

THE WEST PAKISTAN MONEY LENDERS ORDINANCE, 1960

(W.P. ORDINANCE NO. XXIV OF 1960).

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SCHEDULE.

THE WEST PAKISTAN MONEY-LENDERS ORDINANCE, 1960
WEST PAKISTAN ORDINANCE NO. XXIV OF 1960

[20 July, 1960]

AN

ORDINANCE

to amend and consolidate the law relating to money-lenders in the Province of West Pakistan.

WHEREAS it is expedient to amend and consolidate the law relating to money-lenders, their registration and the regulation of their accounts in the Province of West Pakistan;

NOW, THEREFORE, in pursuance of the Presidential Proclamation of the seventh day of October, 1958, and having received the previous instructions of the President, the Governor of West Pakistan, in exercise of all powers enabling him in that behalf, to make and promulgate the following Ordinance: —

CHAPTER - I
PRELIMINARY

1. (1) This Ordinance may be called the West Pakistan Money- lenders Ordinance, 1960.

(2) It extends to the whole of the '[Province of Khyber Pakhtunkhwa] except the [Tribal Areas.]

2. In this Ordinance, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

(a) "bank" means a bank which is a "scheduled bank" as defined in the State Bank of Pakistan Act, 1956, or a banking company registered under the Companies Act, 1913;

"[In sub-section (2), the words "Province of West Pakistan" the word "North-West Frontier Province" Subs by Khyber Pakhtunkhwa Adpt: of Laws Ordar, 1975 and then subs by the word "Khyber Pakhtunkhwa", vide Khyber Pakhtunkhwa Act No.IV of 2011.

? In sub-section (2), the words "Federal Capital and the Special Areas", the words "Tribal Areas", subs. by W.P. Ord. No. VII of 1964.

Preamble.

Short title and
extent.

Definitions.

(b) “capital” means the sum of money which a money- lender invests in the business of money-lending;

(c) “Collector” includes such officer as may be specially empowered by Government to discharge the functions of a Collector under this Ordinance;

(d) “company” means a company registered under the Companies Act, 1913, or any other law relating to companies;

(e) “Commissioner” includes an Additional Commissioner or any other officer specially empowered by Government to perform the duties of the Commissioner under this Ordinance;

(f) “co-operative society” means a society registered or deemed to have been registered under the Co-operative Societies Act, 1912, or any other law relating to co-operative societies;

(g) “Court” includes a Court acting in the exercise of its insolvency jurisdiction;

(h) “debtor” means a person to whom a loan is advanced;

(i) “effective licence” means a licence which has not been suspended or cancelled or which has not expired;

(j) “Government” means the Government of '[Khyber Pakhtunkhwa].

(k) “interest” includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any sum lawfully charged for or on account of costs of expenses;

(1) “loan” means an advance whether secured or unsecured of money or in kind at interest and shall include any transaction which the Court finds to be in substance a loan, but shall not include, —

(i) an advance in kind made by a landlord to his tenant for the purposes of husbandry; provided the market value of the return does not exceed the market value of the

' In section-2, in clause (j), for the words “West Pakistan”, the words “North-West Frontier Province”, subs, by Khyber Pakhtunkhwa Adapt of Laws Order, 1975 and then subs by the word “Khyber Pakhtunkhwa”, vide Khyber Pakhtunkhwa Act No.IV of 2011.

advance as estimated at the time of advance;

(ii) a deposit of money or other property in a Post Officer Saving Bank, or any other bank or with a company, or with a co-operative society or with any employer as security from his employees;

(iii) a loans to, or by, or a deposit with, any society or association registered under the Societies Registration Act, 1860, or under any other enactment relating to religious or charitable societies;

(iv) a loan advanced by or to the Central or any Provincial Government or by or to any local authority or other body corporate setup under the authority of the Central or any Provincial Government;

(v) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certified auditor under the Companies Act, 1913;

(vi) a loan advanced by a trader to a trader, in the regular course of business, in accordance with trade usage;

(vii) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note;

(m) "money-lenders" means a person carrying on the business of advancing loans;

(n) "prescribed" means prescribed by rules made under this Ordinance;

(o) "principal" in relation to a loan means the amount actually lent to the debtor;

(p) "trader" means a person who in the regular course of business, buys and sells goods or other property, whether movable or immovable, and shall include —

A wholesale or retail merchant,
A commission agent,

A broker,

A manufacturer,

A contractor, and

A factory owner,

but shall not include a person who sells only his own agricultural produce or cattle, or buys agricultural produce or cattle for his own use.

CHAPTER - II REGISTRATION AND LICENSING OF MONEY LENDERS.

3. (1) No money-lender shall, after a date to be notified in this behalf by Government carry on or continue to carry on the business of money-lending unless he holds an effective licence under this Ordinance.

(2) A money-lender may apply to the Collector for a licence which may be granted for such period, in such form and on such conditions, and on payment of such fees, as may be prescribed.

(3) No money-lender shall carry on the business of money-lending except in accordance with the terms and conditions of such licence.

(4) An application for a licence under this section or for the renewal of a licence shall be in such form and shall contain such particulars as may be prescribed.

(5) When an application for the renewal of a licence has been received from a money-lender before the expiry of the period of his licence, the existing licence shall be deemed to be effective until orders on the application have been made.

4. The Collector shall maintain a register of money-lenders licensed the last preceding section in such form as may be prescribed.

5. (1) The collector may, on his own motion or on the application of a debtor, for reasons to be recorded in writing, cancel the licence issued to a money-lender on any one or more of the following grounds, namely: —

(i) that the money-lender has been held by a Court to have contravened the provisions of sections 13 or 14 in more than two suits;

(ii) that the money-lender's suit has been dismissed with a finding that he has made, dishonestly or fraudulently, a material alteration in any document relating to a loan;

(iii) that the money-lender's suit has been dismissed with a finding that the suit was based on a fraudulent transaction or was fraudulent;

Licensing of
money lenders.

Register of
licences.

When licence

may be
cancelled.

(iv) that the money-lender has been found guilty by a Court of forgery or cheating in respect of a money transaction;

(v) that the money-lender has been found by a Court to have charged such interest as was excessive within the meaning of section 4 of the West Pakistan Usurious Loans Ordinance, 1959;

(vi) that the money-lender has been found by a Court to be responsible for an entry relating to a loan showing the amount of the sum advanced to be in excess of that actually advanced plus legitimate expenses incurred;

(vii) that the money-lender or any person responsible or proposed to be responsible for the management of the money lender's business is disqualified under this Ordinance for holding a licence;

(viii) that the money-lender has been convicted of any offence under Chapter V of this Ordinance;

Provided that no licence shall be cancelled without giving the money lender concerned an opportunity of being heard:

Provided further that where the cancellation of a licence is based on a judgment, decree or order of a Court, and such judgment, decree or order is subsequently modified in review or set aside in appeal or revision, the Collector shall, on an application made in that behalf by the money-lender, review his order.

(2) The Collector in cancelling a licence under sub-section (1) may specify the period for which the licence shall not be renewed or a fresh licence shall not be granted.

(3) Any debtor making an application under this section which is frivolous or vexatious shall be liable to pay to the money lender against whom the application has been made, compensation of such amount not exceeding one thousand rupees as such, in the opinion of the Collector, be sufficient.

6. The name of a money-lender whose licence has been cancelled under section 5, shall be struck off from the register of money-lenders maintained under section 4:

Provided that a licence shall not be deemed to be cancelled nor the name of the money-lender deemed to be struck off from the register until the expiry of the period of appeal prescribed under sub-section (2) of section 8, and where an appeal has been preferred against the order of cancellation, until the order has been confirmed in appeal.

Effect of
cancellation
of licence.

7. A money-lender whose licence has been suspended or cancelled under sections 5, 8 or 11, may, within thirty days of the order suspending or cancelling his licence, apply to the Collector for grant of a certificate specifying the loans in respect of which a suit may be instituted or the decree in respect of which an application for execution may be presented by him.

8. (1) An appeal shall lie to the Commissioner against order of the Collector passed under section 5 or an order refusing to grant a certificate under section 7.

(2) Every such appeal shall be filed within thirty days of the date of the order appealed against.

(3) The provisions of the Limitation Act, 1908, applicable to appeals, shall, so far as may be, apply to appeals preferred under this section and for the purposes of the said provisions the Collector shall be deemed to be a Court.

(4) In an appeal from an order of the Collector under sub-section (3) of section 5, the Commissioner may exercise the powers conferred on the Collector by sub-sections (1) and (2) of the said section.

15) In every appeal filed under this section, an opportunity shall be given to the appellant of being heard against the order appealed from.]

9. A money-lender may, after the termination of the period for which his licence has been cancelled or the expiry of the period for which he has been disqualified under section 11, apply to the Collector under section 3 for the grant of a licence:

Provided that full particulars of every disqualification incurred by the applicant and every cancellation or suspension of a licence held by him under this Ordinance are specified in the application.

10. (1) Notwithstanding anything contained in any other enactment, a suit by a money-lender for recovery of a loan or an application by a money-lender for the execution of a decree relating to a loan shall be dismissed unless at the time of the institution of the suit or at the time of presentation of the application for execution of the decree, as the case may be, the money-lender—

(a) holds an effective licence granted under section 3; or

(b) holds a certificate granted under section 7 specifying the loan in

' Sub-section (5) ins. by W.P. Ord. No.XXXIV of 1965.

Issue of
certificates to
moneylenders
whose licences
have been
cancelled.

Appeals and
powers of

Commissioners.

Licensing of
moneylenders
after expiry of
period for which
licence was
cancelled.

Effect of money
lender not being
licensed.

respect of which the suit is instituted or the decree in respect of which the application for execution is presented.

(2) No Court shall allow any claim in respect of a loan advanced by a money-lender after the date notified under sub-section (1) of section 3, unless it is satisfied that at the time when the loan was advanced the money-lender held an effective licence.

11. (1) A Court convicting a money-lender of an offence under this Ordinance or trying a suit to which he is a party may, if satisfied that such money-lender has committed such contravention of the provisions of this Ordinance, or the rules made there under as, in its opinion, makes him unfit to carry on the business of money-lending.

(a) order that the licence held by such money-lender be suspended for such period as the Court may think fit, or cancelled.

(b) declare any such money-lender, or if any such moneylender is a firm or a company or a society, any person responsible for the management of the business of money-lending carried on by such firm, company or society, to be disqualified for holding a licence for such period as the Court may think fit;

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cause the particulars of the conviction and of any order made by the Court under this section to be endorsed on the licence held by the money-lender convicted or by any person affected by the order, and shall cause copies of its order to be sent to the Collector by whom the licence was granted for the purpose of entering such particulars in the register of money-lenders maintained under section 4.

(2) Any person aggrieved by an order of the Court under this section may appeal against such order to the Court to which an appeal ordinarily lies from an appealable decree or sentence of the Court passing the order or where the Court passing the order is a Civil Court from whose decree no appeal ordinarily lies, to the principal Court having original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate.

(3) Every such appeal shall be filed within thirty days of the order appealed against and the provisions of the Limitation Act, 1908, applicable to appeals shall, so far as may be, apply to appeals preferred under this section.

(4) The Court which passes an order under this section or the Court of appeals may, if it thinks fit, pending the appeal, stay the operation of the order.

(5) Any licence required by a Court for endorsement in accordance with sub-section (1) shall be produced in such manner and within such time as the Court

Suspension and
cancellation of

licence by
Court.

may direct, by the person by whom it is held.

(6) Powers conferred on a Court under this section may be exercised by any Court in appeal and in revision.

(7) Where the Court of appeal or revision sets aside or varies an order passed under this section, it shall order that any endorsement made in pursuance thereof upon a licence held by a money-lender shall be cancelled or modified as the case may be.

12. (1) Any person whose licence has been cancelled or suspended in accordance with the provisions of this Ordinance shall, during the period for which such order of cancellation has effect or during the period of suspension, as the case may be, be deemed to be disqualified for holding a licence.

(2) No person whose licence has been suspended or cancelled under the provisions of this Ordinance shall be entitled to any compensation for the suspension or cancellation of his licence, or to the refund of any licence fee paid or deposit made in respect thereof.

CHAPTER—III. REGULATION OF ACCOUNTS.

13. Every money-lender shall—

(a) deliver to the debtor, at the time a loan is advanced, a statement showing in clear and distinct terms the amount and date of the loan, the date of its maturity, the nature of the security, if any, for the loan, the name and address of the debtor and the rate of interest to be charged;

(b) give to the debtor a plain and complete receipt for every payment made on account of any loan at the time of such payment and permit him or his agent to endorse such payment on the document, if any, evidencing the loan.

(c) upon payment of a loan in full, mark indelibly with words indicating payment or cancellation every paper signed by the debtor pertaining to the loan, and discharge any mortgage, restore any pledge, return any note, and cancel any assignment given by the debtor as security for the loan.

Bar of doing
business of
money-lending
and to compen-
sation for
suspen-sion or
cancellation of a
licence.

Duty of
moneylenders to

keep accounts.

14. (1) Every money-lender shall—

(a) regularly record and maintain an account for each debtor separately, of all transactions relating to any loan advanced to that debtor;

(b) furnish each debtor every six months with a legible statement of accounts signed by the money-lender or his agent of any balance or amount that may be outstanding against such debtor on the 30th day of June or the 31st day of December, in each year, and such statement of accounts shall include all transactions relating to the loan entered into during the six months to which the statement relates, and shall be sent on or before the 31st day of August in the case of any balance outstanding on the 30th day of June and on or before the 28th day of February in the case of any balance outstanding on the 31st day of December.

(2) The accounts shall be so kept that items due by way of interest shall be shown as separate and distinct from the principal sum, and separate totals of principal and interest shall be maintained.

(3) Entries in accounts maintained under clause (a) of subsection (1) shall be deemed to be regularly kept in the course of business for the purpose of section 34 of the Evidence Act, 1872, and copies of such entries, certified in such manner as may be prescribed, shall be admissible in evidence for any purpose in the same manner, and to the same extent as the original entries.

Explanation.—A person to whom a statement of accounts has been sent under sub-section (1) shall not be bound to acknowledge or deny its correctness and his failure to protest shall not, by itself, be deemed to be an admission of correctness of the accounts.

(4) Government may prescribe the form and numerals in which the accounts required by this section and the last preceding section shall be maintained and furnished the Government may also prescribe, whole or any part of the Province, a panel of scripts and languages, any of which may be employed by the money lender at his option in keeping and furnishing the accounts:

Provided that if the debtor in writing demands that the accounts be furnished in any other script included in the panel it shall be supplied to him in that script at his cost according to the scale prescribed.

(5) The provisions of this section and of clauses (b) and (c) of section 13 shall apply to every person to whom a loan has, since it was advanced, passed by way of inheritance, assignment or otherwise, in the same manner as to the money lender advancing the loan:

Duty of money-lender to keep and furnish accounts.

Provided that if the person to whom the loan has passed be a minor or a widow, such minor or widow shall not be bound to maintain or furnish the accounts prescribed by this section.

15. Notwithstanding anything contained in any other enactment—

(a) in any suit or proceeding relating to a loan the Court shall, before

deciding the claim on the merits, frame and decide the issue, whether the money-lender has complied with the provisions of clauses (a) and (b) of sub-section (1) of section 14 ;

(b) if the Court finds that the provisions of clause (a) of subsection

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(L) of section 14 have not been complied with by the money-lender, the Court shall, if the money-lenders' claim is established in whole or in part, disallow the whole or such portion of the interest found, due, as may seem reasonable to the court in the circumstances of the case and shall disallow costs.

if the Court finds that the provisions of clause (b) of subsection (1), of section 14 have not been complied with by the money-lender, the Court shall in computing the amount of interest due upon the loan exclude every period for which the money-lender omitted duly to furnish the account as required by clause (b) of sub-section (1) of section 14.

Explanation.—A person who has kept his accounts and sent his six monthly statements of accounts in the form and manner prescribed in sub-section (4) of section 14 shall be held to have complied with the provisions of that sub-section, in spite of errors and omissions, if the Court finds that the errors and omissions have been accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of that sub-section.

CHAPTER—IV.

MISCELLANEOUS.

16. In the case of loans in kind, the money value of the commodity at the time when, and the locality where the loan was advanced shall, for the purposes of this Ordinance, be deemed to be the principal of the loan, and in determining the amount which may, subject to the provisions of this Ordinance, be decreed in respect of a loan repayable in kind, the Court shall take into consideration the market value of the commodity in the said locality at the date or dates of repayment.

Penalty for non-

compliance
with the
provisions of
section 14.

Computation of
interest on loans
in kind.

17. Any agreement between a money-lender and a debtor or an intending debtor for the payment by the debtor or intending debtor to the money-lender of any sum on account of costs, charges for expenses incidental or relating to the negotiations for, or the granting of, the loan shall be illegal and if any sum is paid to a money lender by the debtor or intending debtor for, or on account of, any such costs, charges or expenses, that sum shall be recoverable as a debt due to the debtor or intending debtor, or in the event of the loan being completed shall, if not so recovered, be set off against the amount actually lent and the amount shall be deemed to be reduced accordingly:

Provided that nothing in this section shall debar a money lender from recovering costs of investigating title, of stamp duty and registration of documents and other necessary and incidental expenses in case where the contract includes a stipulation that property is to be given as security or by way of mortgage, or the cost of stamp duty and registration of documents in the case of unsecured loans, if both parties have agreed to such expenditure and reimbursement thereof, or where such costs, charges or expenses are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force.

CHAPTER —V. PENALTIES.

18. Where, in a suit for the recovery of a loan, the Court is satisfied that the entry relating to the loan has been made by a money-lender or at his instance in any document showing, the amount of the sum advanced to be in excess of that actually advanced plus permissible expenses incurred, the Court shall disallow the whole claim with costs, unless the money-lender satisfies the Court that the entry was accidental or was the result of a bona fide mistake.

19. Whoever carries on the business of money-lending without being in possession of an effective licence under section 3 shall be punished with imprisonment for a term which may extend to six months, or with fine or with both.

20. Any money-lender who charges compound interest, or simple interest at a rate higher than seven and a half per centum per annum or two per centum above the bank rate, whichever is higher, in the case of a secured loan and twelve and a half per centum per annum in the case of an unsecured loan, shall be punished with imprisonment for a term which may extend to six months or with fine, or with both.

21. (1) Whoever, being a party to a suit for the recovery of a loan dishonestly uses in such suit any document in which, he is aware, that there is any statement or entry relating to such loan which is false in any material particulars shall be punished with imprisonment which may extend to three months, or with fine not exceeding one thousand rupees, or with both.

Prohibition on
charging of
expenses of loan
by money-
lender.

Penalty for false

claim of
principal sum.

Punishment for
money-lending
without
registration or
licence.

Punishment for
charging high
rates of interest.

Penalty for use
of documents
containing false
entries.

(2) If the Court is satisfied, after such preliminary enquiry, as it thinks fit, that there is ground for enquiring an offence under sub-section (1), the Court may record a finding to that effect and prefer a complaint of the offence in writing to a Magistrate of the first class having jurisdiction, and such Magistrate shall deal with such complaint in the manner provided in the Code of Criminal Procedure, 1898.

22. (1) No money-lender shall take from a debtor or intending debtor any note, promise to pay, bond or security, which states an amount greater than the actual amount of the loan, nor shall he take from any debtor or intending debtor any instrument in which the principal amount is left blank for being filled in at a later date.

(2) Whoever intentionally contravenes the provision of subsection (1) shall be punished with fine which may extend to one thousand rupees.

(3) Notwithstanding anything contained in any law, every note, promise to pay, bond, security or document referred to in subsection (1) shall be void and unenforceable.

23. Whoever molests, or abets the molestation of, a debtor for the purpose of recovering or attempting to recover a loan shall be punished with imprisonment which may extend to three months, or with fine not exceeding five hundred rupees, or with both.

Explanation.—For the purpose of this section, a person who, with intent to cause another to abstain from doing or to do any act which he has a right to do or to abstain from doing—

(a) obstructs or uses violence to or intimidates such other person, or

(b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of or hinders him in the use thereof. Shall be deemed to molest such other person.

24. Whoever, without reasonable cause, makes default in producing the licence required to be produced under section 11 for endorsement shall be punished with fine not exceeding twenty-five rupees for each day for the period during which the default continues.

25. Whoever, being disqualified for holding a licence applies for or obtains a licence during the pendency of such disqualification without disclosing the fact thereof, shall be punished with fine which may extend to five hundred rupees.

Entry of sum in documents greater than the loan advanced to be an offence.

Penalty for molestation of debtors.

Punishment for
default in
producing
licence for
endorsement.

Punishment for
applying for or
obtaining a
licence during
the pendency of
disqualification.

26. Whoever obliterates or causes to be obliterated or attempts to obliterate an endorsement entered on a licence under this Ordinance or abets such obliteration or attempt shall be punished with imprisonment which may extend to six months or with fine which may extend to five hundred rupees, or with both.

27. Whoever intentionally makes default in complying with or intentionally acts in contravention of any of the provisions of this Ordinance shall, if no specific penalty has been provided in this Ordinance, be punished with fine which may extend to five hundred rupees.

28. Offences under sections 19 and 23 shall be cognizable within the meaning of clause (f) of sub-section (1) of the section 4 of the Code of Criminal Procedure, 1898.

29. (1) Government may make rules for carrying out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for all or any of the following matters:—

(a) the form of the application for a licence;

(b) the form of a licence and the conditions subject to which a licence shall be issued or renewed;

(c) the scale of fees for the issue or renewal of a licence;

(d) the place where a money-lender shall apply for a licence;

(e) the form in which a register of money-lenders is to be kept under section 4;

(f) the procedure before the Collector and the Commissioner in proceedings under sections 5 and 8;

(g) the panel of scripts and languages from which a moneylender in a particular area may select one at his option under sub-section (4) of section 14;

(h) the form and the numerals to be used in the accounts kept and furnished by a money-lender;

(i) the scale of costs to be paid by such debtors as may demand that the six monthly accounts should be furnished in a particular script.

Penalty for
obliterating
endorsement on
licence.

General
provisions for
punishment of

offences.

Cognizance of
offences.

Rules.

(3) Rules made under this section shall be subject to the conditions of previous publication.'

30. The enactments specified in the Schedule are repealed to the extent Repeal. specified in the fourth column thereof.

' For the proposed W.P. Money lenders Rules, 1962, See the Gazette of West Pakistan, 1962, Extraordinary, pp. 1411.—1421.

SCHEDULE

Enactment repealed

(Section 30)

Year No Short title Extent of repeal

'T1930 |

1935 Vv The North-West Frontier The whole,

ProvinceRegulation ofAccounts

Act.

711938 I]

1938 III

1944 XIV

1934 Vil Section 3 7 and 38.1]

1939 IV The Khyber Pakhtunkhwa Section 4.

AgriculturistsDebtors Relief Act.

' Omitted by Khyber Pakhtunkhwa Adaptation of Laws Order, 1975.

>. Omitted by Khyber Pakhtunkhwa Adaptation of Laws Order, 1975.