b) and 7 of the Legal Aid Act, be entitled to legal aid.

**20. Sale of mortgaged property**

(1) Where the Commissioner is satisfied that all possible means of doing otherwise than as provided for in sections 14, 15, 17 and 18 have been exhausted, he shall -

(a) authorise, in the first instance, the borrower or the guarantor, if any, to sell, within such time as the Commissioner may determine, the mortgaged property by private contract; or

(b) where the mortgaged property is not sold within the time referred to in paragraph (a), the price offered does not reflect the market value of the property or there is no potential buyer, proceed with the sale of the property by calling for sealed offers in such manner as may be prescribed.

(2) No sale under subsection (1)(a) shall be effected unless –

(a) the sale is made under the supervision of the Commissioner; and

(b) the Commissioner is satisfied that the price offered reflects the market value of the property, as recommended by the Chief Government Valuer in writing.

(3) Where the Commissioner proceeds with the sale of the property by way of sealed offers, he may, on the recommendation of the Chief Government Valuer, approve the sale of the property to the highest bidder.

(4) Parts I and II of the Sale of Immovable Property Act shall not apply to an immovable property given as security under this Act.

(5) Section 28(2) of the Land (Duties and Taxes) Act and section 17 of the Registration Duty Act shall not apply to a sale of an immovable property authorised under this Act.

(6) The distribution of the proceeds of the sale of an immovable property under this Act shall be governed by the provisions of the Sale of Immovable Property Act.

## PART V - MISCELLANEOUS

### 21. Offences

(1) Any person who -

(a) without reasonable excuse, fails to appear before the Commissioner, when summoned to do so pursuant to section 6(2)(d)(i);

(b) being in attendance as a witness before the Commissioner refuses to take the oath;

(c) without reasonable excuse, refuses to furnish to the Commissioner any information or produce any document in his control or possession or to answer any question;

(d) prevents or impedes an enquiry under this Act; or

(e) knowingly provides the Commissioner with information that is false or misleading in any material particular,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees.

(2) Any person who knowingly gives false or misleading information in any material particular in his application for a credit facility under section 10 shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees.

(3) Any person who fails to comply with, or contravenes, any other provision of this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees.

**22. Regulations**

(1) The Minister may -

(a) make such regulations as he thinks fit for the purposes of this Act; and

(b) by regulations, amend the First and Second Schedules.

(2) Regulations made under this section may provide -

(a) for the procedures to be followed for the sale of mortgaged property by way of sealed offers and the recovery of costs in relation thereto;

(b) for the payment of fees and the levying of charges; and

(c) that any person who contravenes them shall commit an offence, and shall, on conviction, be liable to a fine not exceeding 25,000 rupees.

**23. Transitional provisions**

(1) Any complaint relating to seizure of immovable property under the Sale of Immovable Property Act made to the police between 30 August 2006 and 31 December 2006 shall be referred to the Commissioner.

(2) Where any other person, who has, before the commencement of this Act, entered into an agreement -

(a) to which this Act would have applied had it been made after the commencement of this Act; and

(b) in respect of which the obligation to repay the debt is outstanding on or after the commencement of this Act,

considers that the terms of the agreement are extortionate, he may make a written complaint to the Commissioner, giving all the relevant information and documents.

(3) Subject to subsection (4), where a complaint is referred to the Commissioner pursuant to subsection (1) or is made under subsection (2), the Commissioner may -

(a) enquire into the complaint; and

(b) hold a conciliation sitting between the parties, draw up any scheme or arrangement that may be agreed upon and where such scheme or arrangement has been agreed upon, determine that the implementation of such scheme or arrangement be subject to his supervision.

(4) Section 4 shall not apply to a complaint referred to the Commissioner pursuant to subsection (1).

(5) Where no scheme or arrangement under subsection (3)(b) has been agreed upon and the Commissioner is of opinion that if this Act would have applied had the agreement been made after the commencement of this Act, the terms and conditions thereof would have been extortionate, he may make a declaration to that effect and recommend that the parties act accordingly.

(6) No party to an agreement to which a complaint under subsection (1) or (2) relates shall exercise any right under that agreement prior to the course of action under subsection (3) having been completed.

(7) A borrower shall, notwithstanding sections 4(b) and 7 of the Legal Aid Act, be entitled to legal aid, where a conciliation sitting is held in accordance with subsection (3)(b).

**24. Consequential amendments**

(1) The Hire Purchase and Credit Sale Act is amended, by inserting immediately after section 20, the following new section -

**20A. Advertisements**

(1) No person shall, in any manner whatsoever, publish, broadcast or cause to be published or broadcast, an advertisement relating to the hire purchase or credit sale of any goods which -

(a) is, or is likely to be, misleading to readers, viewers or listeners;

(b) indicates, or tends to indicate, that a hire purchase or credit sale agreement may be entered into in contravention of this Act; or

(c) does not indicate that no hire purchase or credit sale agreement shall be entered into with a person where it causes him to be over-indebted.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees.

(2) The Law Practitioners Act is amended by adding immediately after section 15, the following new section -

**15A. Receipts to be given by attorneys and barristers**

Every attorney or barrister shall, in respect of his services, give a receipt for the sums which he receives as deposit, fees or for attendance, disbursement or travelling expenses.

(3) The Moneylenders Act is amended -

(a) in section 12(3)(a), by inserting immediately after the words "is made", the words "and is to be repaid in full";

(b) in section 12A, by adding immediately after paragraph (c), the following new paragraph, the word "or" in paragraph (b) being deleted and the full stop at the end of paragraph (c) being deleted and replaced by the words "; or" accordingly -

(d) any agreement, including a notarial deed or a deed under private signature, is entered into by a person carrying the activity of a moneylender, without being in possession of a valid moneylender's licence, which creates a *reconnaissance de dette.*

(4) The Sale of Immovable Property Act is amended by adding immediately after section 76, the following new section -

**76A. Parts I and II not applicable to credit agreements**

Parts I and II of this Act shall not apply to a credit agreement under the Borrower Protection Act 2007.

**25. Commencement**

This Act shall come into operation on a date to be fixed by Proclamation.

Passed by the National Assembly on the twenty-fourth day of January two thousand and seven.

R. R. Dowlutta
*Clerk of the National Assembly*

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**FIRST SCHEDULE**
(*sections 2 and 4)*

**Maximum sum under a credit agreement**

2,000,000 rupees

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**SECOND SCHEDULE**
(*section 2)*

A bank under the Banking Act 2004

Development Bank of Mauritius Ltd

Employees' Welfare Fund

An insurance company under the Insurance Act

A leasing company

Mauritius Civil Service Mutual Aid Association

Mauritius Housing Company Ltd

National Housing Development Company Ltd

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**THIRD SCHEDULE**
(*section 3(3))*

**OATH**

I ……., do swear/solemnly affirm/declare that I will well and truly serve the Republic of Mauritius in the Office of the Commissioner for the Protection of Borrowers under the Borrower Protection Act 2007 and I will do right to all people according to law, without fear or favour, affection or ill-will. (So help me God).

Date: ……