

THE MONEY LENDERS ACT, 1945.

[BURMA ACT NO. XXVII OF 1945.]

Simla, the 13th October, 1945.

No. 11.- The following Act is published for information:-

WHEREAS it is expedient to provide for the registration and control of money-lenders in British Burma;

AND WHEREAS by Proclamation, dated the tenth day of December, 1942, the Governor of Burma has assumed to himself all powers vested by or under the Government of Burma Act, 1935 (26 Geo. 5, c. 3) , in the Legislature or in either Chamber thereof:

NOW, THEREFORE, in exercise of the said powers, it is hereby enacted by the Governor of Burma as follows:-

CHAPTER I.

Preliminary.

1. Short title, extent and, commencement.-

- (1) This Act may be called the Money-Lenders Act, 1945.
- (2) It shall extend only to such local areas and shall come into force in such areas on such dates as the Governor may, by notification, direct, and the Governor may, by the notification extending this Act to any local area, direct that any section or part thereof shall not be in force in such local area.

2. Definitions.-

In this Act, unless there is anything repugnant in the subject or context,-

- (1) "bank" means a banking company as defined in section 277F of the Burma Companies Act, whether incorporated in or outside British Burma;
- (2) "company" means a company as defined in the Burma Companies Act, or incorporated under an Act of Parliament or of the Legislature of a British possession or by a Royal Charter or Letters Patent;

- (3) “co-operative society” means a society registered under the Co-operative Societies Act;
- (4) “interest” means rate of interest and includes the return to be made in money, kind or otherwise over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise;
- (5) “loan” means an advance, whether of money or in kind, at interest and includes–
 - (i) any transaction which is in substance a loan;
 - (ii) a sabape transaction or a transaction of a like nature by which money is advanced during or before a cultivating season and whereby the debtor agrees to return at or after harvest a stated quantity of paddy or other produce exceeding or likely to exceed in value the sum advanced; and
 - (iii) a transaction in which money, goods, grain or other produce is advanced and whereby the debtor undertakes to deliver on a subsequent date a quantity of produce exceeding or likely to exceed in value the money, goods or produce advanced:

Provided that it shall not include–

- (a) a deposit of money or other property in a post office savings bank or with any bank or a company or co-operative society or with an employer as security by his employee;
- (b) a loan to or by, or a deposit with any society or association registered under the Societies Registration Act or under any other law relating to public, religious or charitable objects;
- (c) a loan taken or advanced by Government or by any local authority in Burma;

- (d) a loan advanced by a co-operative society, insurance company or provident insurance society;
- (e) a loan advanced by a bank which is a scheduled bank as defined in the Reserve Bank of India Act, 1934 (India II, 1934) , or by a bank which the Governor has, by notification, exempted;
- (f) a loan advanced by a trader to another trader in the ordinary course of business and in accordance with trade usage;
- (g) an advance made to a trader on the basis of a negotiable instrument as defined in the Negotiable Instruments Act other than a promissory note;
- (h) an advance in money or in kind by a landlord to his tenant to meet the expenses of cultivation or by a cultivator to his labourers against wages payable at harvest.

Explanation 1. – A bond bearing interest executed in respect of goods taken on credit but not for the purpose of sale by the borrower, is a loan.

Explanation 2. – A supply of goods on a contract of hire-purchase is not a loan.

- (6) “money-lender” means a person who carries on the business of advancing loans as defined in this Act and shall include his legal representatives and successors-in-interest whether by inheritance, assignment or otherwise:

Provided that nothing in this definition shall apply to–

- (a) a person who is the legal representative or is by inheritance the successor-in-interest of a deceased money-lender together with all his rights and liabilities, if such person only winds up the estate of such money-lender and does not advance any fresh loans; or
- (b) a person who from the date on which this Act comes into force merely winds up his money-lending business and does not advance any fresh loans;

- (7) “prescribed” means prescribed by this Act or by rules made under this Act;
- (8) “principal” means in relation to a loan the amount in money or in kind actually lent to the borrower;
- (9) “Registrar” means a Registrar appointed under the Registration Act;
- (10) “secured loan” means a loan which is secured by a mortgage, charge or lien on any property, movable or immovable;
- (11) “Sub-Registrar” means a Sub-Registrar appointed under the Registration Act;
- (12) “trader” means a person who in the ordinary course of business, buys and sells goods or other property, whether movable or immovable, and includes—
 - a wholesale or a retail merchant,
 - a commission agent,
 - a broker,
 - a manufacturer,
 - a contractor, and
 - a factory owner,but does not include a person who sells only his own agricultural produce or cattle, or buys agricultural produce or cattle for his own use;
- (13) “unsecured loan” means any loan other than a secured loan.

3. Power to exempt any class of money-lenders from this Act.-

The Governor may, by notification, exempt any money-lender, or money-lenders, or any class or classes of money-lenders, as may be specified in the notification, from the operation of all or any of the provisions of this Act.

CHAPTER II.
Registration of Money-lenders.

4. Register of money-lenders.-

Every Registrar shall maintain a register of money-lenders in such form and containing such particulars as may be prescribed.

5. Registration of money-lenders and registration certificates.-

- (1) Every money-lender shall, within three months from the commencement of this Act in any local area, register himself under this Act.
- (2) Every application for registration shall be in the prescribed form and shall be stamped for the prescribed fee, and shall state-
 - (a) the name and address of the applicant;
 - (b) the name and style under which he carries on or desires to carry on business as a money-lender;
 - (c) the address of his principal place of business and the branches thereof, if any, and particulars of the district or districts in which he carries on or desires to carry on his business; and
 - (d) such other particulars as may be prescribed.
- (3) The application for registration shall be made-
 - (a) to the Registrar at Rangoon if the money-lender intends to carry on his business in more than one district or in the whole of British Burma.
 - (b) to the Registrar or Sub-Registrar of a district if the money-lender intends to carry on his business within the limits of that district only.
- (4) The Sub-Registrar shall, on receipt of such application, forward the same to the Registrar of the district.
- (5) The Registrar shall, where the application has been properly presented, make the necessary entries in the register maintained by him under

section 4 and issue a registration certificate to the money-lender in such form as may be prescribed.

- (6) On the expiration of the certificate by efflux of time under section 6, or on the money-lender ceasing to carry on business, or on the removal from the register of the name of the money-lender under section 18, the money-lender shall forthwith deliver up his certificate to the Registrar, who shall cancel the same.

6. Duration and renewal of registration.-

- (1) A registration made and certificate issued under the provisions of section 5 shall remain in force for a period of three years from the date of registration.
- (2) On the expiration of the period for which the registration is in force under sub-section (1), the name of and particulars relating to the money-lender shall be deleted from the register and the money-lender shall cease to carry on business, unless in the meantime the money-lender has applied under sub-section (3) for renewal of registration.
- (3) At any time within thirty days prior to the date of which his registration will expire, a money-lender may, and shall if he intends to continue in business, apply for renewal of registration, and the provisions of sub-sections (2), (3), (4) and (5) of section 5 shall apply to such application: Provided that it shall not be necessary to make fresh entries in the register of money-lenders on the renewal of the registration, but a note of the date of renewal of the registration shall be made therein.
- (4) The period for which a renewed registration shall remain in force shall be three years from the date of expiration of the previous registration.

CHAPTER III.
Regulation of Accounts of Money-lenders.

7. Duty of money-lender to maintain accounts and to give receipts.-

- (1) Every money-lender shall, in respect of every loan advanced by him after the commencement of this Act and every transaction made by him after the commencement of this Act relating to a loan advanced by him before the commencement of this Act,-
- (a) regularly record and maintain, or cause to be recorded or maintained, an account showing for each debtor-
 - (i) the date and terms of the loan, the amount advanced, the rate of interest charged and the articles pledged, if any, and
 - (ii) the amount of every payment received by the money-lender in respect of the loan and the date of such payment;
 - (b) give to the debtor, or his agent, a receipt for every sum paid by, or on behalf of, the debtor, duly signed by him or his agent and, where necessary, stamped at the time of such payments;
 - (c) supply the debtor, or his agent, within thirty day of the date of the loan, with a true copy of the entries recorded under sub-clause (i) of clause (a) ;
 - (d) supply the debtor or his agent, at intervals of not more than twelve months, with a statement of account signed by him or his agent, showing the amount that is outstanding against such debtor on account of the principal and interest on the date the statement of account was made, and the amount of every payment received by the money-lender in respect of the loan, and the date of such payment, during the period to which the statement relates;

- (e) give the debtor a receipt signed by him or his agent for every article pledged with a general description of such article, and the amount tax which it is pledged; and
 - (f) return to the debtor as soon as the loan is repaid in full every document whereby the debtor or any other person became liable for the re-payment of the loan and all securities therefor.
- (2) A, person to whom a copy of entries under clause (c) of sub-section (1) or a statement of account under clause (d) of sub-section (1) has been supplied shall not be deemed to have admitted the correctness of such entries or statement of account by reason only that he has not objected to the correctness thereof.
- (3) A copy of entries in an account or of a statement of account supplied under sub-section (1) shall be written in such language as may be prescribed and no charge shall be made for supplying a copy thereof to the debtor.

8. Inspection of accounts maintained by money-lenders.-

Every money-lender shall produce all books of account maintained by him in respect of his money-lending business for inspection by such persons and in such manner as may be prescribed:

Provided that no inspection of such accounts shall be made without the sanction of the Registrar.

CHAPTER IV.

Suits and Execution of Decrees.

9. Bar to decrees and orders on suits and applications by unregistered money-lenders.-

Notwithstanding anything contained in any other law for the time being in force, no Court shall pass a decree on a suit by a money-lender for the recovery of a loan, or for the enforcement of any security taken in respect of a loan, or an order on an

application by a money-lender for the execution of a decree relating to a loan or to any security in respect of a loan, unless the money-lender is registered under this Act and the registration is in force.

10. Maximum rates at which interest may be decreed.-

- (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any contract, no Court shall, in any suit or proceeding in respect of a loan advanced after the commencement of this Act, pass a decree in respect of interest at rates exceeding twelve per centum per annum in the case of a secured loan and eighteen per centum per annum in the case of an unsecured loan.
- (2) A copy of every judgment or order of a Court whereby, in consequence of the provisions of sub-section (1), the rate of interest recoverable on a loan is reduced shall be transmitted to the Registrar by the Court.

11. Agreements for payment of compound interest void.-

- (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any contract, an agreement for the payment of compound interest on loans advanced after the commencement of this Act shall be void in so far as it provides, directly or indirectly, for the payment of compound interest:
Provided that the Governor may, by notification, and subject to such conditions as he may impose exempt any class of loans from the provisions of this section.
- (2) A copy of every judgment or order of a Court hereby, in consequence of the provisions of sub-section (1), compound interest is disallowed shall be transmitted to the Registrar by the Court.

12. Maximum amount which may be decreed in suit on loan.-

Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any contract, no Court shall, in respect of a loan advanced before or after the commencement of this Act, pass a decree for a sum greater than the principal of the original loan and arrears of interest which, together with any interest already paid, exceeds the amount of such principal.

13. Power of Court to reopen certain transactions.-

In any suit or proceeding, whether filed before or after the commencement of this Act, in respect of a loan advanced before the commencement of this Act, or in any appeal or proceeding in revision arising out of such suit or proceeding, the Court may exercise any of the following powers, namely-

- (a) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any interest in excess of twelve per centum simple per annum in the case of a secured loan and eighteen per centum simple per annum in the case of an unsecured loan;
- (b) notwithstanding any agreement purporting to close previous dealings and to create a new obligation, re-open any account already taken between the parties and relieve the debtor of all liability in respect of any interest in excess of twelve per centum simple per annum in the case of a secured loan and eighteen per centum simple per annum in the case of an unsecured loan;
- (c) set aside, either wholly or in part, or revise or alter any security given or agreement made in respect of any loan, and, if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just:

Provided that in the exercise of these powers the Court shall not-

- (i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the

parties, or persons through whom they claim, more than six years before the institution of such suit; or

- (ii) do anything which affects any decree of a Court in a previous suit: Provided further that, if anything has been paid or allowed in respect of any liability for interest in excess of twelve per centum simple per annum in the case of a secured loan and eighteen per centum simple per annum in the case of an unsecured loan, nothing in clause (a) or clause (b) shall be deemed to require the creditor to repay any amount so paid or allowed in excess or to reduce the amount of the principal of the loan.

**CHAPTER V.
Miscellaneous.**

14. Right to deposit in Court money due on loan.-

- (1) Where a debtor tenders any sum to a money-lender or his agent in payment of any interest or principal of a loan and the money-lender or his agent refuses to receive the sum tendered, the debtor may deposit the amount so tendered, in any Court in which the money-lender might have instituted a suit for the recovery of such interest or loan, to the account of the money-lender.
- (2) The Court shall thereupon issue notice of the deposit to the money-lender.
- (3) The money-lender may, within three years after the date of the service upon him of the notice issued under sub-section (2), apply to the Court for the sum deposited to be paid to him.
- (4) If no application is made within the period specified in sub-section (3), the amount deposited shall be disposed of in the prescribed manner.

- (5) Upon receipt of an application under sub-section (3) the Court may order the sum deposited to be paid to the applicant upon such terms and subject to such conditions as it may specify.
- (6) The deposit made under sub-section (1) shall operate as satisfaction for the amount so deposited in the same manner and to the same extent as if such amount had been received by the money-lender in whose favour the deposit was made on the date of such deposit.

15. Documents with blanks or incorrect entries.-

- (1) No creditor shall take from a debtor or intending debtor any note, bond, security or promise to pay, which does not state the actual amount in words of the loan, the terms of the loan, the date of the execution of the document, the rate of interest charged and the time, if any, within which the principal is stipulated to be repaid in full, or which states any of such particulars incorrectly; nor shall any creditor take from any debtor or intending debtor any instrument in which any of the above particulars is left blank to be filled up at a subsequent date.
- (2) Notwithstanding anything contained in any law for the time being in force any such note, bond, security, promise, or document shall be void.

16. Penalty for molestation.-

- (1) Whoever molests, or abets the molestation of, a debtor for the purpose of recovering or attempting to recover a debt shall be punishable on conviction, with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.- A person who with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing-

- (a) obstructs or uses violence to or intimidates such other person, or

- (b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in, the use thereof, or
- (c) loiters or does any similar act at or near a house, building, or place where such other person resides, stays, works or carries on business or happens to be, shall be deemed to molest such other person:

Provided that a person who attends at or goes near such house, building or place for the purpose only of making a formal demand for repayment of a loan or of enquiring about the property of the debtor or his whereabouts shall not be deemed to molest.

- (2) Notwithstanding anything contained in the Code of Criminal Procedure, an offence under this section shall be cognizable and bailable:

Provided that no arrest shall be made for an offence under this section except-

- (a) by an officer-in-charge of a police-station or a police officer not below the rank of sub-inspector, or
- (b) on a warrant issued by a Magistrate.

17. General provision regarding penalties.-

Whoever contravenes the provisions of sub-section (1) or sub-section (6) of section 5, or of sub-section (2) of section 6, or of sub-section (1) or sub-section (3) of section 7, or of section 8, or of sub-section (1) of section 15, or abets the contravention of any of the aforesaid provisions, shall be punishable in the case of-

- (i) a first offence with fine which may extend to two hundred rupees,
- (ii) a second offence, with fine which may extend to five hundred rupees, and
- (iii) a third or subsequent offence, with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

18. Removal of name from register.-

- (1) The Registrar may remove from the Register of Money-lenders the name of any money-lender who, after the commencement of this Act,-
 - (i) has been found guilty of an offence under section 16 or section 17, or
 - (ii) has made loans at rates of interest in excess of the maximum rates prescribed by section 10, or
 - (iii) has made loans carrying compound interest, except as permitted under the proviso to section 11.
- (2) Before the name of a money-lender is removed from the register under sub-section (1) he shall be given by the Registrar a reasonable opportunity of showing cause why his name should not be so removed.
- (3) Any money-lender whose name has been removed from the register by the Registrar under sub-section (1), may, within thirty days of the service on him of a copy of the order of the Registrar, appeal against the order to the Governor, and the decision of the Governor thereon shall be final.

19. Service of notices.-

All processes, notices and orders required to be served on a money-lender shall be deemed to be duly served if left at or sent by registered post to the address given by the money-lender in his application for registration.

20. Rule-making power.-

- (1) The Governor may make rules for carrying out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-
 - (a) the form of register under section 4 and the particulars to be contained in such register,

- (b) the form of and the further particulars to be contained in an application for registration under section 5,
- (c) the fee to be paid on an application for registration under section 5,
- (d) the form of registration certificate under section 5,
- (e) the language or languages to be used in making copies of entries and statements of account under sub-section (3) of section 7,
- (f) the manner in which accounts shall be made available for inspection under section 8, and the persons who may carry out such inspections and
- (g) the manner in which deposits made under section 14 shall be disposed of.

21. Repeal.-

On the coming into force of this Act in any area the Usurious Loans Act shall be deemed to have been repealed in the said area.

In the name of His Majesty I assent to this Act.

R.H. DORMAN-SMITH,

Governor of Burma.

SIMLA, the 9th October 1945.

By order,

D.B.PETCH,

Secretary to the Govt. of Burma.