

THE MONEYLENDING ACT

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THE MONEYLENDING ACT

Cap. 254.
Acts
30 of 1967,
33 of 1970,
18 of 1974,
8 of 1997,
29 of 2003.

[27th January, 1938.]

1.—(1) This Act may be cited as the Moneylending Act.

Short title
and inter-
pretation.

(2) In this Act—

“interest” does not include any sum lawfully charged in accordance with the provisions of this Act by a lender of money for or on account of costs, charges or expenses, but save as aforesaid includes any amount, by whatsoever name called, in excess of the principal, paid or payable to a lender in consideration of or otherwise in respect of the loan;

“principal” means in relation to a loan the amount actually lent to the borrower.

2.—(1) Where proceedings are taken in any court by any person for the recovery of any money lent either before or after the commencement of this Act, or the enforcement of any agreement or security made or taken in respect of money lent either before or after the commencement of this Act, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, enquiries, fines, bonuses, premiums, renewals or any other charges, are excessive, or that, in any case, the transaction is harsh or unconscionable, the court may reopen the transaction, and take an account between the parties, and shall, notwithstanding any statement or settlement of account, or any note, security or agreement purporting to close previous dealings and create a new obligation, reopen any account already taken between them, and relieve the

Reopening
of money-
lending
transactions
and relief.

person sued from payment of any sum in excess of the sum adjudged by the court to be fairly chargeable and due in respect of such principal, interest and charges, as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it; and shall set aside, either wholly or in part, or revise, or alter any security given, or agreement made in respect of money lent, and if the lender has parted with the security, may order him to indemnify the borrower or other person who gave such security.

(2) Any court in which proceedings might be taken for the recovery of money lent, shall have, and may at the instance of the borrower, or surety, or other person liable, exercise the like powers as may be exercised under this section where proceedings are taken for the recovery of money lent, and the court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Act by the borrower, or surety, or other person liable, notwithstanding that the time for the repayment of the loan, or any instalments thereof, may not have arrived:

Provided that in the event of the bankruptcy of the borrower the powers of a court under this subsection may be exercised at the instance of the Trustee in Bankruptcy notwithstanding that he may not be a person liable in respect of the transaction.

(3) On any application relating to the admission or amount of a proof in any bankruptcy proceedings in respect of any loan, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money.

(4) The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of moneylending.

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any court.

3.—(1) Where, in any proceedings in respect of any money lent after the commencement of this Act or in respect of any agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act, it is found that the interest charged exceeds the prescribed rate per annum, the court shall, unless the contrary is proved, presume for the purposes of section 2 that the interest charged is excessive and that the transaction is harsh and unconscionable, but this provision shall be without prejudice to the powers of the court under that section where the court is satisfied that the interest charged, although not exceeding the prescribed rate per annum, is excessive.

Presumption where interest charged exceeds 20 per cent per annum.

8/1997
S. 2(b).

8/1997
S. 2(b).

(2) In this section “prescribed rate” means such rate as the Minister may from time to time, by order, *prescribe.

8/1997
S. 2(c).

4. [*Repealed by Act 8 of 1997.*]

5. [*Repealed by Act 8 of 1997.*]

6. Whosoever shall by any false, misleading, or deceptive statement, representation, or promise, or by any dishonest concealment of material facts, fraudulently induce, or attempt 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 on summary conviction before a Resident Magistrate to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Penalties for false statements and representations.

8/1997
S. 4.

*L.N. 101c/1997

Moneylend-
ing adver-
tisements.

7.—(1) Where any document issued or published by or on behalf of a lender of money purports to indicate the terms of interest upon which he is willing to make loans or any particular loan, the document shall express the interest proposed to be charged in terms of a rate *per centum per annum*.

8/1997
S. 5.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable, on summary conviction before a Resident Magistrate, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(3) Where it is shown that a moneylending transaction was brought about by a contravention of the provisions of this section, the transaction shall be illegal, unless the lender proves that the contravention occurred without his consent or connivance.

Form of
moneylend-
ing con-
tracts.
8/1997
S. 6(a).

8.—(1) Subject to subsection (3), no contract for the repayment by a borrower of money lent to him or to an agent on his behalf after the commencement of this Act or for the payment by him of interest on money so lent and no security given by the borrower or by any such agent as aforesaid in respect of any such contract shall be enforceable, unless a note or memorandum in writing of the contract containing the particulars required by this section be made and signed personally by the borrower, and unless a copy thereof be delivered or sent to the borrower within seven days of the making of the contract; and no such contract or security shall be enforceable if it is proved that the note or memorandum aforesaid was not signed by the borrower before the money was lent or before the security was given, as the case may be.

(2) The note or memorandum aforesaid shall contain all the terms of the contract, and in particular shall show the date on which the loan is made, the amount of the principal of the loan, and the interest charged on the loan expressed in terms of a rate *per centum per annum*.

(3) Notwithstanding anything in subsection (1) or (2) any court of competent jurisdiction may, upon application being made and if it considers it equitable to do so, declare the contract to be enforceable in the same manner and to the same extent as if the requirements of subsections (1) and (2) had been complied with.

8/1997
S. 6(b).

9. Subject as hereinafter provided, any contract made after the commencement of this Act for the loan of money shall be illegal in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of any default in the payment of sums due under the contract:

Prohibition
of com-
pound
interest
and provi-
sion as to
defaults.

Provided that provision may be made by any such contract that if default is made in the payment upon the due date of any sum payable to the lender under the contract, whether in respect of principal or interest, the lender shall be entitled to charge simple interest on that sum from the date of the default until the sum is paid, at a rate not exceeding the rate payable in respect of the principal apart from any default and any interest so charged shall not be reckoned for the purposes of this Act as part of the interest charged in respect of the loan:

Provided further that any such provision for the payment of simple interest in the circumstances aforesaid shall be in writing and signed personally by the borrower.

Obligation
of lender to
supply
information
as to the
state of
loan and
copies of
documents
relating
thereto.
8/1997
S. 7.

10.—(1) In respect of every contract for the repayment of money lent whether before or after the commencement of this Act, the lender shall, on any reasonable demand in writing being made by the borrower at any time during the continuance of the contract and on tender by the borrower of the sum of fifty dollars for expenses, supply to the borrower or, if the borrower so requires, to any person specified in that behalf in the demand, a statement signed by the lender or his agent showing—

- (a) the date on which the loan was made, the amount of the principal of the loan and the rate *per centum* per annum of interest charged; and
- (b) the amount of any payment already received by the lender in respect of the loan and the date on which it was made; and
- (c) the amount of every sum due to the lender, but unpaid, and the date upon which it became due, and the amount of interest accrued due and unpaid in respect of every such sum; and
- (d) the amount of every sum not yet due which remains outstanding, and the date upon which it will become due.

(2) A lender of money shall, on any reasonable demand in writing by the borrower, and on tender of a reasonable sum for expenses, supply a copy of any document relating to a loan made by him or any security therefor to the borrower, or if the borrower so requires, to any person specified in that behalf in the demand.

(3) If a lender to whom a demand has been made under this section fails without reasonable excuse to comply therewith within one month after the demand has been made, he shall not, so long as the default continues, be entitled to sue for or recover any sum due under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of the default.

11.—(1) Where a debt due to a lender in respect of a loan of money made by him after the commencement of this Act includes interest, that interest shall, for the purposes of the provisions of the Bankruptcy Act relating to the presentation of a bankruptcy petition, voting at meetings, compositions and schemes of arrangement, and dividend, be calculated at a rate not exceeding six *per centum* per annum, but nothing in the foregoing provision shall prejudice the right of the creditor to receive out of the estate, after all the debts proved in the estate have been paid in full, any higher rate of interest to which he may be entitled.

Provisions
as to
bankruptcy
proceedings
for lender's
loans.

The provisions of this subsection shall, in relation to such a debt as aforesaid, have effect in substitution for the provisions of section 128 (1) of the Bankruptcy Act.

(2) No proof of a debt due to a lender in respect of a loan of money made by him shall be admitted for any of the purposes of the Bankruptcy Act unless the affidavit verifying the debt is accompanied by a statement showing in detail—

- (a) the amount of the sums actually lent to the debtor and the dates on which they were lent, and the amount of every payment already received by the lender in respect of the loan and the date on which every such payment was made; and
- (b) the amount of the balance which remains unpaid distinguishing the amount of the principal from the amount of interest included therein; and
- (c) where the amount of interest included in the unpaid balance represents a rate *per centum* per annum exceeding six *per centum*, the amount of interest which would be so included if it were calculated at the rate of six *per centum* per annum.

(3) Rules of court may be made for the purpose of carrying into effect the objects of this section.

Prohibition
of charge
for expenses
on loans.
8/1997
S. 8(a)(b).

12.—(1) Subject to subsection (2), any agreement between a lender or intending lender of money and a borrower or intending borrower for the payment by the borrower or intending borrower to the lender or intending lender of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be illegal, and if any sum is paid to a lender or intending lender by a borrower or intending borrower as for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or, in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly.

8/1997
S. 8 (c).

(2) Subsection (1) does not apply to any sum on account of tax, duty or fee under the Stamp Duty Act or the Registration of Titles Act.

Exemptions.

13.—(1) This Act shall not apply to—

- (a) any Friendly Society, or to any Building Society or Benefit Building Society, registered under the Friendly Societies Act or the Building Societies Act respectively or any enactment amending or substituted for the same, or to any loans made by any such Society; or
- (b) any Society registered under the Industrial and Provident Societies Act or any enactment amending or substituted for the same, or to any loans made by any such Society; or
- (c) any body corporate, incorporated or empowered by an enactment of the Legislature of this Island to lend money in accordance with such enactment; or

- (d) any company licensed under the Financial Institutions Act; or 8/1997
S. 9 (b).
- (e) any company licensed under the Banking Act; or 8/1997
S. 9 (b).
- (f) any loan to or contract or security for the repayment of money lent to a body corporate incorporated in Jamaica by or under any enactment or by royal charter; or 8/1997
S. 9 (b).
- (g) any insurance company registered under the Insurance Act, in the course of whose business and for the purposes whereof it lends money; or 8/1997
S. 9 (b).
- (h) any person whose main business is not the lending of money and who lends money solely incidental to the conduct of such business; or 8/1997
S. 9 (b).
- (i) any loan or contract or security for the repayment of money lent at such rate of interest not exceeding such rate per annum as the Minister may by order *prescribe; or 8/1997
S. 9 (b).
- (j) a licensee under the Securities Act; or 29/2003
S. 2 (b).
- (k) an entity— 29/2003
S. 29 (b).
- (i) which is established by a statutory body or authority; and
- (ii) the primary purpose of which is to lend money.

(2) [*Deleted by Act 8 of 1997.*]

14.—(1) Where the Minister is satisfied that it is in the public interest so to do, he may by order declare—

- (a) any loan or contract or security for the repayment of a loan specified in that order; or
- (b) any loan made, or any contract entered into, or any security for the repayment of a loan given by any person specified in that order,

Minister's
power to
declare
exemptions.
33/1970
S. 3.

*L.N. 101c/1997

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to be exempt from the provisions of this Act, subject to such terms and conditions as may be specified in the order.

(2) Where there has been a breach of any term or condition specified in an order under subsection (1), or any fraudulent act in respect of the exemption obtained thereby, or where such order has been obtained by misrepresentation, whether innocent or otherwise, the Minister may by order revoke that exemption but without prejudice to the rights of any innocent third parties.