



MahWengKwai & Associates

ADVOCATES AND SOLICITORS



Speaker
SONIA MOHAN
Associate



Speaker
AMIR NIZAM
Associate



Moderator
JEROMY YAN
Pupil In Chambers

Wed 20 May 2026
3:00pm (GMT +8)

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MWKA ONLINE TALKS

**Friendly Loans: Protecting and
Recovering Your Money and Interest**



DATO



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 - 15.4.2026: Calling Performance Bonds: How Developers Can Avoid and Overcome Injunctions
- Upcoming MWKA Online Talk:
 - 10.6.2026: Breaking Deadlock: Termination of Co-proprietorship in Malaysia

Sonia Mohan

Associate



- ❖ Associate in our Dispute Resolution Department
- ❖ Bachelor of Laws (Honours) from Multimedia University
- ❖ Admitted to the Malaysian Bar in January 2022
- ❖ Areas of practice includes general litigation, insurance accident claims corporate and construction disputes, employment matters, criminal and family law, contractual disputes, as well as probate and administration.

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Amir Nizam

Associate

- ❖ Associate in our Dispute Resolution Department
- ❖ Bachelor of Laws (Hons) from the University of East Anglia in 2020
- ❖ Admitted as an Advocate and Solicitor of the High Court of Malaya in November 2025.
- ❖ Areas of general litigation and land dispute

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Talk Points

- Structuring Friendly Loans for Enforceability
- When a Loan Becomes Unlicensed Moneylending
- Interest, Profit and Excessive Returns
- Recovery Strategies and Defending Claims

Introduction

What are Friendly Loans?

- Typically a one-off transaction made between individuals who share an existing personal relationship, such as family members, friends, or business partners
- To assist the borrower in times of hardship

What are Friendly Loans?

- Common characteristics:
 - no formal agreement
 - WhatsApp discussions only
 - no repayment date
 - interest verbally agreed
 - repayment linked to trust

Moneylenders Act 1951

- The Act targets:
 - Unlicensed lenders
 - Loan sharks
 - Disguised commercial lending arrangements
 - Exploitative lending practices
- The Courts look beyond labels like:
 - “friendly loan”
 - “advance”
 - “profit-sharing”
 - “investment”

“Was this really a friendly loan...or was it moneylending?”

- The Malaysian courts examine:
 - Loan given with interest/profit
 - Repeated demands for repayment
 - Use of agreements, post-dated cheques or security
 - Structured repayment schedule
 - Multiple borrowers or organized lending activity
 - Advertising / solicitation / use of agents
 - Financing as a business activity rather than a private arrangement

Intention vs Legal Characterisation?

- Subjective Intentions:
 - "I was just helping a friend"
 - "This wasn't a business arrangement"
 - "My intention was only to provide temporary assistance"

Intention vs Legal Characterisation?

- Legal Characterization - What the Court commonly asks:
 - What actually happened?
 - Was profit expected?
 - Was interest charged?
 - Were there multiple loans?
 - Did the lender behave commercially?
 - Was there a repayment schedule?
- Even if parties call it a “friendly loan”, the Court may legally characterize it as unlicensed moneylending, unenforceable transaction or illegal lending activity.

Presumption of Moneylending

Section 100A of the Moneylenders Act 1951

- S. 100A of the Moneylenders Act 1951 provides for a rebuttable presumption that a single loan with interest shall be presumed to be moneylending until proven otherwise:

*“Where in any proceedings against any person, it is alleged that such person is a moneylender, **the proof of a single loan at interest made by such person shall raise a presumption that such person is carrying on the business of moneylending, until the contrary is proved.**”*

Presumption of Moneylending

- Section 100A of the Moneylenders Act 1951 creates a legal presumption that a person is carrying on the business of moneylending if certain conduct exists.
- This is significant because:
The Court considers surrounding conduct and commercial reality, not just the parties' statements.

Presumption of Moneylending

- **Examples:**

- RM50,000.00 advanced with 10% monthly interest
- Lender repeatedly finances different persons
- Borrower signs repayment schedule + penalty clauses
- “Friendly advance” but lender keeps profit margin and security documents

- **Less likely to trigger s.100A:**

- One-off family assistance
- Genuine commercial investment or joint venture
- Temporary advance between business partners without lending intent
- Interest-free emergency loan

Core Idea of the Presumption

The law essentially says:

"If it walks and behaves like a moneylender, the Court may treat it as one."

Effect of Section 100A

- The burden shifts to the accused once the prosecution proves:
 - a loan; and
 - interest / profit element
- The accused must rebut the presumption by showing he was not carrying on a moneylending business.

Why Section 100A Matters

- Normally, the person alleging illegal moneylending must prove it.
- However, under s.100A, the burden may shift to the lender to prove they are not a moneylender once certain facts are shown. This makes litigation much harder for informal lenders who charge interest or repeatedly lend money.
- Courts have emphasized that even a “one-off” loan with interest may be enough to invoke the statutory presumption under s.100A.

Rebutting the Presumption

- The defence must show:
 - transaction was isolated / exceptional
 - no system or business of lending
 - primary purpose was not moneylending
 - money advanced for another genuine purpose

Case Law - Rebutting the Presumption

- In **Cosmopolitan Avenue Sdn Bhd v Nadayu Properties Bhd [2025] MLJU 4385 (HC)**, the presumption was rebutted, as per the grounds detailed in **Toe Hong Choo v Piong Choong Fah [2024] MLJU 2405 (HC)**:

*“[42] I am satisfied that based on the documents produced by the Defendant, there is a singular lack of evidence that the Defendant was in the business of moneylending and coupled with the following **I found that the Defendant has in fact rebutted the presumption placed on it under S100A of the MA:***

(i) that there was a relationship between the Plaintiff and the Defendant where the Defendant, in a bid to have ingress and egress to the PHB Land and the PHB Buildings, has requested for the modification of the Elevated Ramp (No. 6) to allow the construction of the Connection Road thereto. The CAA-1, the Supplemental Agreement, the CAA-3 and all the letters issued between parties collectively evidenced this relationship;

(ii) that there is an absence of any evidence of a system and continuity in moneylending transactions by the Defendant where from the evidence in this case the only lending of money was to the Plaintiff;

(iii) that there is also no evidence that the Defendant was carrying on or advertised itself in any way as a business of moneylending;

(iv) that the Profit Chargeable for Advances was not exorbitant.”

Case Law - Rebutting the Presumption

Triple Zest Trading & Suppliers & Ors v Applied Business Technologies Sdn Bhd [2023] 6 MLJ 818, the Federal Court held:

that an 'interest' rate of 100% is an exorbitant rate and unless the presumption that the lender is carrying on the business of moneylending is rebutted by the lender such a lender will be considered as carrying on a moneylending business which requires a licence under the MA 1951.

Case Law - Rebutting the Presumption

- **Sandhu Singh v Sellathurai [1955] 1 MLJ 117 (approved in Chow Yoong Hong, Privy Council)**, Court held the Appellant failed to rebut the presumption.

Facts

- Appellant lent respondent \$2,000.
- Respondent issued a cheque for acknowledgment/security, which was dishonoured.
- Appellant sued for recovery; respondent claimed appellant was an unlicensed moneylender.

Case Law - Rebutting the Presumption

Presumption

- Proof of money lent with expected interest raised the statutory presumption that the appellant was a moneylender.
- After one transaction is proven, the burden shifts to the lender to prove they were not carrying on a moneylending business.

Why Appellant Failed

Court relied on evidence that the appellant:

- Previously acted as a moneylender.
- Later obtained a moneylender's licence.
- Described himself as a moneylender.
- Charged interest on the loan.

Case Law - Rebutting the Presumption

- **Wong Thian Choy & Anor v Goodnite Sdn. Bhd. & Anor [2019] MLJU 1038**, *the Plaintiffs successfully rebutted the presumption.*
- The Court found that the Plaintiffs were:
 - genuine businessmen in the furniture industry
 - not carrying on a moneylending business
 - not advertising or holding themselves out as moneylenders
- Court also noted:
 - loans arose from long standing business relationships
 - money came from personal bank accounts
 - defendant produced no evidence of any lending business

Effect of Exorbitant Interest Rate

Exorbitant Interest

Triple Zest Trading & Suppliers & Ors v Applied Business Technologies Sdn Bhd [2023] 6 MLJ 818

- Factual Background
 - The Lender advanced a principal loan sum of RM800,000 to the Borrower
 - The loan agreement explicitly stipulated that the principal must be repaid within a short period of 30 days, alongside an additional RM800,000 labelled by the parties as an "agreed profit"
 - Upon the Borrower's default, the Lender initiated legal proceedings to recover the total of RM1.6 million

Exorbitant Interest

Triple Zest Trading & Suppliers & Ors v Applied Business Technologies Sdn Bhd [2023] 6 MLJ 818

- Court's findings:
 - The Federal Court looked past the commercial labels used and determined that the "agreed profit" was actually a disguised simple interest rate of 100% payable in just 30 days
 - This exorbitant interest rate triggered the rebuttable presumption under Section 100A, which the Lender failed to rebut
 - definitively ruled that the transaction was an illegal moneylending arrangement rather than a genuine friendly loan

The ‘Loss Falls Where it Lies’ Principle

Remedies?

- Restitution under Section 66 Contracts Act 1950
 - *“When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.”*

The 'Loss Falls Where it Lies' Principle

Triple Zest Trading

- Court's findings
 - The Federal Court held that the 100% "agreed profit" was an unlawful consideration, rendering the entire loan agreement void from the very beginning (void ab initio) pursuant to Section 24 Contracts Act 1950
 - the Court clarified that that restitution is not available where a contract is void ab initio due to illegality
 - The Court warned that if illegal lenders are guaranteed the recovery of their principal sum through the courts, it would create a "fertile breeding ground" for unlicensed moneylenders

The ‘Loss Falls Where it Lies’ Principle

Triple Zest Trading

- “[23] ... if the court were to lend a helping hand to a person who charges exorbitant interest to claim back the principal amount lent, it would create a fertile breeding ground for illegal moneylenders aka ‘Ah Long’ because in the event the borrower does not repay, the principal loan amount is guaranteed to be recoverable through the court process. Ah Longs would have nothing to lose...”
- “[24] ... can be likened to allowing a robber to claim back his cost and expenses in a botched robbery attempt.”

Permissible Interest Rate

Menta Construction Sdn Bhd v SPM Property & Management Sdn Bhd & Anor [2017] MLJU 526

- Factual Background:
 - The Plaintiff advanced RM1.2 million to the Defendant to assist with the financial costs of an ongoing construction project
 - The parties executed a Loan Agreement which stipulated an "administrative charge" of 8.8% per annum calculated on a monthly rest
 - The Defendant defaulted on repayment, and the Plaintiff sued to recover the principal sum alongside the ballooning interest amount, which had accrued to nearly the entire principal sum

Permissible Interest Rate

Menta Construction Sdn Bhd (cont.)

- Court's findings:
 - The High Court determined that the 8.8% "administrative charge" was merely a camouflage for interest, as there were no actual services rendered to justify such a charge
 - The Court established the principle that "the Court may strike down the interest element in a friendly loan transaction if the interest is exorbitant, excessive and unconscionable"
 - Refused to enforce the contractual 8.8% rate and instead exercised its discretion to award a simple interest rate of 5% per annum on the principal sum from the date of the statement of claim until realization

Permissible Interest Rate

Toe Hong Choo v Piong Choong Fah [2024] MLJU 2405

- Factual Background:
 - The parties were formerly husband and wife
 - The wife (Plaintiff) provided various loans to the husband (Defendant) between 2013 and 2014 to "tide him over" during their marriage.
 - A formal "Friendly Loan Agreement" was executed in 2015, acknowledging a debt of RM1.52 million.
 - The agreement stipulated "administration charges" calculated at 1.3% per month (approx. 15.6% p.a.)

Permissible Interest Rate

Toe Hong Choo v Piong Choong Fah [2024] MLJU 2405

- Court's findings:
 - The court held that a rate of 1.3% per month was not exorbitant in the context of the facts.
 - Rebutting the Presumption: The presumption of illegal moneylending was successfully rebutted due to the existing domestic relationship and the lack of "system and continuity" in the wife's lending.
 - Decision (at para 123): The court ordered the defendant to pay the principal plus the 1.3% monthly interest from 2015 until full settlement

Permissible Interest Rate

Summary - What Interest Rate is “Allowed”

- No "One-Size-Fits-All" Number
 - While Menta Construction suggests 5% p.a. as a baseline, Toe Hong Choo proves that 15.6% p.a. (1.3% monthly) can be valid depending on the closeness of the parties.
- The "Ah Long" Ceiling
 - The primary threshold remains Triple Zest: 100% interest within 30 days is a clear indicator of illegal moneylending that will lead to a total loss of recovery

Permissible Interest Rate

Summary - What Interest Rate is “Allowed”

- Key Determining Factors for Legality:
 - Purpose: Was the loan for mutual assistance/commercial necessity or pure profiteering?
 - Labels: Courts will ignore labels like "Agreed Profit" or "Administration Charges" and look at the actual percentage.
 - Existing Relationship: A loan to a spouse or a long-term business partner is far more likely to be upheld than a loan to a stranger.

Do's and Don'ts

How to Protect Yourself

- Dos
 - get everything in writing (terms of payment, purpose)
 - set a fixed and specific repayment date
 - avoid interest if possible, or cap it at 5% per annum
 - have clear evidence that moneylending is not to make profit

- Helpful evidence:
 - business / investment documents
 - absence of multiple loans
 - correspondence showing commercial context
 - no advertisements or solicitation

How to Protect Yourself

- Don'ts
 - lend to strangers (no relationship)
 - make a habit of lending money (establishing a system)
 - try to disguise interest under different names ('administration charges' or 'agreed profit')

Questions?

Upcoming Talks

Date	Topic	Speakers
10 June 2026 (Wednesday)	Breaking Deadlock: Termination of Co-proprietorship in Malaysia	Joseph Khor & Keerthana Aiswwarya



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Thank you!

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