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RESEARCH ARTICLE

A Deep Dive into the Legal Framework of Moneylenders Act 1951 in Malaysia: An Overview

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ABSTRACT

In the context of Moneylenders Act in Malaysia, an unlicensed moneylender refers to an individual or entity that engages in money lending activities without obtaining the necessary licence or authorisation from the relevant regulatory authority, i.e. Ministry of Housing and Local Government (MHLG) who is the sole authority to do so. It is not the purview for the central bank, Bank Negara Malaysia to issue moneylending licenses. The public have an alternative to obtain the loan from the licenced moneylenders which are licenced by the MHLG to provide loans to the public. The legal issue arises when someone obtained the loan from unlicenced moneylender and failed to repay back the loan which would result in a financial loss for the unlicenced moneylender or illegal loan shark (also known as "ah longs"), could these unlicenced moneylenders take any actions against the borrower? How did the current laws in Malaysia to protect both moneylenders and borrowers? What are the legal impacts of digital lending platforms on the moneylending landscape in Malaysia? The research adopts a qualitative methodology by studying and comparing similar laws and strategies adopted globally. A structure work was held to get the overview of the study. A review of the literature has also been conducted. This study used primary data and secondary data. The primary data for this study is the statutes, regulations and rules related to digital franchise business. Secondary data of this study comprises of books, legal documents, and articles from journals and online resources. Towards this end it is suggested that revision to the current Moneylenders Act could be revisited. This research is therefore timely and in line with the national strategy, impacting a critical social need.

INTRODUCTION

Section 2 of the Malaysia Moneylenders Act 1951[1] (hereinafter referred to as "the MLA 1951") defines moneylender as anybody who, whether or not they also run other businesses, conducts, promotes, announces, or presents themselves in any manner as doing the moneylending business. Currently there is no specific definition for unlicensed moneylender in Malaysia written law but generally it refers to an individual or entity that engages in money lending activities without obtaining the necessary licence or approval from the relevant regulatory authority. It is not the purview for the central bank, Bank Negara Malaysia to issue moneylending licenses but Ministry of Housing and Local Government ('MHLG') is the sole authority to do so. The public have an alternative to obtain the loan from the licenced moneylenders which are licenced by the MHLG to provide loans to the public. In Malaysia, the MHLG is mostly responsible for monitoring moneylending activities and regulations to ensure all the moneylending activities are run in compliance of the laws alongside with the managing moneylending licences.

[1] Act 400.

The legal issue arises when someone obtained the loan from unlicenced moneylender and failed to repay back the loan which would result in a financial loss for the unlicenced moneylender or illegal loan shark (also known as "*ah long*"), could these unlicenced moneylenders take any actions against the borrower? Meanwhile, this paper also examines the current laws in Malaysia in protecting both licensed moneylenders and borrowers. Due to digital era, there are many digital platforms to perform the business transaction and as such what are the legal impacts of digital lending platforms on the moneylending landscape in Malaysia?

RESEARCH METHODOLOGY

The research adopts a qualitative methodology by studying and comparing similar laws and strategies adopted globally. A structure work was held to get the overview of the study. A review of the literature has also been conducted. This study used primary data and secondary data. The primary data for this study is the statutes, regulations and rules related to digital franchise business. The secondary data of this study comprises of books, legal documents, and articles from journals and online resources.

LITERATURE REVIEW

The history of licensed moneylenders is closely tied to the broader economic and social development of the country (H William Warner, 2020). In the past, those who make lend money to another person and impose interest have been stigmatised as troublesome for engaging in unethical business activities. (Schwartz and Robinson, 2018). During the British colonial period, money lending is synonymous with the name of Chettiars or 'Chetty' in Malaysia. Notably, during this time, Chettiars, a Tamil speaking business caste from South India who migrated to Straits Settlements during the nineteenth century to make fortune in trade were the major moneylenders (Suppiah, Ummadevi, 2014). Before formal regulation, moneylending in Malaysia was largely informal, with community-based lenders (often referred to as "Ah Longs" or loan sharks) providing short-term loans at high interest rates (Elberberi, Ola, et al, 2023). These lenders operated without any formal oversight or regulation. Some licensed moneylenders are actually a family-owned business but some are on private entity or as an extension services by the big corporations (Ministry of Housing and Local Government Malaysia, 2019). However, there have been numerous cases in which licensed moneylenders have violated the trust of borrowers, casting a negative light on the industry (Justin, 2019). The self-regulation of licensed moneylenders necessitates that they conduct their business in an ethical manner, which directly impacts borrowers' trust in the moneylending industry (Daljit et. al. 2021). Currently, moneylenders in Malaysia operate under the legal framework provided by the Moneylenders Act 1951, which aims to regulate the moneylending business and protect borrowers from unscrupulous practices (Ibtisam @ Ilyana Ilias et al, 2022). The licensing system has gone through major reform under the MLA 2003 and brought great changes in streamlining the licensing regime, especially in removing local authorities from regulation of the moneylending industry and replacing them with a centralised system under the Ministry and to solve the problems in the past that the licensing regime were too general, lenient and obsolete, to keep up with the current credit practice and safeguard the borrowers' interest (Afida Mastura Muhammad Arif, 2009). However, despite robust regulations, unlicensed moneylending remains a challenge, often associated with higher risks and exploitative practices. Therefore, the regulatory framework is expected to evolve to address new challenges and ensure the protection of borrowers, especially with the advent of digital lending platforms.

DISCUSSION

1.0 The current laws in Malaysia to protect both licensed moneylenders and borrowers, including friendly loan.

In Malaysia, the moneylending business has a long history of serving clients from a variety of backgrounds. The main law in Malaysia to regulate the business of moneylender activities is the MLA 1951. Major amendment pertaining to the licensing regime was made to the MLA1951 in 2003 via Moneylenders (Amendment) Act 2003[2] (hereinafter referred to as "MLA 2003") which came into force on 1 November 2003. The old licensing regime for moneylenders under the MLA 1951 was said to be too lenient in which it is arguably that the licences were too easy

[2] Act A1193.

to approve and obtain and this shows the lacking systematic control mechanism in administrative of the local authorities (S. Sulaiman, 1997).

What would be penalty for unlicenced moneylenders in Malaysia? For those unlicenced moneylenders or with a valid licence that has expired, suspended, or revoked but they are still running the business of moneylending, it is actually violated the section 5(2) of the MLA 1951 and once conviction, they will be fined between RM250,000-00 and RM1 million or imprisoned for a term up to five years or both. For second or subsequent offence, the offenders will be liable to whipping in addition to the above punishment.

The friendly loan is commonly practises in Malaysia. Generally, the friendly loan is free from interest, but the interest could be charged at the reasonable level and can't be unduly high or outrageous until the lender exploits the interest of the borrower. If the court found that the interest rate charged in friendly loan is excessive and is not reasonable, the court may strike down the interest rate as what have been decided in the case of *Menta Construction Sdn. Bhd. v SPM Property & Management Sdn Bhd & Anor*[3] in which the court found that the interest rate at 8.8 percentage per annum was too high and the court replaced it with interest at 5 percentage per annum instead. However, in the case of *Song Teik Kim v. Lina Dimbad & Anor.*, [4] the Court of Appeals in Malaysia also states that a friendly loan is a loan that does not involve an interest rate in the agreement. If an interest rate is specified in the loan agreement, then there is no difference between friendly loan and currently conventional loan granted by the licensed financial institutions.

The presumption of money lending business has been adopted and applied by the Court of Appeal in the case of *Global Globe Property (Melawati) Sdn. Bhd. v Jangka Prestasi Sdn. Bhd*.[5] in which the court also decided that if a lender provides a single loan with an interest rate, it could be considered as engaging in money lending. In such a case, the responsibility to prove otherwise would fall on the lender (Kee, 2021) and section 10OQ of the MLA1951 is applicable in civil proceedings.

However, if the said borrower is one of the shareholders to the lender's company, it was decided that this lender's company is not considered the moneylender under the MLA 1951 as per the decision by the Federal Court in *Pan Global Equities Sdn. Bhd. & Anor v Taisho Company Sdn. Bhd.*[6] In the Court of Appeal case of *Sureshraj Krishnan v. Pv Power Engineering Sdn. Bhd. & Anor*,[7] the discussion revolved around the assumption of a moneylending operation, where the lender provided multiple loans to a family member. The Court of Appeal concluded that providing financial assistance to a relative, whether in a single instance or multiple occasions, and in cases where the assistance is exclusively given to the relative without involving anyone else, would not be considered within the scope of the MLA 1951.

1.1 The status of the unlicenced moneylender in Malaysia

As provided in section 5(1) of the MLA 1951, prior to running the moneylending business, all the moneylenders must have to obtain the relevant license from MLHG. Those without licenses are called as unlicenced moneylender or illegal loan shark (also known as "*ah longs*"). As all these activities are done underground, there is no data or statistics to show how the aggressiveness of the activities was done. The legal issue arises when someone obtained the loan from unlicenced moneylender and failed to repay back the loan which would result in a financial loss for the unlicenced moneylender, could these unlicenced moneylenders take any actions against the borrower? Generally, the answer is no. In the case of *Triple Zest Trading & Suppliers & 2 Ors v. Applied Business Technologies Sdn. Bhd*.,[8] the Federal Court has examined on how to go about figuring out if someone who appears to be operating without a licence as a

[3] [2017] MLJU 526.
[4] [2019] 7 CLJ 223.
[5] [2020] 6 CLJ 1.
[6] [2005] 3 CLJ 734.
[7] [2023] 1 MLJ 632.
[8] [2023] 8 AMR 225.

moneylender is indeed conducting business as a moneylender under the MLA 1951. The judges have revisited the definition of moneylending under section 2 of MLA 1951 and highlighted the term 'interest'. As in the loan agreement between the said moneylender and the borrower has specifically mentioned that agreed profits constituted as "consideration" for the loan sum of RM800,000-00 with an additional RM800,000 as "agreed profit". The borrowers have pledged two parcels of land and four undated cheques valued at RM1.6 million only as collateral to this loan agreement. The Appellants defaulted on the repayment of principal sum of RM800,000-00.

Despite the parties tried to label the 'interest' rate in other form of definition, as a matter of law, it still brings the meaning of interest in section 2 of the MLA 1951. Meanwhile, the court also examined the section 10OA of the MLA 1951 and found that, unless the opposite is demonstrated, "*the proof of a single loan at interest*" immediately establishes the presumption that the defendant is involved in the moneylending business in a process against a person who is claimed to be a moneylender. The court emphasised that the burden of proof is on the Respondent in this case to show that they were not lending money at any interest to the Appellants. Based on the facts, the court also noted that all the evidence indicated that the loan agreement between the parties was a cunning attempt to "redefining the intention of profiteering."

The similar decision was held in the case of *Mahmood bin Ooyub v. Li Chee Loong and Another Appeal*.[9] The Court of Appeal ruled that any claim for restitution—that is, a claim to recover the principal loan without interest—under illicit moneylending operations could not be allowed since the agreements in question would be invalid ab initio, or unenforceable from away. As a result, the restitution remedy described in Section 66 of the Contracts Act 1950 would not be applicable. The same decision can be found in the Singaporean Court of Appeal's case of *Ochroid Trading Ltd and another v. Chua Siok Lui (Trading as VIE Import & Export) and another*.[10] It should be noted that following the Court of Appeal decision in *Tang Lee Hiok & Ors v Yeow Guang Cheng*[11] decided that restitution pursuant to section 66 of the Contracts Act 1950 is not applicable in cases relating to the violation of the MLA 1951.

It is also argued that a valid contract must consist of a few elements, namely, consideration, legal capacity, consent, intention, certainty and legality. According to section 24 of the Contracts Act 1950, if the consideration for an agreement is unlawful it will result the said agreement becomes void. In the current case, the consideration would consider contrary to the public policy. As such, all the contracts entered into by the moneylenders and the borrowers are arguably not enforceable under the MLA 1951 and the borrowers are legally not obliged to repay the loan.

The decision rendered by the Federal Court in the *Triple Zest's* case sends a strong and unambiguous statement opposing unauthorised moneylending operations. Undoubtedly, this development gives borrowers a great deal of confidence, but it also serves as a warning to those involved in the economic and commercial sector. If an allegation of moneylending is raised, the mere proof of a single loan at interest will automatically trigger the presumption of moneylending, which can only be disproved by the purported lender. The lender would be deemed as an unlicensed moneylender if the party fails to disprove the presumption of moneylending. The lesson from this case is that it basically acts as a call to action for more legal compliance and due diligence in the business and commercial sphere, asking all parties involved to exercise caution while conducting financial transactions and lending procedures to stay within the strict boundaries of the law. Thus, presumption of moneylending would arise when there is a proof of any loan at interest. However, this presumption is rebuttable if the party would show that no interest is involved in lending the money.

Few days prior to the delivery of the judgment by the Federal Court's decision in *Triple Zest*'s case, the Court of Appeal in the case of *Shim Vui Geh v Dayang Mastura Sahari & Another*

[9] [2020] 6 MLJ 755
[10] [2018] 1 SLR 363
[11] [2022] 5 MLJ 584

Appeal[12] decided that unlicensed moneylender is prohibited to charge any interest for the loan granted, thus no interest could be claimed by unlicensed moneylender in the event that the borrower has fail to pay the loan. These two cases have clearly shown that section 10OA of the MLA 1951 is in favour of the borrowers and the unlicensed moneylender will now face a risk.

1.2 The legal impacts of digital lending platforms on the moneylending landscape in Malaysia.

Digital lending platforms have made borrowing more accessible, especially for individuals and small businesses that traditionally struggled to secure loans from banks due to stringent requirements and lack of credit history. These platforms utilise alternative data sources and sophisticated algorithms to assess creditworthiness, enabling them to serve a broader segment of the population. The emergence of digital lending platforms is reshaping the moneylending landscape in Malaysia, bringing both opportunities and challenges (Liang, Shih-Chen, 2023). To harness the benefits of this evolution while mitigating its risks, the legal and regulatory framework must evolve. This includes ensuring consumer protection, maintaining financial stability, and promoting fair competition. By adapting to these changes, Malaysia can foster a more inclusive, innovative, and resilient financial ecosystem.

There are several impacts of the emergence of digital lending platforms and it also gives legal impact to the landscape of moneylending in Malaysia. For example, the use of alternative data for credit scoring in digital lending platform raises concerns about data privacy and security. At the moment, the Personal Data Protection Act 2010 (PDPA) in Malaysia governs the collection, use, and storage of personal data of the country. Therefore, digital lenders are expected to ensure compliance with PDPA to protect consumers' privacy. In addition to that, enhanced regulatory measures are needed to ensure that digital lending practices are transparent and fair. This includes clear disclosure of terms and conditions, fees, and interest rates, as well as safeguards against predatory lending practices.

As effort of the MHLG to adapt to the digital age and modernise the moneylending landscape in Malaysia, the MHLG has implemented guidelines that allow licensed moneylenders to provide online loans to the borrowers from 13 May 2021.[13]Apart from the MLA 1951, online money lenders and the activities are also regulated by other relevant legislations, including the Stamp Act 1949, the Digital Signature Act 1997, the Electronic Commerce Act 2006, the Electronic Government Activities Act 2007 and the Personal Data Protection Act 2010 (PDPA 2010). In this regard, KPKT has published Online Money Lending Guidelines ("Guidelines") to regulate and monitor the online moneylending business.

Credit community companies have the flexibility to utilise digital or electronic platforms for customer profiling. When it comes to electronically providing moneylending agreements (Schedule J or K) to borrowers, it is important to adhere to the requirements outlined in the Moneylenders (Control and Licensing) Regulations 2003 and the Electronic Commerce Act 2006. Additionally, moneylending agreements can be signed digitally, either using the public key infrastructure method as specified in the Electronic Commerce Act 2006 or the Digital Signature Act 1997. Due to these additional laws, lenders need to exercise caution to avoid violating any relevant laws and regulations that apply to online money lending activities. Failure to comply with these laws can result in various penalties. However, ensuring compliance with these laws is a challenging responsibility placed on the relevant authorities. It is yet to be determined whether enforcement actions will be taken against individual websites or apps that provide online money lending services.

Meanwhile, in view that the money lending transactions involve the collection of significant personal information from borrowers, such as financial details, and the money lending agreement is signed digitally, all parties involved must exercise additional caution to minimize the risk of forgery and fraud. It is crucial to handle all collected personal data in compliance with the Personal Data Protection Act 2010 (PDPA 2010) and the applicable regulations.

[12] [2024] 1 MLRA 392.

[13] Based on the Garis Panduan Pemberian Pinjaman Wang Dalam Talian Untuk Syarikat Kredit Komuniti issued by Ministry of Housing and Local Government.

The attestation of the agreement remains a crucial aspect of a money lending transaction as prescribed by the MLA 1951. Previously, physical attestation was a prerequisite for obtaining a loan, where the parties had to personally appear before an advocate and solicitor/commissioner for oath/notary public ("the Relevant Person"). The Relevant Person would explain the content of the agreement, and the borrower would sign the agreement in their presence. However, with the introduction of the Guidelines, this requirement has been replaced. Now, digital signatures maintained by the electronic or digital system used by lenders are in accordance with the requirements outlined in the Electronic Commerce Act 2006 or the Digital Signature Act 1997. As per the Guidelines, the attestation of the borrower's signatures can be conducted through either a live video conference or a pre-recorded video. Although the execution and the attestation of the agreement can be done through online, it is to take note that s.27(2) of the MLA 1951 must be adhered to. The Relevant Person is still required to explain the contents of the agreement to the borrower digitally to ensure that the borrower understands the entire transaction. Explanation can be done through video chat, video phone, or other appropriate means. To make sure the borrower understands the terms of the agreement, KPKT has not specified the type of explanation that is permitted under the Guidelines.

The emphasis on cyber-security and the requirement to make sure both parties are suitably secured when using the website or app is a fundamental feature of the Guidelines. According to the Guidelines, lenders must make sure that appropriate security measures are in place to fend off cyberattacks. To lower the danger of security threats, they must also periodically conduct Security Posture Assessments. Therefore, lenders need to be on the lookout for any security risks, invest in anti-virus and anti-malware software, and keep a close eye out for and defend against intrusions.

Furthermore, the lender bears full responsibility for the website and app's development, including its effectiveness and security. Due to the procedure is entirely virtual, lenders need to take safety measures to avoid system malfunctions. Therefore, the success of the online money loan transaction depends on the investment made in IT employees or firms. The lender may incur additional costs as a result, and if problems emerge, they bear full responsibility for any loss or damage.

Online money lending has long been legal in other countries. In the United Kingdom, Virgin Money offers an entirely digital transaction using an 'Application' (Apps), with the money transferable in as little as two hours or by the end of the following day. To stay up with technology advancements, online money lending is also quite common in the United States. Australia is a country that has a high popularity for online money lending. Numerous organisations provide fully virtual services, requiring only an online application form and a phone appointment in order to obtain funds within a day. Therefore, it is praiseworthy that Malaysia is at last overtaking other nations in the financial technology sector.

For Malaysia, the unveiling of the new online money lending scheme is a positive move. It is undoubtedly better late than never, even though it would have been more appreciated at the start of 2020, before the Covid-19 epidemic. The industry participants will be anticipating more announcements from KPKT on the need for an online money lending system and the security precautions that must be taken.

1.3 Moneylenders' Law in the Selected Jurisdiction

1.3.1 Singapore

All the moneylending activities in Singapore are governed by the Singapore Moneylenders Act 2008 (SMA 2008) which aims to protect all the borrowers from suppressed by unfair practices. SMA 2008 also set the ceiling interest rates can be imposed by the licensed moneylenders against the borrowers, namely at four per centum per month.[14] Compared with the provisions in Malaysia, section 17A of MLA 1951 provides that the moneylenders could charge up to twelve per centum per annum for the loan with collateral and eighteen per centum per annum for the loan without collateral.

[14] Section 36 of the Singapore Moneylenders Act 2008. Cross refer to Ministry of Law Singapore's website. https://rom.mlaw.gov.sg/information-for-borrowers/guide-to-borrowing-from-licensed-moneylenders-english/

Section 47 of the SMA 2008 also prohibits the harassment by the moneylenders against the borrowers to ensure the peaceful livelihood of the borrowers. In determining the terms in the loan agreement between the moneylenders and the borrowers, SMA 2008 requires the terms in the loan agreement must be transparent, clear and understandable to the borrowers and to ensure that the confidentiality of the personal information of the borrowers. Transparency is also applicable in the advertisement made by the moneylenders including but not limited to ensure that all the information in the advertisement is clear, namely the interest rate, the schedule of payment, late repayment charges etc. Thus, the application process for getting the moneylender's license in Singapore is strict and renewal is only be done subject to compliance with regulatory requirements. In Malaysia, although the application process for getting the moneylender's license is tedious too, however, the licensing criteria may be vary slightly between states. In terms of application of the legislation, SMA 2008 applies uniformly across the entire country. Although MLA 1951 in Malaysia is a federal legislation, the enforcement and determination of the requirements may be different between the states because each state has their own Registrar of Moneylenders.

1.3.2 United Kingdom (UK)
The main legislation governing money lending activities in United Kingdom would be Consumer Credit Act 2006. Like the provisions in MLA 1951 and SMA 2008, those running the consumer credit businesses, namely banks and credit union must also obtain the license from Financial Conduct Authority (FCA). Like SMA 2008, the consumers and/or borrowers who have obtained the credit facility have a right to cancel the facility within a specified cooling-off period. In fact, our Malaysia Moneylenders Act 1951 should also incorporate this clause into the Act for the betterment protection of the borrowers' right. Furthermore, few other legislation and regulations in the UK would be relevant in monitoring the money lending activities in the UK such as Financial Services and Markets Act 2000 (FSMA), Money Laundering Regulations and General Data Protection Regulation (GDPR).

1.3.3 Australia
Generally, it is not the federal legislation which governs the money lending activities in Australia, but this duty falls under the responsibility of each state and territory government. Thus, the laws and regulations in each state and territory could be different.
For example, the Consumer Credit Act 1995 and Consumer Credit Regulation 2020 are applicable in New South Wales whereby in Victoria, they apply Consumer Credit (Victoria) Act 1995. In Queensland, Consumer Credit (Queensland) Act 1994 is applicable while in Western Australia, all the credit activities are fall under the jurisdiction of the Credit (Administration) Act 1984. Unlike in Malaysia, in most of the states in Australia will apply the unfair contract terms in their consumer credit agreements to protect the borrowers from being oppressed by the unfair practices and terms in the agreement. Perhaps the Malaysia MLA 1951 should also consider inserting the unfair contracts terms in any credit agreements too. Meanwhile, the state government has also provided ombudsman services to handle any disagreements and disputes between the borrower and credit providers. The purpose of ombudsman is to provide dispute resolution mechanism to solve the issues between the borrower and credit providers. In fact the ombudsman services could be inserted into the Malaysia MLA 1951 too.

CONCLUSION

The MLA 1951 places regulations on the way for licensed moneylenders to conduct their business, and there is a strong relationship moneylending business and the interest of the borrowers. One may argue that having comprehensive legislation by itself is insufficient. Strict enforcement must go hand in hand with it to guarantee the compliance by the industry players. Pursuant to MLA 1951, once any form of complaints regarding the unlicensed moneylending activities have been received by the police, police have been given authority to investigate and question any party who intends to break the MLA 1951. Police could enter, inspect and search the particular premises with or without warrant or even to seize any movable properties and documents in the said premises or access to any data available in any electronic devices without the owner's consent. Furthermore, to be more effectively protect the interest of the borrowers, the Malaysian Licensed Moneylenders Association (MILMA) could play the vital role in overcoming the issue of unlicensed moneylending activities and

eradicate unlicensed moneylending activities in the community and to improve the image of licensed moneylenders by being ethical, professional and law-abiding. Additionally, it is debatably important for borrowers to be knowledgeable to enable self-awareness and protection as opposed to completely depending on the law, regulations, and regulator.

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