

CHAPTER 90

MONEY LENDING

Ordinance No. 2 of 1918, Acts Nos. 9 of 1954, 11 of 1963. AN ORDINANCE TO PROVIDE FOR THE BETTER REGULATION OF MONEY-LENDING TRANSACTIONS, AND THE PROHIBITION OF THE CARRYING ON OF THE BUSINESS OF MONEY LENDING BY CERTAIN PERSONS.

[1st August, 1918.]

Short title. **1.** This Ordinance may be cited as the Money Lending Ordinance.

Prohibition of the carrying on of the business of money lending by certain persons. **1A.** (1) On or after the first day of January, 1964, no person shall carry on the business of money lending if such person—

[§48, 11 of 1963.] (a) is an individual who is not a citizen of Sri Lanka; or

(b) is a foreign company; or

(c) is a foreign firm:

Provided, however, that the preceding provisions of this subsection shall not apply to any foreign firm or foreign company approved for the purposes of this subsection by the Minister in charge of the subject of Finance by Order published in the Gazette.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding six months, or to both such fine and imprisonment.

(3) In any prosecution of any person for an offence under this section, the burden of proving that such person is a citizen of Sri Lanka, or is not a foreign company or foreign firm, shall lie on such person.

(4) In this section—

(a) "citizen of Sri Lanka" means any individual who is a citizen of Sri Lanka under any law for the time being in force relating to such citizenship;

(b) "foreign company" means a company to which Part XI of the Companies Ordinance\* applies, other than any commercial bank within the meaning of the Monetary Law Act or any life insurance company; and

(c) "foreign firm" means a firm—

(i) consisting of two partners one of whom is not a citizen of Sri Lanka, or both of whom are not such citizens; or

(ii) consisting of more than two partners at least one of whom is not a citizen of Sri Lanka.

**1B.** No suit or other proceedings, shall be instituted or maintained in any court in respect of any money lent if such money was lent on or after the first day of January, 1964, by any person carrying on the business of money lending in contravention of the provisions of subsection (1) of section 1A.

Prohibition of suit or other proceedings in respect of money lent in certain circumstances. (§48, 11 of 1963)

2. (1) Where proceedings are taken in any court for the recovery of any money lent after the commencement of this

Re-opening of "money-lending transactions."

\* Repealed and replaced by the Companies Act, No. 17 of 1982.

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Ordinance, or the enforcement of any agreement or security made or taken after the commencement of this Ordinance in respect of money lent either before or after the commencement of this Ordinance, and there is evidence which satisfies the court—

- (a) that the return to be received by the creditor over and above what was actually lent (whether the same is charged or sought to be recovered specifically by way of interest, or in respect of expenses, inquiries, fines, bonuses, premia, renewals, charges, or otherwise), having regard to any sums already paid on account, is excessive, and that the transaction was harsh and unconscionable, or, as between the parties thereto, substantially unfair; or
- (b) that the transaction was induced by undue influence, or is otherwise such that according to any recognized principle of law or equity the court would give relief; or
- (c) that the lender took as security for the loan a promissory note or other obligation in which the amount stated as due was to the knowledge of the lender fictitious, or the amount due was left blank,

the court may re-open the transaction and take an account between the lender and the person sued, and may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly 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 refund it; and may 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 sued.

(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 the last preceding subsection, and the court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Ordinance by the borrower or surety or other person liable, notwithstanding that the time for repayment of the loan or any instalment thereof may not have arrived.

(3) In any insolvency proceedings on any application relating to the admission or amount of a proof in respect of any money lent, 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 money lending.

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

3. In the exercise of its powers under the Prescription. last preceding section the court shall have regard to the lapse of time, the conduct of the party praying for relief, and any other equitable considerations that the Justice of the case may require to be taken into account, but the provisions of the Prescription Ordinance shall not apply to any claim for relief under the said section:

Provided that in any case in which any amount claimed at any time to be due has been settled in account, no repayment or re-adjustment of the account shall be ordered in respect of any sum paid or allowed in account at a date exceeding six years before (negate of the application to the court for relief. .

4. (!) In considering whether in any case the return to be received by the creditor is excessive, the court shall have regard (amongst other things) to the reasonableness of the rate of interest charged.

Meaning of return being excessive.

Rates above which interest presumed to be unreasonable.

(2) Any rate of interest charged above the rates following, that is to say;—

- (a) in the case of loans of an amount up to and including one - hundred rupees, twenty *per centum* per annum;
- (b) in the case of loans over one hundred rupees and up to and including two thousand five hundred rupees, eighteen *per centum* per annum;
- (c) in the case of loans over two thousand five hundred rupees, fifteen *per centum* per annum,

shall be deemed to be unreasonable, unless the creditor, or any person claiming through the creditor, shall satisfy the court that in all the circumstances of the case the rate charged was in fact reasonable :

Provided that nothing in this section shall be deemed to preclude the court, in any case in which the above limits are not exceeded, from directing a reduction of the rate of interest charged, if the party seeking relief shall satisfy the court that in all the circumstances of the case such reduction ought to be made.

(3) In computing the rate of interest charged, the court shall take into account all payments, other than principal made by the debtor to the creditor, or charged to the debtor by the creditor in account, in respect of the loan, whether purporting to be by way of interest or otherwise (not being payments from which the creditor derives no benefit), and shall for the purposes of the computation, as nearly as practicable, convert all such payments into a rate *per centum* per annum.

Observance of rule that interest shall not exceed principal.

5. In taking the account under section 2, the court shall observe the rule that no interest shall at any time be recoverable to an amount in excess of the sum then due, as principal.

Meaning of undue influence.

6. (1) A transaction is said to be induced by "undue influence", within the meaning of section 2 of this Ordinance, where the relations subsisting between the

parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair-advantage over the other.

(2) Where a person who is in a position to dominate the will of another enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

(3) Nothing in subsection (2) shall affect the provisions of section 111 of the Evidence Ordinance.

*Illustrations*

- (a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.
- (b) A commercial firm, dealing with the owner of certain plumbago mines indebted to the firm, who is in insolvent circumstances, offers, as an alternative to obtaining an adjudication of his insolvency, to lend him a sum of money on condition of his repaying the amount in instalments at the customary rate of interest, but on the further condition of his binding himself to supply the firm during the period prescribed for the repayment of the loan, and if so required for the rest of his life, with the produce of his mines at a rate twenty *per centum* below the ordinary market rate for the time being. The mine owner, having no means of contesting any action the firm may take, consents. The commercial firm employs undue influence.
- (c) A, being in debt to B, a money lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

7. Section 2 of this Ordinance shall not apply to transactions in the ordinary course of business by—

- (a) any mutual provident or specially authorized society registered under the Societies Ordinance;
- (b) any society incorporated under the National Housing Act;

Exclusion of certain classes of transactions

- (c) any society registered or deemed to be registered under the Co-operative Societies Law;
- (d) any body corporate or incorporated empowered by a special enactment to lend money in accordance with such special enactment;
- (e) any duly incorporated and registered bank or banking company;
- (f) any person or company bona fide carrying on the business of insurance;
- (g) any pawnbroker licensed under the Pawnbrokers Ordinance.

Duty of persons carrying on money-lending business to keep accounts.

**8.** (1) A person who carries on the business of money lending, or who advertises or announces himself or holds himself out in any way as carrying on that business, shall keep or cause to be kept a regular account of each loan, clearly stating in plain words and numerals the items and transactions incidental to the account, and entered in a book paged and bound in such a manner as not to facilitate the elimination of pages or the interpolation or substitution of new pages.

(2) If any person, subject to the obligations of this section, fails to comply with any of the requirements thereof, he shall not be entitled to enforce any claim in respect of any transaction in relation to which the default shall have been made :

Provided that in any case in which the court is satisfied—

- (a) that the default was due to inadvertence and not to any intention to evade the provisions of this section; and
- (b) that the receipt of the loan, the amount thereof, the amount of the payments on account, and the other material transactions relating thereto satisfactorily appear by other evidence,

the court may give relief against any such default on such terms as it may deem just.

(3) The preceding provisions of this section shall not apply to any duly incorporated and registered bank or banking company.

**9.** (1) A person who carries on the business of money lending, or who advertises or announces himself or holds himself out in any way as carrying on that business, shall in respect of every loan—

Duty of persons carrying on money-lending business to give copies of accounts and receipts.

- (a) on request in writing and subject to the payment of a reasonable sum for expenses, furnish the borrower from time to time with a true and certified copy of the account of the loan and any document relating to the loan or any security therefor, and shall on the like request allow him, or any person authorized by him in writing in that behalf, to compare such copy with the original; and
- (b) on request at the time when any payment is made by or on behalf of the borrower on account of the loan, tender to the borrower, or the person making the payment on his behalf a written receipt for the amount of such payment.

(2) An entry in any pass book or statement of account furnished to the borrower by the lender shall be deemed to be equivalent for the purposes of this section to the grant of a receipt for the amount so entered.

(3) If any person, subject to the obligations of this section, fails to comply with any of the requirements thereof, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding one hundred rupees.

**10.** (1) In every promissory note given as security for the loan of money after the commencement of this Ordinance, there shall be separately and distinctly set forth upon the document—

Particulars to be set forth in promissory notes.

- (a) the capital sum actually borrowed;

- (b) the amount of any sum deducted or paid at or about the time of the loan as interest, premium, or charges paid in advance; and
- (c) the rate of interest *per centum* per annum payable in respect of such loan.

(2) Any promissory note not complying with the provisions of this section shall not be enforceable:

Provided that in any case in which the court shall be satisfied that the default was due to inadvertence and not to any intention to evade the provisions of this section, it may give relief against the effect of this subsection on such terms as it may deem just.

(3) The setting forth of the particulars required by subsection (1) shall not affect the negotiability of any promissory note.

(4) Any promissory note setting forth the said particulars substantially in the form given in the Schedule shall be deemed to be in compliance with this section.

(5) The provisions of this section shall apply to renewals of any loan, and in all such cases the amount stated as the capital sum actually borrowed shall be the amount of the original loan.

Protection of bona fide holder for value.

11. Nothing in sections 2, 8, or 10 hereof shall impair the rights of any bona fide holder for value of any promissory note given in respect of any loan, without notice of any matter affecting the enforceability of such note:

Provided that in any case in which any borrower is prejudiced by the operation of this section, he shall be entitled to be indemnified by the lender to the extent to which he is so prejudiced.

Penalties for false statements and representations.

12. If any person, 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, he shall be guilty of the offence

of cheating, and shall be liable on conviction to the penalties prescribed for that offence in the Penal Code.

13. Any person who shall take as security for any loan a promissory note or other obligation in which the amount stated as due is to the knowledge of the lender fictitious, or in which the amount due is left blank, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred rupees, or in the event of a second or subsequent offence, either to a fine not exceeding one thousand rupees, or to simple imprisonment for a period not exceeding six months.

Penalty for taking fictitious or blank promissory note as security.

14. A promissory note given in respect of a loan with regard to which a reduction was made or a sum paid at or about the time of the loan in respect of interest, premium, or charges payable in advance, without such deduction or payment being set forth upon the document in accordance with section 10 (unless the circumstances are such as reasonably to entitle the lender to relief under that section), and any promissory note or other obligation in respect of a loan, with regard to which at or about the time of the loan any payment was made, or any collateral transaction entered into with a view to disguising the actual amount of the sum advanced, or the rate of interest payable in respect thereof, shall be deemed to be a promissory note or obligation in which the amount stated as due is, to the knowledge of the lender, fictitious within the meaning of sections 2 and 13 of this Ordinance.

Meaning of "fictitious".

15. Any person carrying on the business of money-lending, who, with a view to harassing or intimidating his debtor or any member of his family, either personally or by any person acting on his behalf, watches or besets the residence or place of business or employment of the debtor, or any place at which the debtor receives his wages or any other sum periodically due to him, shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding one hundred rupees, or to imprisonment of either description for a period not exceeding six months:

Besetting residence, &c. of debtor.

Provided that a person shall not be deemed to commit an offence under this section merely because, either personally or by any person acting on his behalf, he calls at reasonable intervals at such residence or place of business or employment for the purpose of demanding payment of the debt due to him.

**18.** (1) In any case in which in any civil proceeding a borrower pleads any of the provisions of this Ordinance (whether in any complaint, answer, or other pleading, or in any affidavit or application for the purpose of obtaining leave to defend any action), if the court is satisfied that such plea was not made' in good faith, but was made for the purpose of delaying or harassing the lender, the court may order such borrower to pay for the benefit of the lender a sum equivalent to the amount of any stamp duty incurred by the lender in the proceeding (or such lesser sum as may be ordered by the court), and every such sum so ordered to be paid shall be added to the amount of the judgment recoverable by the lender;

Protection of lenders against frivolous and vexatious pleading of the Ordinance.

Loans to women or children of householders by money lenders visiting the residence of any person.

**16.** Any person carrying on the business of money-lending, who, by visiting the residence of any person, induces the wife or child of any such person to contract a loan without his written consent, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding one hundred rupees, or to imprisonment of either description for a period not exceeding six months,, or to both such fine and imprisonment.

Burden of proof.

**17.** (1) In any proceedings taken under, or in pursuance of the provisions of, this Ordinance, in which the lender in any money-lending contract is a person of the class commonly known in Sri Lanka as "Afghans ", such person shall be presumed to be a person carrying on the business of money-lending, unless the contrary is proved to the satisfaction of the court.

Provided that no payment ordered by the court under this subsection shall in any case exceed the amount of two hundred and fifty rupees.

(2) In any case in which in any criminal proceeding instituted against a lender for a breach of any provision of this Ordinance the court is satisfied that the charge was made maliciously, frivolously, or vexatiously, it may direct that the costs of the accused to such an amount as shall be determined by the court shall be payable by the complainant, and any amount so ordered to be paid shall be recoverable for the benefit of the accused in the same manner as a fine imposed by the court.

(2) Save as aforesaid, if any question arises as to whether any person is a person carrying on the business of money lending, the burden of proving that such person in fact carries on such business shall lie on the party alleging it.

[Section 10.]

**SCHEDULE**

PROMISSORY NOTE GIVEN IN RESPECT OF A LOAN

*Stamp.*

Particulars required by the Money Lending Ordinance. 1. Capital sum borrowed, Rs..... 2. Interest, premium or charges deducted or paid in advance, if any, Rs..... 3. Rate of interest <i>per centum per annum</i> :.....	On demand (or ..... months after date) I promise to pay to ... .., or order, the sum of Rupees . . . ., with interest thereon at the rate of. . <i>per centum per annum.</i>	..,or . <i>per</i>
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(Signature of Borrower.)