

The Money-Lenders Act, 1940 (Bengal Act)

(ACT NO. X OF 1940)

An Act further to regulate transactions of money-lending in Bangladesh.^{1♣}

WHEREAS it is expedient to make further and better provision for the control of money-lenders and for the regulation and control of money-lending;

It is hereby enacted as follows:-

CHAPTER I

INTRODUCTORY

**Short title,
extent and
commencement**

1. (1) This Act may be called the ²[* * *] Money-lenders Act, 1940.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.

Definitions

2. 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 Companies Act, 1913, whether incorporated in or outside Bangladesh;

(2) “borrower” means a person to whom a loan is advanced and includes a successor-in-interest or surety;

³[* * *]

(4) “commercial loan” means a loan advanced to any person to be used by such person solely for the purposes of any business or concern relating to trade, commerce, industry, mining, planting, insurance, transport, banking or entertainment, or to the occupation of wharfinger, warehouseman or contractor or any other venture of a mercantile nature, whether as proprietor or principal or agent or guarantor;

Explanation.- Notwithstanding anything contained in any agreement relating thereto, a loan shall not be deemed to be a commercial loan unless it is in substance a loan to be used solely for any of the purposes referred to in this clause.

(5) “co-operative life insurance society”, “mutual insurance company” and “provident society” have the same meanings as in the Insurance Act, 1938;

(6) “co-operative society” means a society registered under the ⁴[* * *] Co-operative Societies Act, 1940, or any Act of ⁵[Parliament], for the time being in force, relating to such societies;

⁶[(7) “insurance company” means an Insurance Company within the meaning of the Insurance Act, 1938;]

(8) “interest” includes any sum by whatsoever name called, in excess of the principal paid or payable to a lender in consideration of, or otherwise in respect of, a loan whether the same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any sum lawfully charged by a lender in accordance with the provisions of this Act or any other law for the time being in force for or on account of costs, charges or expenses;

(9) “lender” means a person who advances a loan and includes a money-lender;

(10) “licence” means a licence granted under this Act;

(11) “life assurance company” means a company whose business is the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life;

(12) “loan” means an advance, whether of money or in kind, made on condition of repayment with interest and includes any transaction which is in substance a loan but does not include-

(a) a deposit of money or other property,

- (b) a loan to, or by, or a deposit with, any society or association registered under the Societies Registration Act, 1860, or under any other law relating to public, religious or charitable objects;
- (c) a loan taken or advanced by ⁷[the Government] or by any local authority in Bangladesh;
- (d) a loan advanced before or after the commencement of this Act-
- (i) by a bank which was a scheduled bank on the first day of January, 1939, or by a bank which has been declared to be a notified bank under section 3, whether or not such bank was a scheduled bank or was so declared to be a notified bank, as the case may be, at the time the loan was advanced; or
- (ii) by a co-operative life insurance society, co-operative society, insurance company, life assurance company, mutual insurance company, provident insurance society or provident society or from a provident fund; or
- (iii) by the Agricultural Development Finance Corporation established under the Agricultural Development Finance Corporation Act, 1952; ⁸[or
- (iv) by the Krishi Bank established under the Bangladesh Krishi Bank Order, 1973;]
- (e) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note;
- (f) a commercial loan;
- (g) a loan advanced to any person for the purchase or construction of a house or for the construction of a house together with the purchase of the site thereof, within the limits of any area which has been or may hereafter be constituted a municipality under the provisions of the Municipal Administration Ordinance, 1960, if such loan is subject to the condition of repayment by instalments extending over a period of ten years or more;
- (h) a loan made to or by the Administrator-General and Official Trustee of Bangladesh or the Administrator of Waqfs or the Official Assignee or the Official Receiver of the ⁹[Supreme Court];

(i) a loan or debenture in respect of which dealing are listed on any Stock Exchange;

(13) “money-lender” means a person who carries on the business of money-lending in Bangladesh or who has a place of such business in Bangladesh, and includes a pawnee as defined in section 172 of the Contract Act, 1872;

(14) “money-lending business” and “business of money-lending” mean the business of advancing loans either solely or in conjunction with any other business;

(15) “prescribed” means prescribed by rules made under this Act;

(16) “principal” means in relation to a loan, the amount actually advanced to the borrower;

(17) “provident fund” has the same meaning as in the Provident Funds Act, 1925;

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(19) “register” means a register of money-lenders maintained under section 7;

(20) “scheduled bank” has the same meaning as in ¹¹[the Bangladesh Bank Order, 1972];

(21) “suit” includes an appeal;

(22) “suit to which this Act applies” means any suit or proceeding instituted or filed on or after the 1st day of January, 1939, or pending on that date and includes a proceeding in execution-

(a) for the recovery of a loan advanced before or after the commencement of this Act;

(b) for the enforcement of any agreement entered into before or after the commencement of this Act, whether by way of settlement of account or otherwise, or of any security so taken, in respect of any loan advanced whether before or after the commencement of this Act; or

(c) for the redemption of any security given before or after the commencement of this Act in respect of any loan advanced whether before or after the commencement of this Act.

Notified bank

3. The Government may, by notification in the official Gazette, declare any bank to be a notified bank for the purposes of this Act:

Provided that no bank shall be so declared to be a notified bank unless it complies with such conditions as may, with the approval of ¹²[Parliament], be prescribed.

CHAPTER II

COMPETENT COURTS AND PROCEDURE

Competent Courts under this Act

4. Notwithstanding anything contained in any other law, the Courts (hereinafter referred to as Competent Courts) which have jurisdiction to entertain proceedings under sections 16 and 19 and to pass orders therein are the Courts hereinafter specified, within the local limits of whose jurisdiction the money-lender actually and voluntarily resides or carries on the business of money-lending-

¹³[* * *]

(b) the Court of the District Judge (hereinafter called a "District Court") and any Court to which he may transfer the proceedings.

Procedure in Competent Courts

5. (1) Subject to the provisions of this Act, a Competent Court shall, in proceedings under section 19, have the same powers and shall follow the same procedure as it has and follows in civil suits, and the provisions of section 24 of the Code of Civil Procedure, 1908, shall apply to such proceedings.

(2) Every order made by a Competent Court under this Act shall be subject to appeal in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals.

CHAPTER III

REGISTRATION AND LICENSING OF MONEY-LENDERS