

# **The Jammu and Kashmir Money Lenders and Accredited Loan Providers Act, 2010**

JAMMU & KASHMIR

India

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### **Act 23 of 2010**

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The Jammu and Kashmir Money Lenders and Accredited Loan Providers Act, 2010 Act No. 23 of 2010 [Received the assent of Governor on 23rd October, 2010 and published in the Government Gazette dated 25th October, 2010.] An Act to regulate the transactions of money lending in the State of Jammu and Kashmir and for matters connected therewith and incidental thereto. Whereas, it is expedient to make provisions for protecting the interests of borrowers, for regulating the transactions of money lending and to secure more transparency in such transactions in the State of Jammu and Kashmir. Be it enacted by the Jammu and Kashmir State Legislature in the Sixtieth Year of the Republic of India as follows : -

## **Chapter I**

### **Preliminary**

#### **1. Short title, extent and commencement.**

(1) This Act may be called the Jammu and Kashmir Money Lenders and Accredited Loan Providers Act, 2010. (2) It shall extend to the whole of the State of Jammu and Kashmir. (3) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint.

#### **2. Definitions.**

- In this Act, unless the context otherwise requires, -(1) "Accredited Loan Provider" means a person who has a contractual arrangement with an institutional creditor for receiving finance from such institutional creditor for the purpose of on-lending to the borrowers in his or its own name ;(2) "bank" means -(i) a banking company or a Co-operative Bank to which the Banking Regulation

Act, 1949 (Central Act 10 of 1949) applies;(ii)the State Bank of India constituted under the State Bank of India Act, 1955 (Central Act 23 of 1955) ;(iii)a Subsidiary Bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (Central Act 38 of 1959);(iv)a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970);(v)a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (Central Act 40 of 1980); and(vi)a Regional Rural Bank established under the Regional Rural Banks Act, 1976 (Central Act 21 of 1976);(3)"Borrower" means, a person to whom a loan is advanced and includes a successor-in-interest or surety ;(4)"co-operative society" means a society registered or deemed to have been registered under the Jammu and Kashmir Co-operatives Societies Act, 1989;(5)"Government" means the Government of Jammu and Kashmir;(6)"institutional creditor" means any bank which has advanced or agreed to advance monies to accredited loan providers for the purpose of on-lending;(7)"interest" includes the return to be made over and above what is 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 by a money lender or accredited loan provider as costs, charges, expenses towards evaluation, assessment and creation of the security ;(8)"loan" means an advance whether or money or kind at interest, with or without security, and includes advance, discount, money paid for or on account of or on behalf of or at the request of any person, or the forbearance to require payment of money owing on any account whatsoever, and every agreement (whatever its terms or form may be) which is in substance or effect a loan of money, and also an agreement to secure the repayment of any such loan, but does not include -(a)a deposit of money or other property in a Government Post Office Bank or in a Government Savings Bank ;(b)a loan advanced by the Government or by any local authority authorised by the Government;(c)a deposit of money with or a loan advanced by a Co-operative Society;(d)a loan advanced by the National Bank for Agriculture and Rural Development established under the National Bank for Agriculture and Rural Development Act, 1981 (Central Act 61 of 1981);(e)a loan advanced by the Export-Import Bank of India established under the Export-Import Bank of India Act, 1981 (Central Act 28 of 1981);(f)a loan advanced by the Small Industries Development Bank of India established under the Small Industries Development Bank of India Act, 1989 (Central Act 30 of 1989);(g)a loan advanced by the National Housing Bank, constituted under the National Housing Bank Act, 1987 (Central Act 53 of 1987);(h)a loan advanced by State Financial Corporations established under the State Financial Corporation Act, 1951 (Central Act 63 of 1951); and(i)a loan advanced by any institution -(1)established by or under an Act of Parliament or the State Legislature which grants any loan or advance of the provisions of that Act or(2)notified in this behalf by the Government, in consultation with the Reserve Bank ;(j)an advance made to a subscriber, or a depositor in a Provident Fund from the amount standing to his credit in the fund in accordance with the rules of the fund ;(k)a loan to or by an insurance company as defined in the Insurance Act, 1983 (Central Act IV of 1983);(l)a loan or debenture in respect of which dealings are listed on any Stock Exchange;(m)a loan or deposit to or by a non-banking financial company registered with Reserve Bank under Chapter III of the Reserve Bank of India Act, 1934 (Central Act 2 of 1934);(n)a loan to, or by, or a deposit, with any charitable society or association registered under the Jammu and Kashmir Societies Registration Act, Samvat 1977 ;(o)an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1981 (Central Act XXXVI of 1981) other than a promissory note ;(p)a loan or 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. Explanation :- For the purpose of clause (p), "trader" means a person who in the goods or other property, whether movable or immovable and includes a wholesale or a retail merchant.(9)"Lok Adalat" means the Lok Adalat established under the provisions of the Jammu and Kashmir Legal Services Authority Act, 1997 and includes a Permanent Lok Adalat;(10)"money lender" means a person whose main or subsidiary occupation is the business of advancing and realizing loans in the State ;(11)"Panchayat" means the body constituted at the Panchayat level under the Jammu and Kashmir Panchayati Raj Act, 1989 ;(12)"prescribed" means prescribed by rules made under this Act;(13)"principal" means in relation to a loan, the advance actually made to a borrower;(14)"register" means a register of money lenders of accredited loan providers maintained under this Act;(15)"registering authority" means a person or an officer appointed by the Government to perform the functions of a registering authority under this Act;(16)"registration" means a money lender's-registration or accredited loan providers registration granted under this Act;(17)"Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (Central Act 2 of 1934);(18)"rules" means rules made under this Act.

## **Chapter II**

### **Appointment and Powers of Registering Authority Registration of Money Lenders etc.**

#### **3. Appointment of registering authority.**

- The Government may, by notification in the Government Gazette, appoint such persons, whether public officers or not, as it thinks proper, to be registering authorities of the money lenders and accredited loan providers for the purposes of this Act and may define the areas within which each such authority shall exercise his powers and perform his duties.

#### **4. Register of money lenders.**

(1)Every registering authority shall maintain for the area under its jurisdiction the registers of all money lenders having valid registration in such form as may be prescribed.(2)The registers maintained under sub-section (1) shall be published in such manner and at such intervals as may be prescribed.

#### **5. Money lender to obtain registration.**

(1)No money lender shall commence or carry on the business of providing loan at any place to which this Act applies within obtaining a registration under this Act.(2)Every application for a money lender's registration and for a renewal of money lender's license shall be in writing in the prescribed manner and form and shall be made to the registering authority along with the prescribed fee.(3)Every registration granted by the registering authority shall be in such form and subject to such conditions as may be prescribed.(4)A registration shall be valid within the local area as

specified in the registration for a period of three years :Provided that when an application for renewal of a registration has been received by the registering authority within the prescribed period, the registration shall, until the application is finally disposed of, be deemed to be valid.(5)The registering authority may, at any time for sufficient cause suspend or cancel a registration granted under sub-section (3):Provided that no order suspending or cancelling the registration shall be passed except after giving the money lenders an opportunity of showing cause against the proposed action.Explanation :- For the purposes of sub-section (5), prosecution or conviction of a money lender for violating any of the provisions of this Act shall be sufficient cause for suspension or cancellation of his registration.

## **Chapter III**

### **Maintenance of books of Accounts and Submission of Returns**

#### **6. Duty of money lender to maintain accounts and furnish copies.**

(1)Every money lender shall keep and maintain a cash book, a ledger, register of securities and such other books of accounts in such form and in such manner as may be prescribed.(2)Every money lender shall, -(a)deliver or cause to be delivered, to the borrower within seven days from the date on which a loan is made, a statement in the prescribed form showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower of the money lender and the rate of interest charged :Provided that no such statement shall be required to be delivered to a borrower if he is supplied by the money lender, with a passbook in the prescribed form containing an up-to-date account of the transactions with the borrower ;(b)upon repayment of a loan in full, mark indelibly every paper signed by the borrower with words indicating payment or cancellation, and discharge every mortgage, restore every pledge, return every document or note and cancel or reassign every assignment given by the borrower as security for the loan.(3)No money lender shall receive any payment from a borrower on account of any loan without giving him a duly signed receipt for the payment.(4)No money lender shall accept from a borrower any article as a pawn, pledge or security for a loan without giving him a signed receipt for the same with its description, estimated value, the amount of loan advanced against it and such other particulars as may be prescribed.(5)A money lender shall, on a demand in writing by the borrower, and tender of the prescribed sum of expenses, supply a copy of any document relating to a loan made by him or any security therefor, to the borrower, or if the borrower so requires, to any person specified in that behalf in the demand.

#### **7. Submission of accounts, returns etc.**

- Every money lender shall file such statements of accounts and submit returns to the registering authority, at such intervals and on or before such dates as may be prescribed.

## **8. Power to require production of records or documents, and power of entry, inspection and seizure.**

(1)The registering authority or any officer authorized by the Government in this behalf may, to verify whether the business of the money lender is carried on in accordance with the provisions of this Act, enter the premises of the money lender or any person who in his opinion is carrying on the business of a money lender and call upon him to produce any record or document relating to such business an every such money lender or person shall allow such inspection and produce such record or document.(2)The registering authority may, for the purposes of the said subsection search the premises and seize any record and document as may be necessary and the record or document seized shall be retained only for such period as may be necessary for the purposes of examination, prosecution or other legal action:Provided that the provisions of sections 100 and 102 of the Code of Criminal Procedure, Samvat 1989 shall, so far as may be, apply to such search and seizure.(3)The registering authority of the other officer referred to in sub- section (1) shall also have power to summon and examine the money lender or any person who in his opinion is in a position to furnish relevant information.

## **9. Borrowers not bound to admit correctness of accounts.**

- A borrower to whom a statement of accounts or a passbook has been furnished under this Act shall not be bound to acknowledge or deny its correctness and his failure to do so shall not, by itself, be deemed to be an admission of the correctness of the accounts.

# **Chapter IV**

## **Dispute Resolution**

## **10. Procedure in disputes regarding loan.**

(1)In case of any dispute relating to the transactions involving a loan of up to Rs. 50,000 (fifty thousand) or equivalent value (excluding interest), the aggrieved person may file an application in the prescribed form along with the prescribed fee, before the Panchayat and on receipt of such application, the Panchayat shall cause a notice or the application to be given to the other party.(2)Where in any area there is no Panchayat and in every dispute relating to the transactions involving a loan exceeding Rs. 50,000/- (fifty thousand) or equivalent value (excluding interest), the aggrieved person may file an application in the prescribed form along with the prescribed fee before the Lok Adalat and on receipt of such application, the Lok Adalat shall cause a notice of the application to be given to the other party.(3)The orders passed by the Panchayat or Lok Adalat, as the case may be, after hearing the parties shall be binding on all the parties to the dispute.(4)Notwithstanding anything contained in any law for the time being in force, in any suit to which this Act applies, -(a)a Lok Adalat or Panchayat shall, before deciding the claim on merits, frame and decide the issue whether the money lender has complied with the provisions of section 6 ;(b)if the Lok Adalat or Panchayat finds that the provisions of section 6 have not been complied with

by the money lender, it may, if the money lender's claim is established in whole or in part, disallow the whole or any portion of the interest found due as may seem reasonable to it in the circumstances of the case and may disallow costs. Explanation : - A money lender who has given the receipt or furnished a statement of accounts or a passbook in the prescribed form and manner, shall be held to have complied with the provisions of section 6, as the case may be, in spite of any errors and omissions if the Lok Adalat or Panchayat finds that such errors and omissions are not material or not fraudulent. (5) Notwithstanding anything contained in the Code of Civil Procedure, Samvat 1989, the Panchayat or Lok Adalat, as the case may be, shall have jurisdiction to hear and decide disputes relating to loan between a money lender and borrower at the place where the borrower resides. (6) The Panchayat or Lok Adalat, as the case may be, while hearing a disputes under this Act shall have all the powers as are vested in a Civil Court under the Code of Civil Procedure, Samvat 1989 while trying a suit in respect of the following matters, namely : - (i) the summoning and enforcing the attendance of any defendant or witness and examining the witnesses on oath ; (ii) the discovery and production of any document or other material object producible as evidence ; (iii) the reception of evidence on affidavits ; (iv) issuing of any commission for the examination of any witness ; and (v) any other matter which may be prescribed.

## **11. Power of Panchayat or Lok Adalat to deposit money due on loan in Panchayat or Lok Adalat.**

(1) The Panchayat or Lok Adalat may, at any time, on application of judgement-debtor, after notice to the decree holder, direct that the amount of any decree passed against him, whether before or after the date on which this Act comes into force, in respect of a loan, shall be paid in such number of instalments and subject to such conditions, and payable on such dates, as having regard to the circumstances of the judgement-debtor and the amount of the decree, it considers fit. (2) (a) Where a money lender refuses to accept the whole or any portion of the money due in respect of his loans, the borrower may deposit the said money into the Panchayat or Lok Adalat, as the case may be, to record full or part satisfaction of the loan. (b) Where any such application is made, the Panchayat or Lok Adalat, as the case may be, shall, after due inquiry pass orders recording full or part satisfaction of the loan, as the case may be.

## **12. Suits and applications by unregistered money lenders barred.**

- Notwithstanding anything contained in any other enactment for the time being in force - (i) a suit by a money lender for the recovery of a loan ; or (ii) an application by a money lender for the execution of a decree relating to a loan ; or (iii) an application for resolution of dispute through a Lok Adalat or Panchayat, shall be dismissed, unless at the time when the loan was advanced, the money lender held an effective registration.

## **Chapter V**

### **Accredited Loan Providers**

### **13. Registration of accredited loan providers.**

(1) Any person or institution intending to engage himself or itself as an accredited loan provider shall apply to the registering authority constituted under section 3 of this Act for registration to carry on the business as an accredited loan provider: Provided that only such person who have the necessary educational qualification or knowledge of agriculture and rural economy, knowledge of maintenance of books of accounts and such other conditions as may be specified in the order issued by the Government in this behalf shall be eligible to become accredited loan providers. (2) No such application by an accredited loan provider shall be entertained by the registering authority unless such application is countersigned by an institutional creditor having credit link with the accredited loan provider. (3) No accredited loan provider shall commence or carry on the business of providing loan without obtaining a registration under the provisions of this Chapter. (4) Even registration granted by the registering authority shall be in such form as may be prescribed. (5) Every registering authority shall maintain for the area under its jurisdiction the registers of all accredited loan providers having valid registration in such form as may be prescribed. (6) The registers maintained under sub-section (5) shall be published in such manner and at such periodic intervals as may be prescribed.

### **14. Submissions of accounts, returns etc.**

(1) Every accredited loan provider shall maintain such books of accounts and file such statements of accounts and returns as may be prescribed to the registering authority and a copy of such statement of accounts and returns shall also be furnished to the institutional creditor. (2) The institutional creditor shall, on a requisition from the registering authority, furnish the information concerning the loans provided by an accredited loan provider within such time as may be specified in the requisition.

### **15. Settlement of disputes.**

- The provisions of section 10 shall mutatis mutandis apply to any dispute between the accredited loan provider and the borrower.

### **16. Cancellation of registration.**

(1) If the institutional creditor has informed the registering authority about the termination of its relationship with the accredited loan provider, the registering authority shall cancel the registration of the accredited loan provider : Provided that if within a period of thirty days from the cancellation of the registration such accredited loan provider enters into an agreement with another institutional creditor and his application is countersigned by the new institutional creditor, the registering authority shall restore the registration of such accredited loan provider. (2) the registering authority may, at any time for sufficient cause, suspend or cancel a registration granted under section 13 : Provided that no order suspending or cancelling the registration shall be passed except after giving the accredited loan provider an opportunity to show cause against the proposed action. Explanation

:- For the purposes of sub-section (2), prosecution or conviction of accredited loan provider for violation any of the provisions of this Act shall be sufficient cause for suspension or cancellation of the registration.

## **Chapter VI**

### **Interest Rate Ceiling**

#### **17. Limitation on rates of interest charged by money lenders and accredited loan provider.**

(1)The Government may, from time to time, by notification, specify the maximum rates of interest for any local area chargeable by money lenders and accredited loan providers and separate rates of interests may be specified in respect of secured and unsecured.(2)If any money lender or accredited loan provider charges or receives from a borrower interest at a rate exceeding the maximum rate fixed by the Government under sub-section (1), he shall be liable for punishment under this Act.(3)The maximum rate of interest notified by the Government under sub-section (1), shall be calculated by taking into account the interest rate trends, cost of transactions, cost of the capital, the risk premium and the administrative expenses associated with such loans.(4)All money lenders and accredited loan providers shall display the rates of interest charged by them, both on secured as well as unsecured loans, in a conspicuous place in their premises.

#### **18. Maximum amount of interest recoverable on loans and discharge of loans in certain cases.**

(1)No money lender or accredited loan provider shall recover towards the interest in respect of any loans advanced by him, an amount in excess of the principal amount.(2)Any loan in respect of which the money lender or accredited loan provider has realized from the debtor an amount equal to or more than twice the amount of the principal, shall stand discharged and the amount, if any, so realized in excess of twice the amount of the loan shall be refunded by the money lender or accredited loan provider, as the case may be, to the debtor.

## **Chapter VII**

### **Offences and Penalties**

#### **19. Entry of wrong sum in bond, etc to be an offence.**

(1)No money lender or accredited loan provider shall take any promissory note, acknowledgment, bond or other writing which does not state the actual amount of the loan, or which states such amount wrongly or obtains any instrument in which blanks are left to be filled after execution.(2)Whoever contravenes the provisions of sub-section (1) shall, on conviction, be punished with fine which may extend to twenty thousand rupees or with imprisonment which may



extend to one year or with both.

## **20. Penalty for salami, batta, dharmada etc.**

- If any loan provider or accredited loan provider or his agent takes from a borrower at the time of advancing a loan or deduct out of the principal of such loan any salami, batta, dharmada or other extraction of similar nature by whatever name called, he shall be punishable with fine which may extend to twenty thousand rupees.

## **21. Penalty for molestation.**

(1)Whoever molests, or abets the molestation of, a borrower for the recovery of a debt due by him to a money lender or accredited loan provider or his assignee, as the case may be, shall, on conviction, be punished with imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both.Explanation :- For the purposes of this section, a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing, -(a)obstructs or uses violence to or intimidates such other persons ; 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 hinder him in, the use of any such property ; or(c)loiters at or near a house or other place where such other person resides or works, or carries on business, or happens to be ; or(d)does any act calculated to annoy or intimidate such other person or the member of his family ; or(e)moves or acts in a manner which causes or is calculated to cause or danger to the person or property of such other person, shall be deemed to molest such other person:Provided that a person who goes to the house or place referred to in clause (c) in order merely to obtain or communicate information shall not be deemed to molest.(2)Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989, offence punishable under sub-section (1) shall be cognizable.

## **22. Penalty for carrying on business without registration.**

- Whoever carries on the business of providing loans without obtaining registration or otherwise that in conformity with the terms and conditions imposed by the registering authority shall be punished with imprisonment for a term which may extend to one year and with fine which may extend to fifty thousand rupees.

## **23. Penalty for contravention of the provisions of the Act.**

- If any person contravenes any other provision of this Act, he shall be punishable with line which may extend to ten thousand rupees.

## **24. Composition of offences.**

(1)The registering authority or any other officer or authority authorized by the Government in this behalf, may accept from the person who has committed or is reasonably suspected of having committed any offence under this Act, by way of composition of such offence, -(a)a sum of money equal to the maximum amount prescribed as fine under this Act, if the offence is committed for the first time : and(b)in other cases, twice the amount of such fine prescribed under the respective sections :Provided that an offence with respect to which a proceeding is pending before the court shall not be compoundable.(2)Notwithstanding anything contained in sub-section (1), offence punishable under section 21 of this Act shall be cognizable and shall not be compoundable.

## **25. Cognizance of certain offences.**

- No court shall take cognizance of any offence, except the offence under section 21 save on a complaint made by registering authority or any other officer inly authorized in this behalf by the Government.

# **Chapter VIII**

## **Miscellaneous**

## **26. Every officer to be public servant.**

- Every officer of the Government and every person acting under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the State Ranbir Penal Code.

## **27. Saving of laws relating to agriculturists indebtedness.**

- Nothing in this Act shall affect any of the provisions of any enactment relating to relief or agriculturists indebtedness.

## **28. Power to make rules.**

(1)The Government may, by notification in the Government Gazette, make rules for carrying out the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -(a)the form of the register under section 4 ;(b)the form of the application for registration, the further particulars to be included therein and the manner of payment of registration fee under section 5 ;(c)the form of cashbook, ledger and other books and the manner in which they shall be maintained under section 6 and the other particulars to be prescribed under of that section ;(d)the form of statement of accounts and passbooks to be furnished or delivered and the date before which it is to be furnished or delivered under section 6 ;(e)the procedure to be followed by the officers while compounding offences under this Act;(f)any other matter which has to be or may be prescribed under this Act or any matter for

which there is no provision or insufficient provision in this Act and for which provisions, in the opinion of the Government, necessary for giving effect to the provisions of this Act.(3)Every rule made under this Act, shall be laid, as soon as may be after it is made before each House of the State Legislature while it is in session for total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## **29. Power to exempt.**

- The Government may, after consultation with the Reserve Bank, by notification in the Government Gazette, exempt such money lenders or accredited loan providers, from all or any of the provisions of this Act, subject to such conditions as it may deem fit and for such period as may be specified.

## **30. Annual report on the administration of the Act.**

- The Government shall prepare an annual report on the administration of this Act and the same shall be laid on the Table of both the Houses of the State Legislature annually.