



The Money Lending Contract – What you should know

The Moneylending Act ("The Act") governs money lending transactions in Jamaica in respect of those persons or entities that fall under the provisions of the Act. Legislation such as this is not uncommon, as many countries have, in some form or another, legislation intended to regulate the activities of moneylenders and to protect unsuspecting borrowers. The Act sets out a number of provisions intended to guide the practice of moneylenders, but this article will focus on the form the moneylending contract should take and the entities exempted from the Act,.

Form of the Moneylending Contract

As most persons who refer to this Act do so in respect of the interest rate provisions, one of the frequently overlooked provisions of this Act is the section setting out the form that moneylending contracts are to take. Non-compliance with this section can form a basis for a Court setting aside a contract purported to be drafted pursuant to the Act. Section 8 of the Act provides that the contract must abide by the following rules:-

1. The contract must be evidenced by a note or memo in writing;
2. The note or memo must be signed personally by the borrower;
3. A copy of the note or memo must be delivered or sent to the borrower within seven (7) days of the making of the contract;
4. The note or memo must be signed before money is lent or before security is given.
5. The note or memo must contain 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 in terms of a rate percent per annum.

There is however a proviso in respect of the provisions set out above, as subsection (3) provides that despite the fact that there has not been strict compliance with the form of the agreement an application can made to the Court and the Court may 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 set out above had been complied with. This will no doubt been done on a case by case basis and taking all circumstances into account.

Exemptions to the Act

This Act mainly applies to small lending companies or institutions and individual lenders. This is because the Act expressly exempts a large category of "persons" from its ambit. By virtue of section 13 of the Act, the following categories are exempted from the provisions of the Moneylending Act:-

- (a) Friendly Societies, Building Societies or Benefit Building Societies;
- (b) any Society registered under the Industrial and Provident Societies Act;
- (c) any body corporate, incorporated or empowered by an enactment of the Legislature to lend money in accordance with such enactment; or
- (d) any company licensed under the Financial Institutions Act; or
- (e) any company licensed under the Banking Act; or
- (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
- (g) any insurance company registered under the Insurance Act, in the course of whose business it lends money; or

(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

(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 (the prescribed rate for the purposes of this subsection has been ordered to be 25% by Order dated August 27, 1997); or

(j) a licensee under the Securities Act; or

(k) an entity-

(i) which is established by a statutory body or authority; and

(ii) the primary purpose of which is to lend money.

Section 14 of the Act also provides discretionary powers for the Minister of Finance to grant exemptions to companies. Companies granted exemptions under section 14 of this Act can carry out money lending activities without being subjected to the limitations set out in this Act.

In circumstances where many persons borrow money from small lenders or unregulated entities, it is worthwhile to consult an Attorney to assist you in determining whether the person or company you are dealing with falls under the Act. If you do not do so you may end up paying a much higher rate of interest than they are allowed to charge. Being aware of your rights can save you money.

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