

THE REPUBLIC OF KIRIBATI  
(No. 4 of 1988)

I assent,

*U. Tabai*  
Beretitenti  
25/7/1988

AN ACT TO MAKE PROVISION FOR THE CONTROL OF  
MONEY LENDING AND FOR CONNECTED PURPOSES

Commencement:  
25/7/1988

MADE by the Maneaba ni Maungatabu and assented to by the  
Beretitenti.

PART I  
PRELIMINARY

- |                |  |
|----------------|--|
| Short title    | 1. This Act may be cited as the Moneylenders Act 1988.   |
| Interpretation | 2. In this Act, unless the context otherwise requires -<br>"authorised name" and "authorised address" mean respectively the name under which and the address at which a moneylender is authorised by a licence granted under this Act to carry on business as a moneylender;<br>"company" means any body corporated being a moneylender;<br>"firm" means an unincorporated body of two or more individuals or one or more individuals and one or more corporations or two or more corporations who have entered into partnership with one another with a view to carrying on business for profit;<br>"interest" does not include any sum lawfully charged in accordance with the provisions of this Act by a moneylender for or on account of stamp duties, fees payable by law and legal costs but, save as aforesaid, includes any amount by whatsoever name called in excess of the principal paid or payable to a moneylender in consideration of or otherwise in respect of a loan;<br>"inferior court" means a court other than the High Court or the Court of Appeal; |

"licence" means a moneylender's licence under this Act;

"moneylender" includes every person whose business is that of moneylending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business whether or not that person also possesses property or earns money derived from sources other than the lending of money and whether or not that person carries on the business as a principal or as an agent but does not include -

- (a) any body corporate incorporated or empowered by any enactment to lend money in accordance with such enactment; or
- (b) any person bona fide carrying on the business of banking or insurance or bona fide carrying on any business not having for its primary object the lending of money in the course of which and for the purposes whereof he lends money; or
- (c) any body corporate for the time being exempted by the Minister by order from the provisions of this Act;

"principal" means, in relation to a loan, the amount actually lent to and received by the borrower;

"Registrar" means the Registrar of Moneylenders appointed under this Act and includes an assistant registrar or any officer authorised by either of them.

Certain persons and firms presumed to be moneylenders

3. Save as excepted in paragraphs (a), (b) and (c) of the definition of "moneylender" any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed, until the contrary is proved, to be a moneylender.

Appointment of Registrar

4(1) There shall be a Registrar of Moneylenders whose office shall be a public office.

(2) The Registrar may grant a licence to a moneylender under this Act.

## PART II

### MONEYLENDERS' LICENCES, PARTICULARS TO BE SHOWN ON LICENCES AND GROUNDS FOR REFUSING, SUSPENDING OR FORFEITING LICENCES

Licences to be taken out by moneylenders

5(1) Every moneylender, whether carrying on business alone or as a partner in a firm, shall take out annually in respect of every address at which he carries on his business as such, a moneylender's licence which shall expire on the thirty-first day of December in every year and, subject as hereinafter provided, there shall be charged on every such licence such fee as may be prescribed by the Minister. No licence shall be issued to a person not ordinarily resident in Kiribati.

(2) A licence shall be in such form as the Minister may prescribe and shall be granted on payment of the prescribed fee to the Registrar.

List to be published

6(1) The Registrar shall in the month of January in every year cause to be published a correct list of all persons licensed under this Act and additions to, or alterations in, such list shall be published from time to time.

(2) Every such printed list purporting to be published as aforesaid shall be evidence in all courts that the persons therein specified are licensed under this Act and the absence of the name of any person from such printed list shall be evidence, unless the contrary is shown, that such person is not licensed under this Act.

Particulars to be shown on licences

7. Every licence granted to a moneylender shall show his true name and the name under which, and the address at which, he is authorised by the licence to carry on business as such and a licence shall not authorise a moneylender to carry on business at more than one address or under more than one name or under any name which includes the word "bank" or otherwise implies that he carries on the business of banking and no licence shall authorise a moneylender to carry on business under any name except -

- (a) his true name; or
- (b) the name of a firm in which he is a partner; or
- (c) a business name whether of an individual or of a firm in which he is a partner under which he or the firm has been registered under any enactment.

Offences

8. If any person -

- (a) takes out a licence in any name other than his true name; or
- (b) carries on business as a moneylender without holding a licence or, being licensed as a moneylender, carries on business as such in any name other than his authorised name or at any other place other than his authorised address or addresses; or
- (c) in the course of his business as a moneylender enters into any agreement with respect to any advance or repayment of money or takes any security for money otherwise than in his authorised name,

such person commits an offence under this Act and shall be liable upon conviction to a fine not exceeding \$200 and for a second or subsequent offence shall be liable to the fine aforesaid or to imprisonment for a term not exceeding 2 months and an offender being a company shall on a second or subsequent offence be liable to a fine not exceeding \$1000.

Grounds for  
refusing  
licence

9(1) Subject to subsection (2) a licence shall not be refused except on one or more of the following grounds -

- (a) that satisfactory evidence has been produced that the applicant or any person responsible or proposed to be responsible for the management of his business as a moneylender is not a fit and proper person to hold a licence;
- (b) that the applicant or any person responsible or proposed to be responsible for the management of his business as a moneylender is by order of a court disqualified from holding a licence;
- (c) that the applicant has not complied with the provisions of any regulations made under section 5 with respect to applications for licences; or
- (d) that the applicant or his firm has knowingly lent money to a minor after the commencement of this Act.

(2) Where the Registrar refuses to grant a licence under this Act he shall give reasons for such refusal.

(3) Any person aggrieved by the refusal of the Registrar to grant a licence may appeal to the Minister whose decision shall be final.

Suspension and  
forfeiture of  
moneylenders'  
licence.

10(1) Where any person being the holder of a licence is convicted of any offence under this Act the court -

- (a) may, after considering any representations by the licence holder against suspension, disqualification or forfeiture as the case may be, order that the licence held by that person and, in the case of a partner in a firm, by any other partner in that firm, shall either be suspended for such time as the court thinks fit or be forfeited and may also, if the court thinks fit, declare any such person or any person responsible for the management of the moneylending business carried on by the person convicted to be disqualified from obtaining a licence for such time as the court thinks fit; and
- (b) shall cause particulars of the conviction and of any order made by the court under this subsection to be endorsed on the licence held by the person convicted or by any other person affected by the order and shall cause copies of those particulars to be sent to the Registrar;

Provided that -

- (i) where by the order of a court the licence held by any person is suspended or forfeited or any person is disqualified from obtaining a licence he may, whether or not he is the person convicted, appeal against the order

in the same manner as any person may appeal against his conviction and, pending the hearing of such appeal, the court shall defer the operation of the order;

(ii) an order for forfeiture or suspension made under this subsection shall not affect any moneylending transaction other than that in respect of which such order is made entered into before such order is made.

(2) Any licence required by a court for endorsement in accordance with subsection (1) shall be produced in such manner and within such time as may be directed by the court by the person by whom it is held; and any person who without reasonable cause fails to produce any licence so required shall, in respect of each offence, be liable upon conviction to a fine not exceeding \$25 for each day during which the default continues.

PART III

PUBLICATION OF NAMES, DOCUMENTS, ETC., BY MONEYLENDERS AND RESTRICTION ON MONEYLENDERS' ADVERTISEMENTS

Names to be stated on documents issued by moneylenders  
Cap. 10A

11(1) Section 117(1) of the Companies Ordinance (which requires certain particulars of the Directors and the Secretary to be published in all written or printed publications or circulars and business letters) shall apply with necessary modifications to every company licensed under this Act.

(2) A moneylender shall not for the purpose of his business as such issue or publish or cause to be issued or published any advertisement, circular, business letter or other similar document which does not show in such manner as to be not less conspicuous than any other name the authorised name of the moneylender, and any moneylender who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$100 in respect of each offence.

No circular implying a banking business to be issued

12. If a moneylender for the purpose of his business as such issues or publishes or causes to be issued or published any advertisement, circular or document of any kind whatsoever containing expressions which might reasonably be held to imply that he carries on the business of banking, such moneylender commits an offence and shall be liable upon conviction to a fine not exceeding \$200 and on a subsequent offence shall be liable to the fine aforesaid or to imprisonment for a term not exceeding 12 months and an offender being a company shall for a second or subsequent offence be liable to a fine not exceeding \$1000.

Restrictions on moneylenders' advertisements

13(1) No person shall knowingly send or deliver or cause to be sent or delivered to any person except in response to his written request any circular or other document advertising the name, address or telephone number of a moneylender or containing an invitation -

(a) to borrow money from a moneylender;

(b) to enter into any transaction involving the borrowing of money from a moneylender; or

(c) to apply to any place with a view to obtaining information or advice as to borrowing any money from a moneylender.

(2) Subject as hereunder provided no person shall publish or cause to be published in any newspaper or other printed paper issued periodically for public circulation or by means of any poster or placard an advertisement advertising any such particulars or containing any such invitation as aforesaid:

Provided that an advertisement in conformity with the requirements of this Act relating to the use of names on moneylenders' documents may be published by or on behalf of a moneylender in any newspaper or in any such paper as aforesaid or by means of a poster or placard exhibited at any authorised address of the moneylender if it contains no addition to the particulars necessary to comply with the said requirements except any of the following particulars -

- (a) any authorised address at which he carries on business and the telegraphic address and telephone number thereof,
- (b) any address at which he formerly carried on business,
- (c) a statement that he lends money with or without security and of the highest and lowest sums that he is prepared to lend, and
- (d) a statement of the date on which the business carried on by him was first established.

(3) No moneylender or any person on his behalf shall employ any agent or canvasser for the purpose of inviting any person to borrow money or to enter into any transaction involving the borrowing of money from a moneylender and no person shall act as such agent or canvasser or demand or receive, directly or indirectly, any sum or other valuable consideration by way of commission or otherwise for introducing or undertaking to introduce to a moneylender any person desiring to borrow money.

(4) Where any document issued or published by or on behalf of a moneylender purports to indicate the terms of interest upon which he is willing to make loans or any particular loan, the document shall either express the interest proposed in terms of a rate per cent per annum or per month.

(5) Any person who contravenes any of the provisions of this section commits an offence and shall in respect of each offence, be liable upon conviction to a fine not exceeding \$100 or to imprisonment for a term not exceeding 6 months.

Boards to be affixed at place of business of moneylenders

14(1) Every person licensed as a moneylender under the provisions of this Act shall affix in a conspicuous position outside his authorised address a board bearing the words "Licensed Moneylender" distinctly printed in letters not less than two inches high.

(2) Any person who contravenes any of the provisions of subsection (1) of this section commits an offence and shall be liable upon conviction to a fine of \$100.

PART IV  
MONEYLENDERS CONTRACTS

Contract by  
unlicensed money-  
lender unenforce-  
able

15. No contract for the repayment by a borrower of money lent after the commencement of this Act by an unlicensed moneylender shall be enforceable.

Note or memo-  
randum of money-  
lender's contract  
to be given to  
the borrower

16(1) No contract for the repayment by a borrower of money lent to him or to any agent on his behalf by a moneylender after the commencement of this Act or for the payment by such borrower of interest on money so lent and no security given by the borrower or by any such agent as aforesaid in respect of any such contract shall be enforceable unless -

- (a) a note or memorandum in writing of the contract is made and signed or thump-printed personally by the borrower; and
- (b) a copy of such note or memorandum authenticated by the moneylender is delivered or sent to the borrower within 7 days of the making of the contract;

and no such contract or security shall be enforceable if it is proved that the said note or memorandum was not signed or thump-printed by the borrower before the money was lent or before the security was given as the case may be;

Provided that -

- (a) where a security is given to secure an immediate loan and subsequent loans the security shall be enforceable in respect of any subsequent loan thereby secured if the note or memorandum in respect of such subsequent loan is signed and delivered to the borrower before the money in respect of such subsequent loan is lent;
- (b) where a security is given to secure an immediate loan and subsequent loan and the terms both of the immediate loan and of the subsequent loan are set out in the document constituting the security, it shall not be necessary for the note or memorandum in respect of any such subsequent loan to set out the terms thereof, but a reference in such note or memorandum to the abovementioned security shall be sufficient for the purposes of this section if the note or memorandum contains the particulars referred to in paragraphs (a), (b) and (c) of subsection (3) of this section.

- (2) In this section the expression "borrower" includes a surety.
- (3) The note or memorandum aforesaid shall contain all the terms of the contract and in particular shall show separately and distinctly -

- (a) the date on which the loan is made;
- (b) the amount of the principal of the loan; and
- (c) either the interest charged on the loan expressed in terms of a rate per cent per annum or the rate per cent per annum represented by the interest charged as calculated in accordance with the provisions of the Second Schedule to this Act.

All dates and numbers shall be written in the English language notwithstanding that they are also written in the vernacular.

(4) Where a promissory note in the English language or the vernacular given by a borrower to a moneylender in respect of a loan contains in the body of the note or by writing thereon all the terms of the contract and is countersigned by the lender or his agent, such promissory note shall in itself be a sufficient note or memorandum of the contract for the purpose of this section.

Prohibition of  
compound interest

17. Any contract made after the commencement of this Act for the loan of money by a moneylender shall be illegal in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest to be increased by reason of any default in the payment of sums due under the contract:

Provided that provision may be made by any such contract that if default is made in the payment upon the due date of any sum payable to the moneylender under the contract, whether in respect of principal or interest, the moneylender shall be entitled to charge simple interest on that sum from the date of default until the sum is paid at a rate not exceeding the rate payable in respect of the principal apart from any default, and any interest so charged shall not be reckoned for the purpose of this section as part of the interest charged in respect of the loan.

PART V  
MONEYLENDERS OBLIGATION TO KEEP ACCOUNTS  
OF LOANS AND SUPPLY INFORMATION AS TO  
STATE OF LOANS

Accounts to be  
kept in perma-  
nent books

18(1) Every moneylender shall keep or cause to be kept a regular account of each loan made after the commencement of this Act clearly stating in plain words and in English numerals, with or without the numerals of the script otherwise used, the terms and transactions incidental to the account entered in a book paged and bound in such manner as not to facilitate the elimination of pages or the interpolation or substitution of pages.



(2) Any person who contravenes the provisions of this section shall not be entitled to enforce any claim in respect of any transaction in relation to which default shall have been made. Such person also commits an offence under this Act and shall be liable upon conviction to a fine not exceeding \$20, or in the case of a continuing offence, to a fine of \$10 for each day or part of a day during which such offence continues.

Obligation to supply information as to state of loan and copies of documents relating thereto

19(1) In respect of every contract for the repayment of money lent by a moneylender whether made before or after the commencement of this Act the moneylender shall, on any reasonable demand in writing being made by the borrower at any time during the continuance of the contract and on tender by the borrower of the sum of 20 cents for expenses, supply to the borrower or, if the borrower so requires, to any person specified in that behalf in the demand, a statement of account in English figures and also in the vernacular signed by the moneylender or his agent showing -

- (a) the date on which the loan was made, the amount of the principal of the loan and the rate per cent per annum or the amount of interest charge; and
- (b) the amount of any payment already received by the moneylender in respect of the loan and the date on which such payment was made; and
- (c) the amount of all sums due to the moneylender for principal but unpaid and the dates upon which they became due and the amount of interest due and unpaid in respect of each such sum; and
- (d) the amount of every sum not yet due which remains outstanding and the date upon which it will become due.

A statement of account given in the form of the First Schedule to this Act shall be deemed to comply with the requirements of this subsection.

(2) A moneylender shall, on any reasonable demand in writing by the borrower and on tender of the sum of \$1.00, supply a copy of any document relating to a loan made by him or any security therefor to the borrower or, if the borrower so requires, to any person specified in that behalf in the demand.

(3) If a moneylender to whom a demand has been made under this section fails without reasonable excuse to comply therewith within one month after the demand has been made he shall not, so long as the default continues, be entitled to sue for or recover any sum due under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of the default and, if such default is made or continued after proceedings have ceased to lie in respect of the loan, such moneylender commits an offence and shall be liable upon conviction to a fine not exceeding \$20 for every day on which the default continues.

(4) A moneylender receiving any payment of money under a contract for the repayment of money lent shall give to the payer a receipt in the prescribed form.

(5) Any person who contravenes the provisions of this subsection commits an offence under this Act and shall be liable upon conviction to a fine not exceeding \$50 in respect of each such offence.

20. Where proceedings are taken in a court by a moneylender for the recovery of any money lent after the commencement of this Act or for the enforcement of any agreement made or security taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act, such moneylender shall produce a statement of his account as mentioned in section 19 of this Act.

PART VI  
POWER OF COURT TO RE-OPEN HARSH AND  
UNCONSCIONABLE MONEY LENDING TRANSACTIONS

21. Where proceedings are taken in a court by a moneylender -  
(a) for the recovery of any money lent after the commencement of this Act, or  
(b) for the enforcement of any agreement made or security taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act,

and there is evidence which satisfies the court that the interest charged in respect of the principal sum actually lent is excessive or that the transaction is harsh and unconscionable or is otherwise such that a court of equity would give relief, the court may -

- (c) reopen the transaction and take an account between the moneylender and the person sued, and
- (d) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken between them, and
- (e) 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 or legal costs as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable; and
- (f) if any such excess has been paid or allowed in account by the debtor, may order the creditor to repay it; and

Accounts under section 19 to be produced when suing in court

Re-opening of transactions of moneylenders

- (g) set aside either wholly or in part or revise or alter any security given or agreement made in respect of money lent by the moneylender; and
- (h) if the moneylender has parted with the security order him to indemnify the borrower or other person sued.

Proceedings by borrower against moneylender .

22(1) A court may at the instance of the borrower or surety or other person liable or of the trustee in bankruptcy exercise the like powers as may be exercised under this Act where proceedings are taken for the recovery of money lent, and the court may notwithstanding any provision or agreement to the contrary, entertain any application under this Act by the borrower or surety or other person liable notwithstanding that repayment of the loan or any instalment thereof may not yet be due.

(2) Sections 20, 21 and 22 of this Act shall apply to any transaction whatever its form may be that is substantially one of moneylending by a moneylender.

(3) Nothing in this Act shall affect the rights of any bona fide assignee or holder for value without notice.

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

PART VII

PREVENTION OF EXCESSIVE INTEREST, ETC.  
AND CALCULATION OF INTEREST

Courts in which moneylending transactions are to be commenced

23. Subject as hereinafter provided, no action by a moneylender for the recovery of money lent by him or for enforcing any agreement or security relating to the money lent by him shall be commenced in any court other than the High Court:

Provided that the Chief Justice may by Order direct that any inferior court specified in the Order shall have the same jurisdiction as respects such actions as aforesaid as it would have had but for the provisions of this sub-section, and any such Order may contain such provisions as appear to the Chief Justice expedient with respect to the making of rules of court for regulating the procedure to be followed in the case of any such action, and may be revoked or varied by any subsequent Order made in like manner.

Interest above 12 per cent per annum presumed excessive

24(1) Where in any proceedings in respect of any money lent by a moneylender after the commencement of this Act or in respect of any agreement made or security taken after the commencement of this Act a court finds that the interest charged exceeds the rate of 12 per cent per annum or the corresponding rate in respect of any other period, the court shall, unless the contrary is proved, presume for the purposes of section 21 that the interest charged is excessive and that the transaction is harsh and unconscionable or substantially unfair, but this provision shall be

without prejudice to the powers of the court under that section where the court is satisfied that the interest charged, although not exceeding 12 per cent per annum, is excessive.

(2) Where a court reopens a transaction of a moneylender under the provisions of section 21 of this Act, the court may require the moneylender to produce any licence granted to him in accordance with the provisions of this Act and may cause such particulars as the court thinks desirable to be endorsed on any such licence and a copy of the particulars to be sent to the Registrar.

(3) The powers of a court under the provisions of section 22(1) may be exercised notwithstanding that the moneylender's right of action for the recovery of the money lent is barred.

(4) In no case shall interest at any time be recoverable by a moneylender of an amount in excess of the sum then due as principal unless a court, having regard to all circumstances, otherwise orders.

(5) No person who is neither a licensed moneylender nor one of the persons referred to in paragraphs (a), (b) and (c) of the definition of "moneylender" in section 2 of this Act shall, in respect of money lent by him, in any case recover in excess of the money actually lent by him (whether the excess be claimed by way of interest or otherwise) any sum greater than an amount equal to simple interest at the rate of ten per cent per annum on the money actually lent by him.

Prohibition of charge for expenses on loans by moneylender

25. Any agreement between a moneylender and a borrower or intending borrower for the payment by the borrower or intending borrower to the moneylender of any sum on account of costs, charges or expenses other than stamp duties, fees payable by law and legal costs incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be illegal and if any sum is paid to a moneylender by a borrower or intending borrower as, for or on account of any such costs, charges or expenses other than as aforesaid, that sum shall be recoverable as a debt due to the borrower or intending borrower, or in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly.

Calculation of interest

26. Where the interest charged on a loan is not expressed in terms of a rate per cent per annum the rate of interest per cent per annum charged on such loan shall be calculated in accordance with the Second Schedule to this Act, or where the contract provides for the payment of equal instalments of principal and interest at equal intervals of time, in accordance with the formula set out in the Third Schedule to this Act.

PART VIII  
ASSIGNMENT OF MONEYLENDERS DEBTS

Notice and information to be given on assignment of moneylender's debts

27(1) Where any debt in respect of money lent by a moneylender, whether before or after the commencement of this Act, or in respect of interest on any such debt, or the benefit of any agreement made or security taken in respect of any such debt or interest, is assigned to any assignee, the assignor (whether he is the moneylender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made -

- (a) give to the assignee notice in writing that the debt, agreement or security is affected by the operation of this Act; and
- (b) supply to the assignee all information necessary to enable him to comply with the provisions of this Act relating to the obligations to supply information as to the state of loans and copies of documents relating thereto;

and any person who contravenes any of the provisions of this section shall be liable to indemnify any other person who is prejudiced by the contravention and also commits an offence under this Act and shall in respect of each offence be liable upon conviction to a fine not exceeding \$200 or to imprisonment for a term not exceeding 1 year.

(2) In this section the expression "assigned" means assigned by any assignment inter vivos other than an assignment by operation of law, and the expressions "assignee" and "assignor" have corresponding meanings.

Application of Act as respects assignees

28(1) Subject as hereinafter provided the provisions of this Act shall continue to apply as respects any debt to a moneylender in respect of money lent by him after the commencement of this Act or in respect of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or interest notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee and except where the context otherwise requires, references in this Act to a moneylender shall accordingly be construed as including any such assignee as aforesaid:

Provided that notwithstanding anything in this Act -

- (i) any agreement with, or security taken by, a moneylender in respect of money lent by him after the commencement of this Act shall be valid in favour of any bona fide assignee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him; and

- (ii) any payment or transfer of money or property made bona fide by any person, whether acting in a fiduciary capacity or otherwise, on the faith of the validity of any such agreement or security without notice of any such defect shall, in favour of that person, be as valid as it would have been if the agreement or security had been valid;:

But in every such case the moneylender shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this section and nothing in this proviso shall render valid an agreement or security in favour of a party to proceedings commenced by an assignee or holder for value who is himself a moneylender.

Penalty for taking promissory note in which amount left blank or not truly stated

29. Any moneylender who takes as security for a loan a promissory note or other contract for the repayment of money lent in which the principal is, to the knowledge of the lender, not truly stated or is left blank commits an offence and shall be liable upon conviction to a fine not exceeding \$100 or, in the event of a second or subsequent offence, to a fine not exceeding \$200 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

False statement or representations, to induce borrowing an offence

30. If any moneylender or any manager, agent or clerk of a moneylender or if any person being a director, manager or other officer of any company 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 commits an offence and shall be liable upon conviction to a fine not exceeding \$1000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

PART IX  
MISCELLANEOUS

Regulations

31. The Minister may make regulations under this Act prescribing -

- (a) the form of a licence, the fees to be charged therefore and the procedure for applying for a licence;
- (b) the information to be furnished to the Registrar upon application for a licence;
- (c) the form of a moneylender's receipt and the details and other particulars to be shown on such receipt; and
- (d) such other matters necessary or desirable for giving full effect to this Act and for its due administration.

FIRST SCHEDULE  
(Section 19)

TABLE 1 - PRINCIPAL AND INTEREST

Principal	Date lent	Rate per cent per annum or the amount of interest

TABLE 2 - REPAYMENT

Amount repaid	Date
1.	
2.	
3.	
4.	
5.	
6.	
7.	

TABLE 3 - AMOUNT OF ARREARS

Principal	Date due	Interest	Date Due
1.			
2.			
3.			
4.			
5.			
6.			
7.			

TABLE 4 - SUMS NOT YET DUE

Principal	Date due	Interest	Date Due
1.			
2.			
3.			
4.			
5.			
6.			
7.			

SECOND SCHEDULE  
(Section 26)

CALCULATION OF INTEREST WHEN THE INTEREST CHARGED ON A LOAN IS  
NOT EXPRESSED IN TERMS OF A RATE PER CENT PER ANNUM

1. The amount of principal outstanding at any time shall be taken to be the balance remaining after deducting from the principal the total of the portions of any payments appropriated to principal in accordance with the provisions of this Act.
2. The several amounts taken to be outstanding by way of principal during the several periods ending on the dates on which payments are made shall be multiplied in each case by the number of calendar months during which these amounts are taken to be respectively outstanding and there shall be ascertained the amount of the sum so produced.
3. The total amount of the interest shall be divided by one-twelfth part of the aggregate amount mentioned in paragraph 2 and the quotient, multiplied by one hundred, shall be taken to be the rate of interest per cent per annum.
4. If having regard to the intervals between successive payments it is desired so to do the calculation of interest may be made by reference to weeks instead of months and in such a case the foregoing paragraphs shall have effect as though in paragraph 2 the word "weeks" were substituted for the words "calendar months" and in paragraph 3 the words "one-fifty-second" were substituted for the words "one-twelfth".
5. Where any interval between successive payments is not a number of complete weeks or complete months the foregoing paragraphs shall have effect as though one day were one-seventh part of a week or one-thirtieth part of a month as the case may be.

THIRD SCHEDULE  
(Section 26)

Formula to be used to find the rate per cent per annum where no rate is stated and repayment is to be made by equal instalments at equal intervals of time:-

$$\frac{100 \times I \times 24}{(N + I) \times P \times L}$$

Where I = Total interest repayable


N = Number of instalments

P = Principal

L = Number of calendar months in the intervals between instalments.

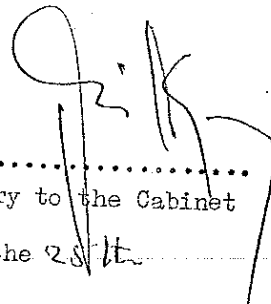


This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on 23rd May, 1988 and is found by me to be a true and correctly printed copy of the said Bill.

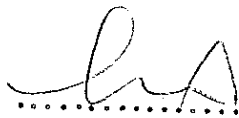
  
.....  
Clerk to the Maneaba ni Maungatabu

Published by exhibition -

(a) at the Public Office of the Beretitenti on the 25th  
day of July, 1988.

  
.....  
Secretary to the Cabinet

(b) at the Maneaba ni Maungatabu on the 28th  
day of July, 1988.

  
.....  
Clerk to the Maneaba  
ni Maungatabu.

THE MONEYLENDERS ACT 1988

EXPLANATORY MEMORANDUM

This Act seeks to re-enact, with some changes, the Moneylenders Ordinance (Cap. 58) which was repealed by Cap. 3 of 1975.

It will be recalled that the said Cap. 58 was repealed in 1975 because, among other things -

- (a) it was considered to be a complex piece of legislation which was not thoroughly explained and publicised to those mainly affected by it (namely, moneylenders) in the circumstances of the country at that time where there were no resident lawyers for the general public; and
- (b) the Government at that time looked upon the said Ordinance more as a means of raising revenue than as a detailed scheme for controlling and regulating the activities of moneylenders.

It was the intention after the repeal of the said Moneylenders Ordinance in 1975 to replace it with "a new, clearer and considerably more simple Ordinance" but this intention was never translated into practical action.

The result was that since 1975 there has been no local legislation to control and regulate the activities of moneylenders and otherwise provide a remedy for the victim of the unscrupulous moneylender. Technically the only legislation available was the Moneylenders Acts 1900 to 1927 of England.

The Moneylenders Acts 1900 to 1927 apply to Kiribati as statutes of general application in force in England on 1st January 1961. It is to be noted however that such statutes shall apply so far only as Kiribati's circumstances and the circumstances of its inhabitants permit and subject to such qualifications as local circumstances render necessary.

In order to avoid the difficulties inherent in the application and administration of the said Moneylenders Acts of England, and to make the law more accessible to the people of Kiribati and especially persons to be affected by it, namely, moneylenders, it has become desirable to re-enact (with necessary changes) the Moneylenders Ordinance (Cap. 58).

Like the repealed Moneylenders Ordinance (Cap. 58), the object of this Act is to provide a local legislation to control and regulate money-lending transactions in Kiribati by, among other things, -

- (a) providing for the licensing of moneylenders, as defined in the Act;
- (b) making certain loan transactions entered into by moneylenders unenforceable by such moneylenders under certain circumstances;
- (c) providing for certain records to be maintained and certain accounts to be rendered in regard to moneylender's loan transactions; and

- (d) empowering the Courts to reopen moneylender's loan transactions where the interest charged is considered excessive and/or the loan transaction is otherwise considered harsh and unconscionable.

The major changes introduced by this Act are contained in Section 21 and 23. Section 21 relates to (d) above. Section 23, on the other hand, provides that a court action by a moneylender for the recovery of money lent by him or for the enforcement of any agreement or security relating to money lent by him shall be commenced only in the High Court. However, the Chief Justice may by Order empower any inferior court (like a Magistrates' Court) to hear any such action subject to certain safeguards outlined in the proviso to the said section.

The legislation contemplated by the Act is not peculiar to Kiribati. Most developed and developing countries have similar legislation. This Act was modelled on the Fiji Moneylenders Ordinance (Cap. 234) as revised to 1977 and the Moneylenders Acts 1900 to 1927 of England.

Michael N. Takabwebwe  
Attorney General

LEGAL REPORT

I hereby certify that in my opinion none of the provisions of the above Act conflict with the Constitution and that the Beretitenti may properly assent to the Act.

Michael N. Takabwebwe  
The Attorney General  
23rd May, 1988.