

# MORTGAGORS' RELIEF ORDINANCE

## 1940-1941. <sup>(1)(2)</sup>

### An Ordinance to grant Relief to Mortgagors and for like purposes.

**B**E it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1935*, as follows:—

1. This Ordinance may be cited as the *Mortgagors' Relief Ordinance 1940-1941.* <sup>(2)</sup>

Short title.  
Amended by  
No. 3 of 1934,  
s. 50.

2. This Ordinance shall commence on a date to be fixed by the Administrator by notice in the *New Guinea Gazette*, and shall continue in force for a period of two years from that date and no longer: <sup>(1)</sup>

Commencement  
and duration.

Provided that the expiry of this Ordinance shall not—

- (a) affect the previous operation thereof or anything duly done or suffered thereunder; or
- (b) affect any right, privilege, exemption, obligation, or liability acquired, accrued, or incurred thereunder.

3. In this Ordinance, unless the contrary intention appears— **Definitions.**  
“Court” means the Supreme Court;

“land” includes any estate or interest in land whether legal or equitable;

“mortgage” means any deed, memorandum of mortgage, instrument, or agreement whereby security for the pay-

(1) This Ordinance expired on 27.9.1942. It has been reprinted, however, in view of its effect on numerous mortgages which are still subsisting.

(2) The *Mortgagors' Relief Ordinance 1940-1941* comprises the *Mortgagors' Relief Ordinance 1940*, as amended by the other Ordinances referred to in the following Table:—

ORDINANCES OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
<i>Mortgagors' Relief Ordinance 1940</i> (No. 10 of 1940)	24.9.1940	24.3.1941	27.9.1940 ( <i>N.G. Gaz.</i> of 26.9.1940)
<i>Mortgagors' Relief Ordinance 1941</i> (No. 9 of 1941)	22.4.1941	31.7.1941	22.4.1941 ( <i>Laws of T.N.G.</i> , Vol. XV, p. 151)
<i>Mortgagors' Relief Ordinance</i> (No. 2) 1941 (No. 18 of 1941)	23.9.1941	15.11.1941	23.9.1941 ( <i>Laws of T.N.G.</i> , Vol. XV, p. 161)

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ment of moneys or for the performance of any contract is granted over land, and includes an equitable mortgage by deposit of title deeds, and also includes—

(a) an agreement for sale and purchase of land where payment of the unpaid purchase money and interest thereon is secured on the land; and

(b) any agreement whereby the mortgagor agrees to sell the produce of land owned or occupied by him or under his control to the mortgagee in consideration of advances of money or goods made or to be made by the mortgagee;

“mortgagee” means any person entitled to receive payment of any moneys payable or to receive the produce of land agreed to be sold under a mortgage;

“mortgagor” means any person liable to payment of any moneys secured by mortgage, or to sell the produce of land agreed to be sold under a mortgage, and any person who has guaranteed such payments or sale.

Ordinance not to apply to mining tenement, &c.

4. Nothing in this Ordinance shall apply to any mining tenement, dredging or sluicing lease, licence, title, or right held under the *Mining Ordinance 1928-1940* or any Ordinance repealed by that Ordinance, or to any lease, licence, or right held under the *Petroleum (Prospecting and Mining) Ordinance 1938-1939*, or to any miner's homestead lease held under the *Miners' Homestead Leases Ordinance 1928-1938*, or to any mortgage as far as it relates to any such mining tenement, dredging or sluicing lease, lease, licence, title, right, or miner's homestead lease.

Reduction of interest on mortgage.

5. Except as hereinafter provided, every mortgage, whether existing at the commencement of this Ordinance or not, shall be construed and take effect as if it were a term of the mortgage that for the period during which this Ordinance is in force the interest payable under the mortgage shall be the lowest rate of interest for which provision is made under the mortgage or the rate of Four pounds per centum per annum, whichever is the lower.

Suspension of interest on mortgage over land used for agricultural or pastoral purposes.

Substituted by No. 18 of 1941, s. 2.

6. Notwithstanding anything contained in the last preceding section and, except as hereinafter provided, any mortgage, whether existing at the commencement of this section or not, over land used for agricultural or pastoral purposes shall be construed and take effect as if it were a term of the mortgage that, with respect to the period during which this Ordinance is in force, interest shall not accrue due or be payable under the mortgage on moneys loaned or advanced before the commencement of this section.

*Mortgagors' Relief Ordinance 1940-1941.*

6A. In any case where the mortgagee on application to the Court upon summons satisfies the Court—

Power of Court to modify or exclude provisions of sections 5 and 6.

Section 6A inserted by No. 18 of 1941, s. 2.

- (a) that the mortgage is over land the more valuable product of which is primary produce, other than coconuts; or
- (b) that the financial position of the mortgagor is such as to enable him to pay interest; or
- (c) that there are other good and sufficient grounds for modifying or excluding the provisions of the last two preceding sections or either of them,

the Court may make an order—

- (d) modifying or excluding the provisions of sections five and six of this Ordinance or either of them;
- (e) fixing the interest payable under the mortgage at a rate not exceeding that payable under the mortgage.

7.—(1.) Any mortgagor may apply to the Court, upon summons, for an order that the mortgagee shall not, whilst this Ordinance is in force, exercise any power of sale, foreclosure, or repossession in respect of the land comprised in the mortgage or any other remedy conferred by the mortgage, or by any law of the Territory, for enforcing payment of the moneys secured by the mortgage.

Power of Court to restrict mortgagee's rights.

(2.) Upon service on the mortgagee of the summons in respect of such application, and pending the decision of the Court, no power of sale, foreclosure, or repossession in respect of the land comprised in the mortgage and no other remedy for enforcing payment of the moneys secured by the mortgage shall, without leave of the Court, be exercised by the mortgagee; and, if any such power or remedy is, or before the service of the summons has been, commenced, it shall be, and is hereby declared to be, stayed and suspended accordingly until the order upon the summons is made.

(3.) If upon the hearing of the summons the mortgagor satisfies the Court—

- (a) that he is unable to redeem the land, either from his own moneys or by borrowing at a rate of interest not exceeding Six pounds per centum per annum; and
- (b) that there are other good and sufficient reasons why the order applied for should be made,

the Court shall make an order in accordance with sub-section (1.) of this section.

(4.) If the Court is satisfied that the mortgagor is able to pay a portion of the moneys secured by the mortgage, the Court may

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insert in the order a condition that it shall not remain in force unless the mortgagor within such time as the Court directs pays to the mortgagee the portion of the moneys specified in the order; and if the mortgagor fails so to pay, the order shall be void in all respects.

(5.) At any time whilst an order made under sub-section (3.) of this section is in force, the mortgagee may apply to the Court, upon summons, for the setting aside of the order, and if the mortgagee satisfies the Court—

- (a) that the mortgagor is able to redeem the land, either from his own moneys or by borrowing at a rate of interest not exceeding Six pounds per centum per annum; or
- (b) that the mortgagee's security is in jeopardy; or
- (c) that the mortgagor is able to pay the interest payable under the provisions of section five of this Ordinance and has neglected to do so,

the Court may set aside the order accordingly or may direct that the order shall be void unless the mortgagor, within such time as the Court directs, complies with the terms or conditions of the direction of the Court.

Notice to be given by mortgagee before exercising certain powers.

8.—(1.) At least forty-eight days before proceeding to exercise any power or remedy mentioned in sub-section (1.) of the last preceding section, a mortgagee shall serve on the mortgagor a notice in writing of his intention to exercise the power or remedy.

(2.) The notice shall contain an address for service, and shall be signed by the mortgagee, his solicitor, or his agent.

(3.) The notice shall be served personally upon the party to whom it is directed:

Provided that, if it appears to a District Court that personal service cannot conveniently be effected, the District Court may make such order for substituted or other service or for the substitution for service of notice by advertisement or otherwise as the District Court thinks just.

Sections 9 and 10 repealed by No. 9 of 1941, s. 2.

Restriction on insolvency petition, &c.

11. Where an insolvency petition has been presented against any debtor, or a winding-up petition has been presented against any company on the ground that it is unable to pay its debts, and the debtor or company proves to the satisfaction of the Court that his or its inability to pay his or its debts is due to circumstances directly or indirectly attributable to any war in which His Majesty

is engaged, the Court may at any time stay the proceedings under the petition for such time and subject to such conditions as the Court thinks fit.

12. Any term or condition of a mortgage, instrument, or agreement made or entered into, or to be made or entered into, by any mortgagor, which, apart from this section, would operate to prevent the mortgagor from obtaining any of the benefits of this Ordinance, shall to that extent be void. Contract void.

13. Except as otherwise provided by this Ordinance, every order made under this Ordinance by any court shall be final and conclusive, and no appeal shall lie in respect of the order. Order of court conclusive.

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