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GAZETTE

EXTRAORDINARY.

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PART II.—LEGAL.

(Separate paging is given to each Part in order that it may be filed separately.)

DRAFT ORDINANCES.

MINUTE.

The following Draft of a proposed Ordinance is published for general information :—

L. D.—O 64/36

An Ordinance to regulate the rates of interest chargeable upon loans of money.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

1 This Ordinance may be cited as the Rates of Interest Ordinance, No. of 1938, and shall come into operation on such date (hereinafter referred to as "the appointed date") as the Governor may appoint by Proclamation published in the Gazette.

Short title and date of operation.

2 No person shall upon any loan made or given after the appointed date take, receive or accept, or agree to take, receive or accept, interest at a rate exceeding the permitted rate.

Rates of interest which are prohibited.

Interest
decreed by
court.

3 (1) Where an action is brought in any court in respect of any loan made or given after the appointed date, the court may in the decree order that interest be paid—

- (a) in respect of any period prior to the institution of the action, on the capital sum borrowed, at the rate agreed upon between the parties or, where no rate is agreed upon between the parties, at the rate of six per centum per annum ;
- (b) in respect of the period from the institution of the action to the date of the decree, on the capital sum borrowed at the rate agreed upon between the parties or where no rate is agreed upon between the parties, at the rate of six per centum per annum ;
- (c) in respect of the period from the date of the decree to the date of payment or to such earlier date as the court thinks fit, on the aggregate sum adjudged in the decree, at the rate of six per centum per annum :

Provided that—

- (i) in no case shall interest at a rate exceeding the permitted rate be decreed under paragraph (a) or paragraph (b) ;
- (ii) where the aggregate sum adjudged in the decree includes as interest any sum in excess of one half of the capital sum borrowed, no interest shall be decreed on the amount of such excess ; and
- (iii) the aggregate of the amounts decreed under paragraphs (a) and (b) on account of interest shall in no case exceed the capital sum borrowed.

(2) Where no order for the payment of interest under paragraph (c) of sub-section (1) is made in any decree, the court shall be deemed to have refused such interest and a separate action therefor shall not lie.

Instruments
of debt.

4 (1) Every instrument of debt executed within Ceylon on or after the appointed date in respect of a loan shall separately and distinctly set forth—

- (a) that it is executed for money lent ;
- (b) the capital sum actually borrowed ; and
- (c) the rate of interest per annum which is to be charged in respect of the loan.

(2) No loan which is made or given on or after the appointed date shall be recoverable at law unless that loan has been made or given on an instrument of debt executed in compliance with the provisions of sub-section (1) :

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

- (a) that the non-compliance with the provisions of sub-section (1) was due to inadvertence and not to any intention to evade the provisions of this Ordinance ; and
- (b) that the receipt of the loan, the amount thereof, the capital sum actually borrowed, and the rate of interest satisfactorily appear by other evidence,

the court may give relief against the effect of this section on such terms as it may deem just.

(3) A registrar may, if he thinks fit, refuse to register under the Registration of Documents Ordinance, No. 23 of 1927, any instrument of debt which does not comply with the provisions of sub-section (1).

In this sub-section, " registrar " has the same meaning as in the Registration of Documents Ordinance, No. 23 of 1927.

Offences.

5 Any person who—

- (1) in respect of any loan made or given on or after the appointed date takes, receives or accepts, or agrees to take, receive or accept, interest at a rate exceeding the permitted rate ; or
- (2) is a party to any agreement in respect of any loan made or given on or after the appointed date 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 capital sum borrowed or the rate of interest payable in respect thereof ; or

- (3) on or after the appointed date makes or executes or is a party to the making or execution of any instrument of debt which does not comply with the requirements of section 4 (1) ; or
- (4) wilfully makes or executes or is knowingly a party to the making or execution of an instrument of debt which contains a statement which is false as to particulars required to be inserted therein by section 4 (1), or utters any such instrument of debt knowing that it contains any such false statement as aforesaid,

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 period not exceeding six months or to both such fine and imprisonment.

6 (1) Nothing in this Ordinance shall affect or be deemed to effect any provision of the Pawnbrokers Ordinance, 1893, or the Co-operative Societies Ordinance, No. 14 of 1936, or of any other written law relating to pawnbrokers or to co-operative societies.

Laws and documents to which the Ordinance does not apply. No. 8 of 1893.

(2) Nothing in this Ordinance shall apply to or in respect of any *bona fide* bottomry or respondentia bond.

7 Save as provided in section 6, the provisions of this Ordinance shall have effect notwithstanding anything to the contrary in Ordinance No. 5 of 1852, the Civil Procedure Code, 1889, the Moneylending Ordinance, No. 2 of 1918, or any other written law ; but such provisions of that Code and of those Ordinances and of such other law as are not inconsistent with the provisions of this Ordinance shall continue to have force and effect as heretofore.

Savings.

8 In this Ordinance, unless the context otherwise requires—

Interpretation.

“ instrument of debt ” includes a negotiable instrument, bond, written contract or agreement or other document containing the terms of any contract or agreement in respect of any loan, but does not include any *bona fide* covering bond in so far as it purports to convey security for future advances ;

“ interest ” includes any sum of money, by whatsoever name called, in excess of the capital sum borrowed, which is paid or payable in consideration of, or otherwise in respect of, a loan ;

“ loan ” means a loan of money and includes any transaction relating to money which is, in the opinion of the court, in substance a loan of money ;

“ permitted rate ” means a rate of interest not exceeding—

(a) nine per centum per annum in the case of a loan secured by a mortgage or charge of or over any property whatsoever ; and

(b) twelve per centum per annum in the case of any other loan.

9 The Ordinances specified in the first column of the Schedule are hereby amended to the extent specified in the second column of that Schedule.

Consequential amendments of written law.

SCHEDULE.

(Section 9).

Ordinance.	Nature of amendment.
The Civil Procedure Code, 1889	In sections 192, 196 and 213, the words “ six per centum ” are substituted for the words “ nine per cent.”.
Ordinance No. 5 of 1852	In section 3, the words “ six per centum ” are substituted for the words “ nine per cent.”.

Objects and Reasons.

The object of this Bill is to regulate the rates of interest which may be charged and the amount of interest which may be recovered on loans of money. On a loan secured by a mortgage of property, whether movable or immovable, the maximum permitted rate of interest will be nine per centum per annum ; on all other loans the maximum rate will be twelve per centum. The legal rate of interest will be reduced from nine to six per centum ; and where the aggregate amount

of a decree entered by a court of law includes as interest any sum in excess of half the capital sum borrowed, no interest will be allowed on the amount of such excess.

2. The new law will not apply to pawnbrokers or co-operative societies or to bottomry and respondentia bonds; but the provisions of the Civil Procedure Code and of the Moneylending Ordinance, No. 2 of 1918, will hereafter be read subject to the reduction in the maximum permitted rates of interest.

3. Clause 4 prescribes the legal requirements of instruments of debt. An action founded on an instrument which does not comply with the requirements of the new law cannot be maintained, though a court is empowered to grant equitable relief in appropriate cases. In addition, a Registrar is vested with the discretion to refuse to register an instrument of debt which does not comply with the new requirements.

G. C. S. COREA,
Minister for Labour, Industry and Commerce.
Colombo, September 6, 1938.