
Market-Based Approach for Moneylending in Malaysia

Adelene Teo



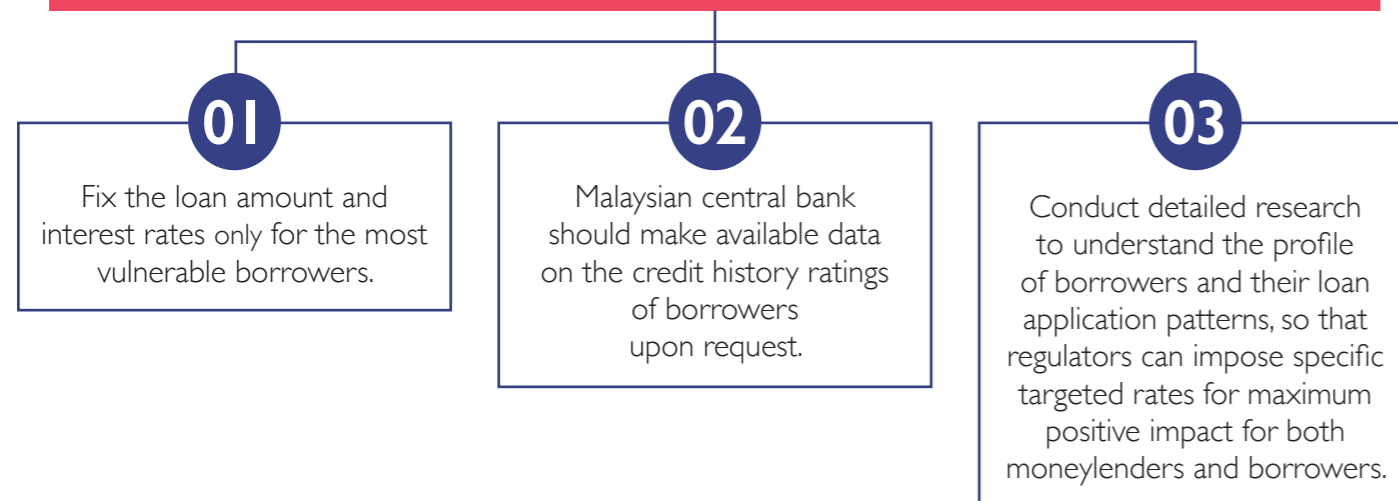
Executive Summary

A lack of access to financial markets is a common challenge faced by the poor across ASEAN countries. Without access to traditional lines of credit or banking, the poor and undocumented often rely on informal means to manage their money. Moneylending is a form of informal financing that has played an important role in facilitating private sector growth and the livelihood of communities that fall beyond the reach of the formal financial system.

There is much confusion among the public in Malaysia between licensed money lending and loan sharking, negatively tainting the reputation of licensed moneylenders. In addition, some think that licensed moneylenders have the same business model and operate exactly like a bank. To deal with these issues and other misconceptions faced by the industry, a heavy handed enforcement approach has been adopted by the government. These efforts empower the police and authorities with increasing powers, and has resulted in unintended consequences that choke the operations of licensed moneylenders.

This paper reviews the Moneylenders Act 1951 - the primary law that guides money lending activities in Malaysia and concludes that the 'one size fits all' pricing for the industry, which aims to protect borrowers, is in reality inefficient and unfair. Malaysia should move towards a floating interest rate - which is determined by market forces for the demand and supply of loanable funds.

If the government is serious about protecting borrowers, it should adopt the following practices instead:



Introduction

An estimated 2 billion working age adults worldwide do not have an account at a formal financial institution (Demirguc-Kunt, Klapper, Singer & Oudheusden, 2015). Lack of access to financial markets - a common feature among the poor in ASEAN countries - effectively lock these individuals out of the formal economy. Without a savings account, debit card, insurance or lines of credit, the poor are hindered from climbing up from the lowest rungs of the economic ladder and must often rely on informal means to manage money.

Moneylending is a form of informal financing¹ and has played an important role in facilitating private sector growth and the livelihood of communities that fall beyond the reach of the formal financial system. The industry exists in almost all countries and has a significant positive impact on a nation's macro and socio-economic indicators (Beck, Kunt & Levine, 2007). The Consultative Group to Assist the Poor (CGAP) insisted that moneylending, together with other microfinance products, is important and cannot be totally written off from the formal financial system.

Author

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Why is moneylending tightly regulated in Malaysia?

In Malaysia, moneylending has long existed, though under-researched. Regulated by the Moneylenders Act 1951, it is defined as 'lending money with interest, with or without security, by a licensed moneylender to a borrower' (Part 1, Section 2 of the Moneylenders Act 1951). It is often confused with loan

sharking. Contrary to money lending, loan sharking is 'an illegal activity of offering money in exchange for its repayment at an interest rate that exceeds the percentage approved by law and the use of intimidation threats of force in order to obtain repayment' (Free Dictionary).

¹ Schreiner (2001) defined informal financing as contracts or agreements conducted without reference or recourse to the legal system to exchange cash in the present for promises of cash in the future. Informal financing is derived from the bottom-up demand of the poor for appropriate financial services.

The confusion between licensed money lending and loan sharking exists throughout society. This has been negatively tainting the reputation of licensed money-lenders. For example, in their website, the Agensi Kaunseling dan Pengurusan Kredit (AKPK), a government agency under Bank Negara Malaysia set up to assist individuals on financial management, describes 'loan sharks' as 'those who lend small sums of money at higher interest rates than that charged by licensed financial institutions to less discerning borrowers'. This definition is quite misleading, especially since the licenced moneylenders also perform the same functions.

The AKPK's definition has two (2) obvious flaws:

1. It does not take note of the collection method
2. It disregards the licenced moneylenders' business model and risk exposure

This loose definition vilifies licensed moneylenders in Malaysia, an otherwise productive and useful element of the economy.

The result of these misplaced fears has been the imposition of a command and control method of regulating the moneylending industry – the Moneylenders Act 1951 and its subsequent amendments in 2003 and 2011. These amendments have resulted in tighter licensing regimes, increased enforcement authority of the police over moneylending activities and the imposition of an interest rate ceiling. If not amended, these heavy handed government regulations will continue to result in unintended consequences, which may ultimately inhibit the access of loanable funds to the poorest sections of society and result in a failure to prevent illegitimate loan sharking activities.

INTERESTING FACT 1: RISK EXPOSURE & INTEREST RATES

Generally, the risk exposure and interest rate payments have a strong, positive correlation. A higher interest rate is the incentive that lenders need to loan out funds to riskier customers. Since the customers for licensed moneylenders are mostly those who are poor and left out of the formal financial sector (i.e. high risk), the interest charged on these loans, if they are determined by market price, tend to be higher than that set by the central bank.

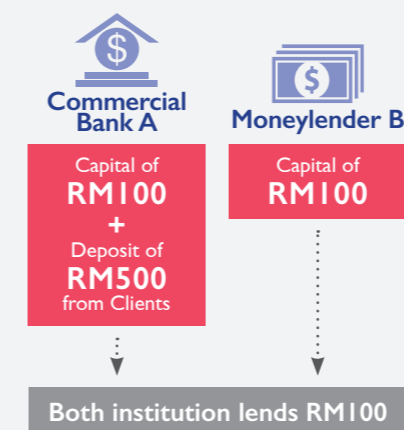
The main purpose of this paper is to propose an alternative model to the current regulations imposed on Malaysia's moneylending industry, a model that is based on market principles of supply and demand and an adoption of international best practices.

Moneylending Differs From Commercial Banking

The biggest myth is that licensed moneylenders have the same business model and they operate exactly like a bank. **They do not.**

Moneylenders offer faster and hassle free financing compared with commercial banks. The main differences however, are the source of funds for credit provision and the inability of moneylenders to collect deposits. Unlike commercial banks that generally lend money from the funds they collect from their depositors, licensed moneylenders offer loans out of their own capital at a rate capped by the Moneylenders Act. This distinction determines the amount of profit each business is able to make and the risk exposure to its respective shareholders. Moneylenders face 100 per cent credit risk on their capital contribution whereas shareholders of commercial banks are partially shielded because loanable funds are provided using deposits, from clients, not the bank's capital.

These two (2) points will illustrate the distinction between commercial banks and moneylender:



First, commercial bank A would earn interests from its own capital (RM100)² and also from loans extended using its existing deposits (RM500),³ whereas moneylender B only earns interest from its own capital (RM100).

Second, in the event of a default, moneylender B loses 100 per cent of its capital (RM100). Shareholders of commercial bank A however, will be

insulated from such losses, as the bank still maintains its capital (RM100), although its deposits now fall to RM400 (500-100). Depositors offer systemic risk protection to commercial bank A - a risk that moneylender B has to fully bear.

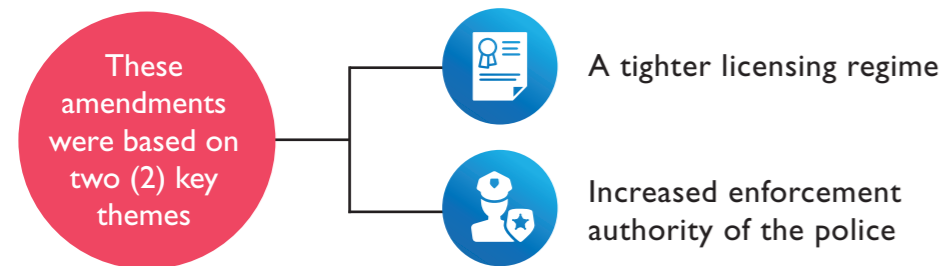
Moreover, commercial banks and licensed moneylenders appeal to and serve different socio-economic groups. Licensed moneylenders normally provide loans to customers with low incomes or bad credit histories. Commercial banks tend to avoid lending to these groups due to their high expected default risk. As such, these groups turn to licensed moneylenders for their less stringent credit requirements, flexibility in financing terms and immediate fund disbursements. This adverse selection exposes licensed moneylenders to higher credit risks because they take on the default risks of customers that formal financial institutions reject.

² Bank capital includes overheads such as the building complex where the bank is housed. The bank can earn money from its capital by leasing parts of its property to tenants to earn rent.

³ A commercial bank can lend the remaining deposits to other banks or park its deposits in the Central Bank to earn interest payments.

The Moneylenders Act: Unnecessary Red Tape?

The moneylending industry in Malaysia is tightly regulated by the Moneylenders Act 1951. The Act has been revised and amended with the objective to further protect the interest of borrowers and prevent loan sharking activities.



1. Tighter Licensing Regime

Over the years, institutional governance of the moneylending business has evolved from a decentralised structure to a centralised structure. Initial administrative decentralisation allowed local authorities to evaluate, administer and grant money lending licenses. This democratised process, in previous years, allowed for efficient fiscal management and empowered the local authorities to oversee the growth of the moneylending industry in a contained environment.

Despite overall growth in the moneylending industry, research has suggested that local authorities were constantly challenged with administrative discrepancies and has failed to implement efficient enforcement mechanisms (Muhammad Arif, 2008). Such gaps allowed errant moneylenders and loan sharks to capitalise on the system. The Moneylenders Act was amended to address such problems. Administrative decentralisation was halted. Instead, the institutional governance and administration

of all money lending activity is now centralised under the Ministry of Urban Wellbeing, Housing and Local Government.

Following this, processes such as licensing applications, maintenance and renewal requirements for moneylending become more stringent. Since 2011, new license applications (to become a money lender) require a high amount of paid-up capital of at least RM 1,000,000 to file an application for a license and must show a profit of RM 500,000 for the three consecutive years to renew a license (Muhammad Arif, 2009). Moneylenders also have to pay RM 2,000 to the Registrar as opposed to the previous annual fee of RM 120 (Section 5B (3) of the Moneylenders Act 2003; Regulation 3(4), Moneylenders Control and Licensing Regulation 2003). Additionally, advertising activities have been restricted and moneylenders are required to submit a statutory declaration signed by a police officer.



2. Increased Enforcement Authority of the Police

Amendments made to the Moneylenders Act 2003 also empowered the Royal Malaysian Police with enforcement authority. These powers were further increased in the 2011 revision. The police are now authorised to investigate oral and written complaints and examine any person deemed to have violated the Act. Authorisation has also been granted to the police to inspect or search premises without a warrant, to seize movable properties and business documents without the owner's permission and to access computerised data from any person to assist with its investigations. Any person arrested for committing or attempting to commit offences under this Act would be dealt with in accordance to the provision of the Criminal Procedure Code.

The move to increase the police authority is a double-edged sword. On one hand, the increased enforcement capacity does provide the police with greater room to combat loan sharking, while on

the other, it chokes the operations of licensed moneylenders.

At present, licensed moneylenders are burdened by heavy compliance costs. The risk of having the police possibly halting business operations and seizing documents and property without a warrant or permission further adds to the operational risk and disadvantage of getting involved in the money lending business. Often these difficulties are translated to adverse selection of loan provisions and, in extreme cases, business closure.

Reforming the System: A Market Based Approach

At present, the command and control regulation on money lending is ineffective and inefficient. It fails to contain the presence and growth of loan sharks, generates high compliance and enforcement costs, stifles competition in the licensed money lending market and is unable to maximise community welfare. Amendments made to the Moneylending Act 1951 did not achieve the objective of protecting the interest of borrowers at the same time weakened the marketplace for licensed moneylenders. To unleash the potential of Malaysia's moneylending sector in helping those who do not have access to formal financial institutions, this paper proposes a market based approach to regulate money lending in Malaysia.

Market-Based Approach to Determine Competitive Price

The OECD report *Alternatives to Traditional Regulation* defines market-based mechanisms as those that 'work by using market signals –prices– to provide an incentive to businesses and citizens to act in a way which will achieve the government's policy objective' (Hepburn, n.d.). Market-based mechanisms are precise in achieving policy objectives and they encourage greater compliance compared with the regulatory approach. In the money lending industry, this approach is adopted by developed countries such as Singapore and Australia. In these countries, the market price interest rates used for moneylending activities are competitively-determined with minimal regulatory intervention (See Appendix 1 for details).

In Malaysia however, Section 17A of the Moneylenders Act 1951 fixes a 'one size fits all' pricing for the industry. The price for secured and unsecured loan is capped at 12 per cent per annum and 18 per cent per annum respectively. Both prices are similar to the rates charged by commercial banks for their personal financing products.

While such rate determination may, at first glance, seem equitable to both the licensed moneylenders and the borrowers, this regulation is in reality inefficient and unfair. First, the modus operandi of a licensed moneylender entails higher risk exposure and returns. As explained in the previous section, licensed moneylenders utilise their own capital

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Pricing in the money lending industry should be competitively determined by the market.
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to offer financing and pay hefty licensing fees. Thus, by capping the price, the Act fails to establish a fair marketplace as licensed moneylenders have to accept a return which is not commensurate with their higher risk exposure and compliance costs.

The second problem with capping the price is that a majority of borrowers will be mispriced. Borrowers or loan amounts that fall outside this risk boundary will be unfairly charged. For example, borrowers taking a higher loan amount or from a weaker credit background than the average, will be paying a considerably cheaper price. Conversely, borrowers from the opposite end, namely those taking a lower amount of loans or have a stronger credit status, will have to pay

a higher rate than the capped price. In this context, the regulatory intervention on price fails to achieve the objective of protecting borrowers' interest effectively and efficiently.

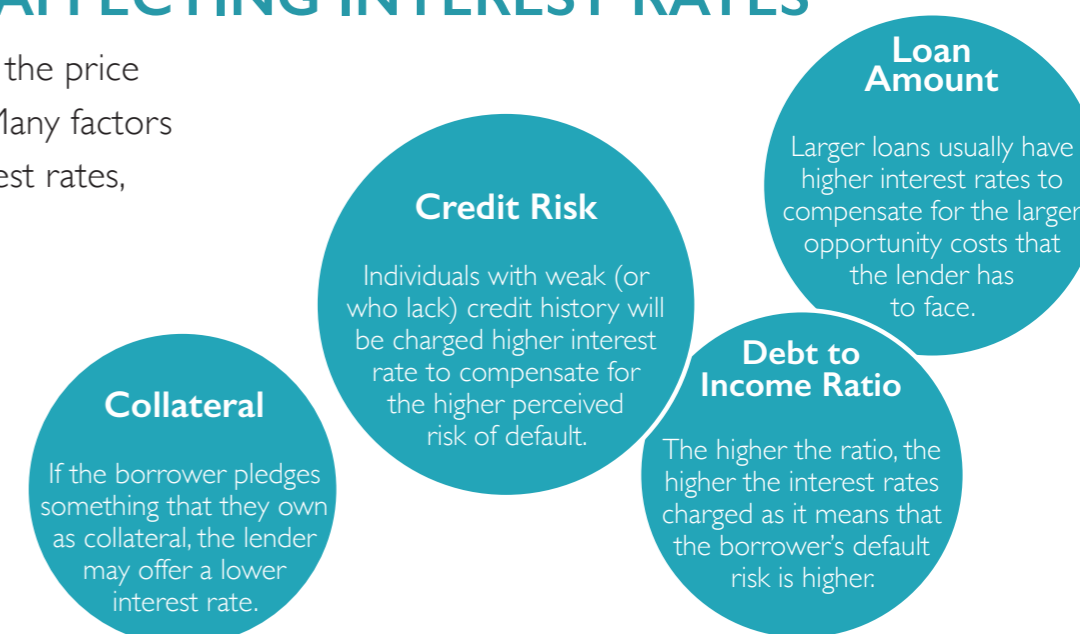
Pricing in the money lending industry should be competitively determined by the market. Undistorted market-based mechanism offers a fair and equitable marketplace for both the borrowers and licensed moneylenders. Moreover, it also discourages the establishment of illegal markets by loan sharks and licensed moneylenders from resorting to unscrupulous ways of conducting business to cover themselves from excess risks.

As such, Malaysia should carefully reconsider its fixed interest rates for secured and unsecured loans and move towards a floating interest rate

This is determined by market forces for the demand and supply of loanable funds. While capping the interest rates low might benefit some borrowers, it will ultimately result in a shortage (and thus inefficient allocation) of scarce loanable funds.

INTERESTING FACT 2: FACTORS AFFECTING INTEREST RATES

The interest rate is the price of loanable funds. Many factors can affect the interest rates, for example:



Protecting Borrowers: How Have Other Countries Done It?

How Has Singapore Done it?

In order to protect the interest of vulnerable borrowers, minimum regulatory intervention can still be applied, as in the case of Singapore.

- Government implements a fixed loan amount for specific low-income earners
- Others are subjected to competitive market price and loan amount

Intentions of Singapore's targeted intervention

- Protects the most vulnerable from the burden of exorbitant interest rates without distorting the wider competitive market.
- Provides a comprehensive list of permitted penalty fees allowed to be charged on borrowers to prevent bad borrowing and repayment habits.

How Has the United Kingdom (UK) Done it?

Similar to Singapore, in the United Kingdom, the Financial Conduct Authority (FCA) implemented the interest rate cap of 0.8% per day for the High Cost Short Term (HSTC) credit.

HSTC - a term used in the UK for some of moneylending activities, to protect vulnerable borrowers from unscrupulous payday lenders (FCA, 2014).

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This targeted intervention intends to protect the most vulnerable from the burden of exorbitant interest rates.
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How Australia Protects Borrowers

In Australia, the dynamics of the payday industry is slightly different.

Payday Industry - an Australian term used occasionally to refer to the moneylending industry in Australia.

- Constant research on the borrowing habits of payday borrowers
- Payday industry stakeholders are consulted before amount, tenure and pricing are fixed

Benefits of Australia's Regulations

• Research on payday borrowers

The constant research is in order for the regulations to be up-to-date with market practices and preferences⁴

• Industry consultation

Allows the borrowers to be protected, and at the same time provides room for payday lenders to make reasonable profits. For example, a study found that small amount loans are usually borrowed to cover short term expenditure needs such as utilities bill payment and thus, the loans are only subjected to permitted maintenance fees and are not charged any interest. For other loan categories, interest and fees are allowed to be charged

(Gardner & Rowlingson, 2014; Please refer to Appendix 1 for more detail)

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⁴ Schreiner (2001) defined informal financing as contracts or agreements conducted without reference or recourse to the legal system to exchange cash in the present for promises of cash in the future. Informal financing is derived from the bottom-up demand of the poor for appropriate financial services.

How can Malaysia Improve on Protecting Borrowers?

Adopt Singapore's model of fixing the loan amount and interest rates only for its most vulnerable borrowers in order to protect them from exploitation.



Supporting Mechanism: Credit Report

Acknowledging the risks involved in the moneylending business, Singapore, Australia and United Kingdom also have in place a credit scoring system that provides a comprehensive supporting mechanism for risk management. This system provides moneylenders with information relating to the borrower's creditworthiness, amount of credit exposure and the potential credit risk posed. This information is useful as it helps moneylenders to ascertain if the borrower is suitable and to help determine the terms and interest rates it will impose on lending.

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The lack of such information results in asymmetric information and puts moneylenders in Malaysia at a greater financial risk compared with the commercial banks.

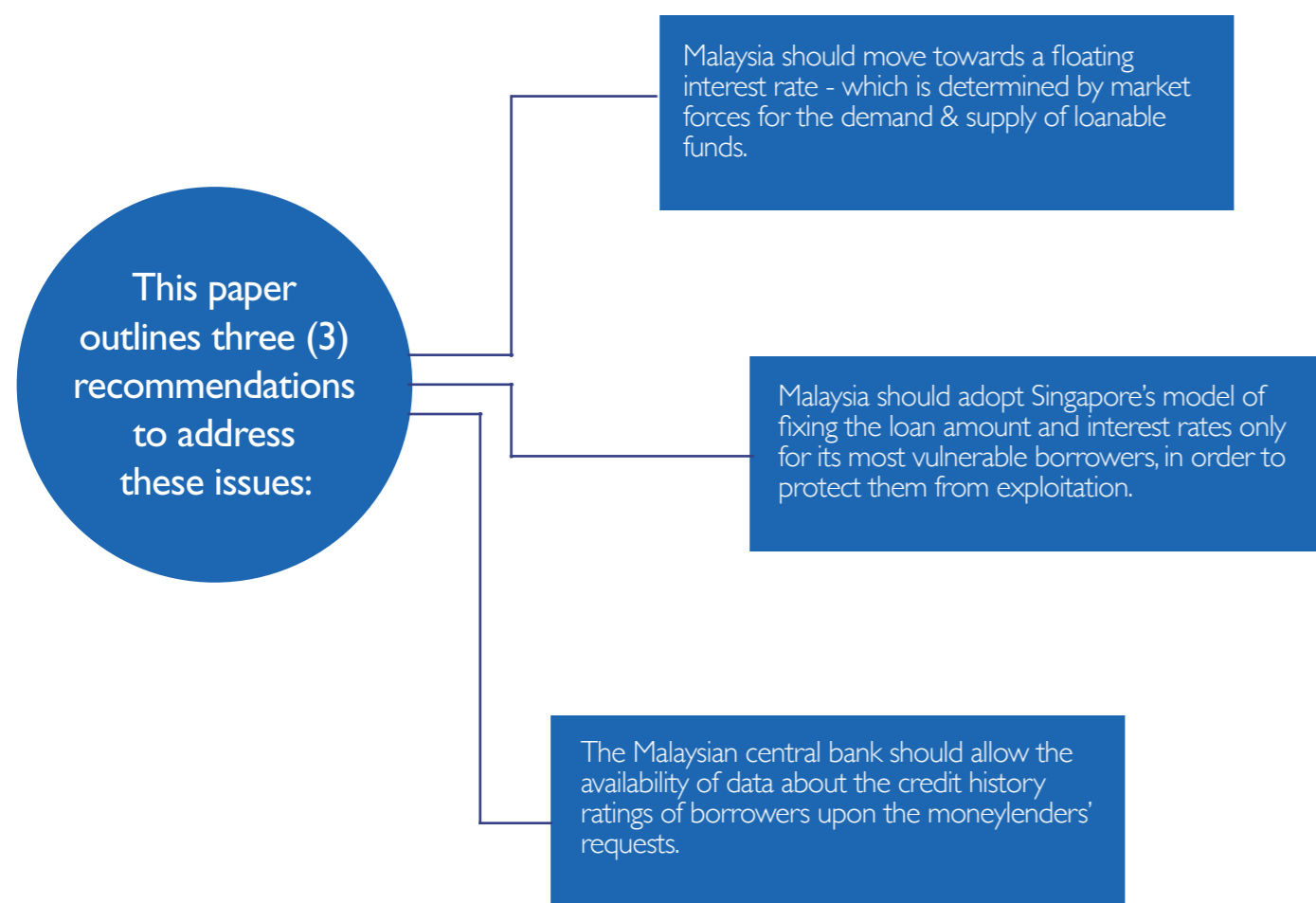
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In Malaysia however, moneylenders do not have access to such facilities. The best credit reference system available is a CTOS report. The CTOS is Malaysia's leading credit reporting agency. It is a private credit reporting agency regulated under the Credit Reporting Agencies Act 2010 that provides moneylenders with the number of debt a borrower has defaulted. Moneylenders cannot subscribe to the Central Credit Reference Information System (CCRIS) report generated by the Credit Bureau, an agency set up by Bank Negara Malaysia to provide reports on credit standing, for information relating to the number and amount of debt a borrower has and their repayment patterns (*“Financial Institutions participating in the CCRIS”, n.d.*). The lack of such information results in asymmetric information and puts moneylenders in Malaysia at a greater financial risk compared with the commercial banks.

To mitigate this problem, the Malaysian central bank should make available data on the credit history ratings of borrowers for moneylenders, if they request, upon any credit facility applications.

Conclusion

The Moneylenders Act 1951 on its own is ineffective and inefficient to protect the interest of borrowers and maximise the public's welfare. The regulatory approach exposes borrowers to an unfair marketplace, fails to deter loan sharking activities and exacerbates the high compliance costs and risks faced by licensed moneylenders.



These recommendations should be integrated into the current Moneylenders Act to establish an equitable market for both the borrowers and the licensed moneylenders. These efforts will do much to suppress illegal activities such as loan sharking, reduce compliance and enforcement costs, provide borrowers with access to information and empower them to make better informed decisions. Only then, can the interest of borrowers be effectively and efficiently protected.

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Appendix

01: Rules on Moneylending in Malaysia, Singapore, Australia, & the United Kingdom (UK)

Aspects	Malaysia	Singapore	Australia	UK
Maximum Rate	<p>Secured loan = 12% p.a.</p> <p>Unsecured loan = 18% p.a.</p>	<p>Secured loan</p> <ul style="list-style-type: none"> Annual Income < SGD 30,000 = 13% p.a. Annual Income > SGD 30,000 = borrower and moneylender's agreed rate <p>Unsecured loan</p> <ul style="list-style-type: none"> Annual Income < SGD 30,000 = 20% p.a. Annual Income > SGD 30,000 = borrower and moneylender's agreed rate 	<p>Small amount loans [Tenure between 16 days & 1 year] [Amount < AUD 2,000] = 0% (not allowed to charge interest)</p> <p>Medium amount loans [Tenure between 16 days & 2 years] = 48% p.a. (including all other fees & charges)</p> <p>All other loans [Amount > AUD 5,000] [Tenure > 2 years] = 48% p.a. (including any fees and charges)</p>	<p>High Cost Short Term Credit (HCSTC)</p> <ul style="list-style-type: none"> Initial cost - capped at 0.8% per day (interest & fees must be < 0.8% per day of the amount borrowed) Total cost (interest and fees) < 100% of amount borrowed Others - Market determined
Permitted Fees	<p>Stamp Duty Fees payable by law.</p>	<ul style="list-style-type: none"> Each occasion of late repayment - Principle or interest Varying contract's term at the request from the borrower Every unsuccessful deduction from a bank account through GIRO Early redemption or termination of the contract Legal costs for the recovery of loan 	<p>Small amount loans</p> <ul style="list-style-type: none"> One-off fee = < 20% of loan amount Monthly account keeping fee = < 4% of loan amount Government fee / charge Enforcement expenses <p>Medium amount loans</p> <ul style="list-style-type: none"> One-off fee = AUD 400 	<p>High Cost Short Term Credit (HCSTC)</p> <ul style="list-style-type: none"> Default fees - fixed at a cap of GBP 15 (interest on unpaid balances & default charges must be < initial rate)
Maximum Amount of Loan		<p>Secured loan</p> <ul style="list-style-type: none"> Any amount <p>Unsecured loan</p> <ul style="list-style-type: none"> Annual Income < SGD 30,000 = up to SGD 3,000 Annual Income SGD 20,000 to 30,000 = up to 2 monthly salaries Annual Income SGD 30,000 to 120,000 = any amount 	<p>Small amount loans</p> <ul style="list-style-type: none"> AUD 2,000 or less <p>Medium amount loans</p> <ul style="list-style-type: none"> AUD 2,001 to AUD 5,000 	
Supporting Mechanism	CTOS	CBS Credit Report	Consumer Credit Reporting (regulated under Part IIIA of the Privacy Act 1988)	Credit Reference Agency (Equifax, Experian & Callcredit)
Source	Moneylenders Act 1951 (Revised – 1989) Incorporating latest amendments – Act A1390 of the year 2011	Moneylenders Act (Chapter 188), Moneylenders Act 2008 (Act 31 of 2008) Moneylenders Rules 2009 (S72/2009).	Australian Securities & Investment Commission – Consumer credit regulation – Short term and small amount loans (including payday loans)	Financial Conduct Authority (FCA) policy statement - PS14/16 Detailed rules for the price cap on high-cost short-term credit.



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