

## **Kerala Money-Lenders (Amendment) Act, 1987**

**16 of 1987**

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## **Kerala Money-Lenders (Amendment) Act, 1987**

**16 of 1987**

An Act further to amend the Kerala Money-Lenders Act, 1958. WHEREAS it is expedient further to amend the Kerala Money-Lenders Act, 1958, for the purposes hereinafter appearing; BE it enacted in the Thirty-eighth Year of the Republic of India as follows:-

### **1. Short Title And Commencement :-**

- (1) This Act may be called the Kerala Money-Lenders (Amendment) Act, 1987.
- (2) It shall be deemed to have come into force on the 12th day of May, 1987.

### **2. Amendment Of Section 2 :-**

In section 2 of the Kerala Money-Lenders Act, 1958 (35 of 1958)

(hereinafter referred to as the principal Act.)

(a) in clause (5),

(i) for sub-clause (vi), the following sub-clause shall be substituted, namely :

"(vi) an advance made by a trader bona fide carrying on any business, other than money lending, if such loan is advanced in the regular course of such business;"

(ii) sub-clause (vii) shall be omitted;

(b) in clause (7), the opening paragraph shall be substituted as follows, namely :

(7) "money-lender" means a person whose main or subsidiary occupation is the business of advancing and realising loans or acceptance of deposits in the course of such business and includes any person appointed by him to be in charge of a branch office or branch offices or a liaison office or any other office by whatever name called, of his principal place of business and a pawn broker, but does not include"

(c) after clause (9), the following clause shall be inserted, namely:

"(9A) "trader" means a person who in the regular course of business buys and sells goods or other property, whether movable or immovable, and includes

(a) a wholesale or retail merchant;

(b) a commission agent;

(c) a broker; and

(d) a manufacturer;"

### **3. Amendment Of Section 3 :-**

In sub-section (1) of section 3 of the principal Act, for the words "shall, except for one month or such longer period as the Government may specify," the words "or unincorporated association of individuals shall commence or" shall be substituted.

### **4. Amendment Of Section 4 :-**

In sub-section (2A) of section 4 of the principal Act, for the Explanation and the TABLE thereunder, the following Explanation and TABLE, shall be substituted, namely:

Explanation. For the removal of doubts, it is hereby declared that a money-lender whose principal place of business is situate outside the State of Kerala and who has within the State of Kerala a branch office or branch offices or a liaison office or any other office by whatever name called, of his principal place of business shall be

liable to deposit the security under this sub-section in respect of such branch or each of the branches or liaison office or any other office, as the case may be.

TABLE

(1)	(2)
A licensee who lends less than one lakh rupees in an year	Five thousand rupees
A licensee who lends one lakh rupees or above but less than five lakh rupees in an year	Ten thousand rupees
A licensee who lends five lakh rupees or above but less than ten lakh rupees in an year	Fifty thousand rupees
A licensee who lends ten lakh rupees or above, but less than twenty-five lakh rupees in an year	One lakh rupees
A licensee who lends twenty-five lakh rupees or above, but less than fifty lakh rupees in an year	On lakh and fifty thousand rupees
A licensee who lends fifty lakh rupees or above in an year	Two lakh rupees".

#### **5. Amendment Of Section 7 :-**

In section 7 of the principal Act, after sub- section (3), the following sub-section shall be added , namely:

"(4) No money-lender shall give any presents, gifts, commission or any amount other than the interest provided in sub-section (2) of section 4 to any depositor in connection with the deposits received by such money-lender or receive any presents, gifts, commission or any amount other than the interest and other charges specified in this section from any person to whom money is advanced".

#### **6. Amendment Of Section 9D :-**

In section 9D of the principal Act, in sub-section (1), for clause (e), the following clause shall be substituted, namely:

"(e) submit to the Inspector concerned such returns relating to the deposits accepted and the loans advanced by him, in such form and at such times, as may be prescribed".

#### **7. Amendment Of Section 9G :-**

In Section 9G of the principal Act, the existing provision shall be numbered as sub-section (1), and after sub-section (1) as so numbered, the following sub-section shall be added, namely:

"(2) Every pawn broker shall, on taking a pledge in pawn, insure

the pledge with him with any company or corporation which is authorized by law for such insurance, for an amount not less than the market value of such pledge."

#### **8. Amendment Of Section 10 :-**

In section 10 of the principal Act, sub-sections (3) and (4) shall be omitted.

#### **9. Insertion Of New Sections 10A, 10B And 10C :-**

After section 10 of the principal Act, the following sections shall be inserted, namely :

"10A. Power to order production of accounts and powers of entry and inspection.-(1) Any Inspector, Licensing Authority or Appellate Authority may, for the purpose of this Act, by notice, require any money-lender,

(a) to produce or cause to be produced before him any accounts, registers, records or other documents; or

(b) to furnish or cause to be furnished any other information relating to his business and such money-lender shall comply with such requisition.

(2) Any Inspector or Licensing Authority may, at any reasonable time with or without the assistance of Police officers or other officers

(a) enter any place of business or office of the money-lender; and

(b) inspect any cash, accounts, registers, records, safes, vaults, pledges or other documents in such premises.

(3) If any officer referred to in this section has reason to believe that the money-lender has violated any of the provisions of this Act or the rules made thereunder, he may, for reasons to be recorded in writing, enter and search the place of business of the money-lender or any other place which includes any godown, buildings, vessel, vehicle, box or receptacle where the money-lender keeps or is reasonably believed to be keeping any accounts, registers, other records, documents or pledges relating to his business :

Provided that no residential building or premises be entered or searched unless such officer specifically authorized in writing by the Member, Board of Revenue in charge of taxes to search that residential building or premises.

(4) All searches under this section shall, so far as may be, made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(5) The officer making the inspection or search may seize such accounts, register; records, or other documents as he considers necessary and on such seizure shall, grant the money-lender a receipt of the things seized.

(6) The accounts, registers, records or other documents seized under sub-section (5) shall not be retained by the officer seizing them beyond a period of thirty days from the date of the seizure, except with the permission of the next higher authority, unless they are required for any prosecution under this Act

(7) The power conferred by sub-sections (3) and (5) shall include, (a) the power to break-open any box or receptacle, safes, vaults or the door of any premises in which any accounts, registers, records or pledges of the money-lender are kept or reasonably suspected to be kept:

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises fails or refuses to open the same on being called upon to do so;

(b) the power to seal nay box receptacle, room or building where any accounts, registers or other documents are kept or reasonably believed to be kept, and if the owner or any other person in occupation leaves the premises or refuses to open the box, receptacle room or building or is not available, then to break open such box, receptacle, room or building on authorization in writing by the officer referred to in sub-section (3) of this section;

(c) the power to search any person who has got out of or is about to get into or is in any place referred to in clause (a) or clause (b) of sub-section (2) of this section if the officer has reason to suspect that such person has secreted about his person any accounts, registers, records or other documents.

10B. Power to summon witnesses and cause production of documents. -(1) An Inspector, Licensing Authority or Appellate Authority shall for the purposes of this Act, have all the powers conferred on a Civil Court by the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely :

(a) summoning and enforcing the attendance of any person and examining him on oath or affirmation ;

(b) compelling the production of any documents ;

(c) impounding of any documents, accounts or other records produced for reasons to be recorded in writing ; and

(d) any other matter which may be prescribed.

(2) The officer who impounds the documents, accounts or registers of the money-lender shall grant a receipt of the things so impounded to the person who produced the same.

10C. Assistance of Police Officers.-Any officer authorised to inspect or search under section. 10A may seek the assistance of the officer in charge of the Police Station having jurisdiction over the area to be inspected or searched and thereupon, such officer of the Police Station shall render all assistance necessary to the officer for the conduct of such inspection or search."

### **10. Amendment Of Section 11 :-**

In section 11 of the principal Act, in clause (b) of sub-section (1), for the opening words who takes", the words "who pays interest", shall be substituted.

### **11. Insertion Of New Section 11 A :-**

After section 11, the following section shall be inserted, namely:

"11 A. Power to demand additional security.-(1) Notwithstanding any-thing contained in section 4, the Licensing Authority may demand from the money-lender additional security at any time, if in the opinion of such authority there is excess of liabilities over the assets of the money-lender at that time ;

Provided that, while determining the excess of liabilities over assets, the security furnished by the money-lender under sub-section (2A) of section 4 of this Act shall be treated as assets of the money-lender;

Provided further that in respect of the loans advanced by the money- lender against security in any form, the Licensing Authority shall have power to revalue or determine the adequacy of the security or securities or to revalue any assets for the purpose of determination of excess of liabilities over the assets.

(2) The additional security to be furnished by the money-lender under sub-section (1) shall be equal to the amount of such excess of liabilities over the assets.

(3) The additional security referred to in this section shall be furnished in any of the following forms:

(a) by deposit in the Government Treasury; or

(b) by deposit with such authority, of Government securities including National Savings Certificates; or

(c) by deposit in Post Office Savings Bank or a Scheduled Bank or a Co-operative Bank and pledging of the pass book thereof, with such

authority; or

(d) by guarantee from a bank approved in this behalf by such authority agreeing to pay to the State Government on demand, the amount, of such additional security; or

(e) by surety bonds from sureties acceptable to such authority, for the amount of such additional security.

(4) The additional security furnished by the money-lender shall be retained till, in the opinion of the Licensing Authority, there exists excess of liabilities over the assets of the money-lender.

(5) The additional security retained under sub-section (4) shall be utilised for the payment of the liabilities of the money-lender in connection with his business as money-lender, at the time of the winding up of the business or cancellation of the license, as the case may be.

(6) Any money-lender from whom additional security is demanded under this section and who carries on business without furnishing such security within thirty days of such demand, shall be punishable with imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both".

## **12. Amendment Of Section 14 :-**

In section 14 of the principal Act, in sub-section (1), after clause (c), the following clause shall be inserted, namely :

"(cc) if the licensee carries on business without furnishing the security or additional security as provided in this Act ; or".

## **13. Amendment Of Section 16 :-**

In section 16 of the principal Act, the words "or for any compensation for such cancellation" shall be added at the end.

## **14. Amendment Of Section 16B :-**

In section 16B of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:

"(1) Any person aggrieved by an order of the Licensing Authority under sub-section (3) of section 4 or sub-section (1) of section 14 or sub-section (1) of section 16A or by an order of the Inspector or the Licensing Authority under section 11A or section 18C or section 18D may, within thirty days from the date of communication of such order, appeal in such manner as may be prescribed, to the Appellate Authority having jurisdiction over the area.

## **15. Insertion Of New Sections 18C, 18D, 18E, 18F, 18G And 18H :-**

After section 18B of the principal Act, the following sections shall be inserted, namely :

"18C. Imposition of penalty by Officers and Authorities. -(1) If the Inspector or the Licensing Authority is satisfied that any person, (a) being a person liable to take himself a license under this Act, carries on the business of money-lending without taking such license ; or (b) has failed to keep true and complete accounts of the business; or (c) has failed to submit any return or statement as required by the provisions of this Act or the rules made thereunder; or (d) has submitted an untrue or incorrect, return or statement ; or (e) has acted in contravention of any of the provisions of this Act or the rules made thereunder, for the contravention of which, no express provision for payment of penalty or for punishment is made by this Act :

Such Inspector or Authority may direct that such person shall pay, by way of penalty an amount not exceeding five thousand rupees.

Explanation. The burden of proving that any person is not liable to the penalty under this section shall be on such person.

(2) No order under sub-section (1) shall be passed unless the person on whom the penalty proposed to be imposed is given an opportunity of being heard in the matter.

18. D Penalty for collection of interest in excess of the rate prescribed under section 7.-(1) If the Inspector or the Licensing Authority is satisfied that any money-lender has received interest in excess of the rate of interest specified. in section 7 or any other charges in excess of the rates fixed by the rules made under this Act, he may direct that such money-lender shall pay by way of penalty an amount not exceeding thrice the amount of interest or other charges so received :

Provided that in the case of interest or other charge collected at excess rate, no penalty shall be imposed under this section, if the Inspector of the Licensing Authority is satisfied that the sums so collected has been refunded to the person from whom it was collected.

(2) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.



18E. Composition of offences -The Inspector or the Licensing Authority or other officer or authority authorized by the Government in its behalf may accept from the person who has committed or is reasonably suspected of having committed an offence against this Act, by way of composition of such offence,

(a) a sum of money equal to the maximum amount prescribed a fine under this Act, if the offence is committed for the first time; and

(b) in other cases, thrice such amount of fine prescribed under the respective sections.

18F Payment and recovery of penalty.-(1) The amount of penalty demanded under this Act shall be paid in such manner and within such time as may be specified in the notice of demand;

(2) If any default is made in payment according to the notice, of demand, the amount outstanding on the date of service of such notice shall be first charge on the properties of the person or persons liable to pay the amount and shall be recoverable as arrears of land revenue.

18G. Liabilities of the money-lender for acts committed by his agents or employees.-Where any agent or employee of the money-lender contravenes any of the provisions of this Act or of any rule made thereunder or of the terms and conditions of a license granted or deemed to be granted, whether with or without the knowledge of money-lender, the money-lender shall without prejudice to the liability of the agent or the employee be liable for the penalty provided under this Act as if the money-lender himself has committed such contravention.

18H Security from the employees.-If any money-lender is desirous of obtaining security from any person employed by him, during the period of his employment in connection with the business of money-lending such security shall be taken only in any of the following forms namely:

(a) deposit of the amount in any treasury, nationalised bank, post office or co-operative bank; or

(b) Government securities or National Savings Certificates; or

(c) mortgage of immovable property; or

(d) personal sureties:

Provided that if any security has already been received by the money lender from any of his employees in any form other than those enumerated above, such security shall be converted into any of the forms under items (a) to (d), within three months from the date of commencement the Kerala Money-Lenders (Amendment)

Ordinance, 1987.

**16. Insertion Of New Sections 20A, 20B And 20C :-**

After section 20 of the principal Act, the following sections shall be inserted, namely:

"20A. Power of revision by the Government.-(1) The Government may suo motu or otherwise, call for and examine any order passed by an Inspector, Licensing Authority or the Appellate Authority and may make such enquiry to cause such enquiry to be made and subject to the provisions of this Act, may pass such order thereon as they think fit:

Provided that no order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard. The Government shall not pass any order under sub-section (1) if

- (a) the time for appeal against the order has not expired; or
- (b) the order has been made the subject of an appeal to the Appellate Authority; or
- (c) more than one year has expired after the passing of the order referred to therein.

20B. Court not to set aside or modify orders.-No suit or other proceedings shall, except as expressly provided under this Act be instituted in any court to set aside or modify any order made under this Act or the rules made thereunder.

20C. Bar of certain proceedings.-(1) No suit, prosecution or other proceedings shall lie against any officer or servant of the Government for any act done or purporting to be done under this Act, without the previous sanction of the Government.

(2) No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceedings, if the act was done in good faith in the course of the execution of duties or the discharge of functions imposed by or under this Act.

**17. Repeal And Saving :-**

(1) The Kerala Money-Lenders (Amendment) Ordinance, 1987 (1 of 1987), is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

