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BILL

Further to amend the Financial Institutions (Recovery of Finances) Ordinance, 2001

WHEREAS it is expedient further to amend the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called the Financial Institutions (Recovery of Finances) (Amendment) Act, 2016.

(2) It shall come into force at once.

2. Amendment of section 2, Ordinance XLVI of 2001.- In the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001), hereinafter referred to as the said Ordinance, in section 2,-

(a) in clause (b), in sub-clause (i), for the word "fifty" the word "hundred" shall be substituted;

(b) in clause (c), after the words "financial institution", occurring for the first time, the words "within or outside Pakistan" shall be inserted;

(c) in clause (d), after sub-clause (vi), the existing two un-numbered sub-clauses shall be numbered as sub-clauses (vii) and (ix) respectively and after sub-clauses (vii), numbered as aforesaid, the following new sub-clause shall be inserted, namely:-

"(viii) any amount of loan or facility availed by a person from a financial institution outside Pakistan who is for the time being resident in Pakistan;"

(d) after clause (f), the following new clause shall be added, namely:-

"(g) "willful default" means-

(i) deliberate or intentional failure to repay any finance, loan, advance or any financial assistance received by any person from a financial institution after such payment has become due under the terms of an agreement, law, rules or regulations issued by the State Bank of Pakistan;

(ii) utilization of finance, loan, advance or financial assistance or a substantial part thereof, obtained by any person from a financial institution for a purpose other than that for which such finance, loan, advance or financial assistance had been obtained and payment in part or full not made to the financial institution; or

- (iii) removal, transfer, misappropriation or sale of any assets collateralized to secure a finance, loan, advance or financial assistance obtained from a financial institution without permission of such institution.”.

3. Amendment of section 5, Ordinance XLVI of 2001.- In the said Ordinance, in section 5,-

- (a) for sub-section (4), the following shall be substituted, namely:-

“(4) A Judge of a Banking Court shall be appointed by the Federal Government after consultation with the Chief Justice of the High Court of the Province in which the Banking Court is established and no person shall be qualified for appointment as the Judge of a Banking Court unless he is, or has been, or is qualified to be a District Judge.”; and

- (b) after sub-section (9), the following new sub-section shall be added, namely:-

“(10) A Judge of a Banking Court shall submit to the Chief Justice of the High Court of the Province in which the Banking Court is established, reports on a quarterly basis regarding the number of cases filed, heard and disposed of by the Banking Court during each relevant quarterly period.”.

4. Amendment of section 8, Ordinance XLVI of 2001.- In the said Ordinance, in section 8, for sub-section (1), the following shall be substituted, namely:-

“(1) Subject to sub-section (2), and notwithstanding anything contained in the Limitation Act, 1908 (IX of 1908) or any other law, a financial institution may, within five years, file a suit for the recovery of any amount written off, released or adjusted under any agreement, contract, or consent, including a compromise or withdrawal of any suit or legal proceedings or adjustment of a decree between a financial institution and a customer, if it has reasons to believe that the amount was written off, released or adjusted for political reasons or considerations other than bona fide business considerations.”

5. Amendment of section 10, Ordinance XLVI of 2001.- In the said Ordinance, in section 10, after sub-section (4), the following new sub-section (5) shall be inserted and the existing sub-sections (5) to (12) shall respectively be re-numbered as sub-sections (6) to (13), namely:-

“(5) Where application for leave to defend submitted under the preceding sub-section is found to be materially incorrect at any stage of the proceedings, the defendant shall lose the right to defence and shall also be liable to pay penalty of not less than five percent of the amount of the claim, unless the defendant can establish that incorrect information was submitted as a result of a bona fide mistake.”.

6. **Amendment of section 11, Ordinance XLVI of 2001.-** In the said Ordinance, in section 11, for sub-section (1), the following shall be substituted, namely:-

“(1) If the Banking Court on consideration of affidavit under oath by the customer supported by certificate of a chartered accountant on the approved panel of auditors of State Bank of Pakistan under section 35 of the Banking Companies Ordinance, 1962 (LVII of 1962) is of the opinion that the dispute between the parties does not extend to the whole of the claim, or that part of the claim is either undisputed, or is clearly due, or that the dispute is mainly limited to a part of the principal amount of the finance or to any other amounts relating to the finance, it shall, while granting leave and framing issues with respect to the disputed amounts, pass an interim decree in respect of that part of the claim which relates to the principal amount and which appears to be payable by the defendant to the plaintiff.”.

7. **Amendment of section 12, Ordinance XLVI of 2001.-** In the said Ordinance, in section 12,-

- (a) after the word “served”, occurring for the second time, the words “nor published in newspapers” shall be inserted; and
- (b) for the words “or otherwise as it thinks fit” the words “which shall not be less than one third of the amount of the decree”, shall be substituted.

8. **Substitution of section 15, Ordinance XLVI of 2001.-** In the said Ordinance, for section 15, the following shall be substituted, namely: -

“15. **Sale of mortgaged property.-** (1) In this section, unless there is anything repugnant in the subject or context,-

- (a) “mortgage” means the transfer of an interest in specific immovable property for the purpose of securing the payment of the mortgage money or the performance of an obligation which may give rise to a pecuniary liability;
- (b) “mortgage money” means any finance or other amounts relating to a finance, penalties, damages, charges or pecuniary liabilities, payment of which is secured for the time being by the document by which the mortgage is effected or evidenced, including any mortgage deed or memorandum of deposit of title deeds;
- (c) “mortgaged property” means immovable property mortgaged to a financial institution; and
- (d) “reserve price” means forced sale value of the mortgaged property determined by a reputable valuation company under clause (a) of sub-section 4.

(2) In case of default in payment by a customer, the financial institution may send a notice to the mortgagor demanding payment of the mortgage money outstanding within fourteen days from service of the notice and failing payment of the amount within due date, it shall send a second notice of demand for payment of the amount within fourteen days. In case the customer on the due date given in the second notice sent, continues to default in payment, financial institution shall serve a

final notice on the mortgager demanding the payment of the mortgage money outstanding within thirty days from service of the final notice on the customer.

(3) When a financial institution serves a final notice of demand, all powers of the mortgagor in regard to recovery of rents and profits from the mortgaged property shall stand transferred to the financial institution until such notice is withdrawn and it shall be the duty of the mortgagor to pay all rents and profits from the mortgaged property to the financial institution:

Provided that where the mortgaged property is in possession of any tenant or occupier, other than the mortgagor, it shall be the duty of such tenant or occupier, on receipt of notice in this behalf from the financial institution, to pay to the financial institution the rent or lease money or other consideration agreed with the mortgagor.

(4) Where a mortgagor fails to pay the amount as demanded within the period prescribed under sub-section (2), and after the due date given in the final notice has expired, the financial institution may, without the intervention of any court and subject to any rules made by the Federal Government under sub-section (5), sell the mortgaged property or any part thereof by public auction and apply the proceeds thereof towards total or partial satisfaction of the outstanding mortgage money in the following manner, namely:-

- (a) the financial institution shall have the mortgaged property evaluated by a reputable valuation company on the panel of the Pakistan Banks Association as on the date of the final notice sent to the mortgagor under sub-section (2);
- (b) the financial institution shall cause to be published a notice in one reputable English daily newspaper with wide circulation and one reputable Urdu daily newspaper with wide circulation in the Province in which the mortgaged property is situated specifying the following, namely:-
 - (i) detailed particulars of the mortgaged property;
 - (ii) name and address of the mortgagor;
 - (iii) amount of the outstanding mortgage;
 - (iv) any encumbrances which the mortgaged property may be subject to which the financial institution is aware of;
 - (v) the financial institution's intention to sell the mortgaged property through a public auction;
 - (vi) the reserve price below which the mortgaged property cannot be sold;
 - (vii) the time and place at which the public auction is to take place, provided that the public auction shall take place in the city where the mortgaged property is located; and