

[AS PASSED BY THE SENATE]

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BILL

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

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

It is hereby enacted as follows: -

1. **Short title and commencement:** - (1) This Act shall be called the Financial Institutions (Recovery of Finances) Amendment Act, 2026.
(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,

- (i) in paragraph (e), in sub-paragraph (iii), the word "and" appearing at the end shall be omitted.

- (ii) after paragraph (f), the following new paragraphs (h) and (i) shall be added, namely: -

- " (h) "Deputy Commissioner" means the Deputy Commissioner of the District concerned, having territorial jurisdiction over the mortgaged property; and

- (i) "housing finance" means a finance extended by a financial institution to a customer for the purpose of construction, purchase, renovation or improvement of a residential property and shall include a finance extended for the purchase of a plot of land on which the customer intends to construct such residential property, but shall not include any finance extended for commercial, industrial or investment purposes."

3. **Insertion of new section 15A, Ordinance XLVI of 2001.**- In the said Ordinance, after section 15, the following new section 15A, shall be inserted, namely:-

"15A. Sale of mortgaged property in housing finance.-(1)

Notwithstanding anything contained in section 15 or any other provision of this Ordinance or any other law for the time being in force, the provisions of this section shall apply exclusively to the sale of immovable property mortgaged to a financial institution as collateral for a housing finance, and to the extent of any inconsistency between the provisions of this section and section 15 of the Ordinance, this section shall have overriding effect with respect of housing finance.

(2) Where a customer defaults in the payment of the mortgage money under a housing finance, the financial institution may send a first notice in writing upon the mortgagor,

demanding payment of the outstanding mortgage money within a period of not less than thirty days from the date of service of such notice. If the mortgagor fails to make payment within the stipulated period, the financial institution shall, upon expiry of that period, serve a second notice in writing upon him, demanding payment within a further period of not less than thirty days from the date of service thereof; and if the mortgagor continues to remain in default upon expiry of the period specified in the second notice, the financial institution shall serve a final notice in writing upon the mortgagor, demanding payment of the outstanding mortgage money within a period of not less than thirty days from the date of service of such final notice:

Provided that at any stage prior to the sale of the mortgaged property, the financial institution shall consider a written request of the mortgagor and dispose of such request within thirty days and on such terms and conditions as it may deem appropriate, enter into an arrangement with the mortgagor for the rescheduling, restructuring or settlement of the outstanding mortgage money, and upon such agreement being duly agreed, the financial institution shall suspend or withdraw any notice issued under this sub-section, subject to compliance by the mortgagor with the terms of such arrangement.

(3) When a financial institution serves a final notice of demand under sub-section (2), 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 and after the due date given in the final notice under sub-section (2) has expired, the financial institution may, without the intervention of any court and subject to any rules made by the Federal Government, 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 served upon 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 money;
 - (iv) any encumbrances which the mortgaged property may be subject to, of which the financial institution is aware;

- (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
 - (viii) any other information which may be relevant;
- (c) the financial institution shall send a notice with the information specified in clause (b) to the mortgagor and to all persons who, to the knowledge of the financial institution, have an interest in the mortgaged property as mortgagees; and
- (d) the public auction for the sale of the mortgaged property shall not take place before the expiration of fifteen business days of the publication of the notice as required under clause (b).

(5) In addition to its powers under sections 25 and 26, the Federal Government may, by notification in the official Gazette, make rules specifying the mode, conduct or method of sale of the mortgaged property and in addition to the conditions stipulated in sub-section (4).

(6) The financial institution shall be entitled, in its discretion, to participate in the public auction and to purchase the mortgaged property for an amount not more than ten percent higher than the highest bid obtained in the public auction; provided that where the financial institution chooses to purchase the mortgaged property, it shall issue notice to the mortgagor who shall have five business days from the service of the notice to match the financial institution's bid.

(7) Where the mortgagor or his agent or any person put in possession by the mortgagor or on account of the mortgagor does not voluntarily give possession of the mortgaged property sought to be sold or purchased by the financial institution, the financial institution may make a written request to the concerned Deputy Commissioner or an officer nominated by him or a designated authority as notified by the concerned Government in the official Gazette having jurisdiction over the mortgaged property for assistance in taking possession of such property. Upon receipt of such request, the concerned Deputy Commissioner or an officer nominated by him or the designated authority shall take possession of the mortgaged property and hand over such possession, together with all documents relating thereto, to the financial institution:

Provided that the concerned Deputy Commissioner or an officer nominated by him or the designated authority shall not hand over possession where the mortgaged property is in occupation of a person under a bona fide lease predating the mortgage, except on expiry of the period of such lease, or on payment of such compensation as may be agreed between the parties or as may be determined by the Banking Court to be reasonable.

Explanation. - Where the lease is created after the date of the mortgage and it appears that the lease was created so as to adversely affect the value of the mortgaged

property or to prejudice the rights and remedies of the financial institution, it shall be presumed that the lease is not bona fide, unless proved otherwise. In case of any dispute regarding the bona fide nature of such lease, the matter shall be determined by the concerned Deputy Commissioner for reasons to be recorded in writing

(8) The concerned Deputy Commissioner or an officer nominated by him may, for the purposes of sub-section (7), take such steps and use such force as may be deemed necessary.

(9) No act of the concerned Deputy Commissioner or an officer nominated by him, done in pursuance of sub-section (7), shall be called in question in any court or before any authority.

(10) For purposes of execution and registration of the sale deed in respect of the mortgaged property, the financial institution shall be deemed to be the duly authorized attorney of the mortgagor and a sale deed executed and presented for registration by duly authorized attorneys of the financial institution shall be accepted for such purposes by the Registrar and Sub-Registrar under the Registration Act, 1908 (XVI of 1908):

Provided that no such sale deed shall be executed or registered until the expiry of fifteen days after the completion of the public auction for the sale of the mortgaged property.

(11) Upon execution and registration of the sale deed of the mortgaged property in favour of the purchaser, all rights in such mortgaged property shall vest in the purchaser free from all encumbrances, and the mortgagor shall be divested of any right, title and interest in the mortgaged property.

(12) Net sale proceeds of the mortgaged property, after deducting all expenses of sale or expenses incurred in any attempted sale, shall be distributed ratably amongst all mortgagees in accordance with their respective rights and priorities in the mortgaged property. Any surplus remaining after paying in full all the dues of mortgagees shall be paid to the mortgagor.

(13) A financial institution which has sold mortgaged property in exercise of powers conferred under this section shall file proper accounts of the sale proceeds in the Banking Court within fourteen days of the sale.

(14) All disputes relating to the sale of the mortgaged property under this section, including disputes amongst mortgagees in respect of the mode, conduct or method of the sale or the distribution of the sale proceeds including expenses of sale or expenses incurred in any attempted sale, shall be decided by the Banking Court to the exclusion of any other court of law.

(15) The Banking Court shall not grant an injunction to restrain any sale or proposed sale of mortgaged property under this section, until and unless the financial institution is put on notice and is heard, and the Banking Court is,-

- (a) satisfied that no mortgage in respect of the immovable property has been created; or
- (b) satisfied that there is a prima facie case for fraud in the proposed mode, conduct or method of the sale; or

- (c) satisfied that all moneys secured by mortgage of the mortgaged property have been paid; or
 - (d) the mortgagor or objector deposits in the Banking Court, in cash, the full outstanding mortgage money or a lesser amount that may be agreed by the financial institution.
- (16) Where any mortgaged property has been sold under this section, the mortgagor or any person entitled to a share in the rateable distribution of assets or whose interest is affected by the sale may apply to the Banking Court to set aside the sale on the ground of fraud:
- Provided that no sale shall be set aside on the ground of fraud unless, upon the facts proved, the Banking Court is satisfied that the applicant has sustained substantial injury by reason of such fraud and such injury cannot be compensated by damages.
- (17) An application for setting aside the sale under sub-section (16) must be made within seven days of the completion of the public auction for the sale of the mortgaged property and shall not be entertained by the Banking Court unless the applicant deposits an amount equal to twenty five percent of the outstanding amount or furnishes security for the same amount to the satisfaction of the Banking Court.
- (18) No suit, prosecution or other legal proceedings shall lie against any financial institution or any of its officers or managers exercising any of the powers conferred under this section for anything done or intended to be done in good faith.
- (19) The rights and remedies provided under this section are in addition to and not in lieu of any other rights or remedies a financial institution may have under this Ordinance.
- (20) The provisions contained in this section shall have effect notwithstanding anything contained in section 15 of this Ordinance or any other law for the time being in force or any judgment of any court, and in case of any conflict between the provisions contained in this section and any other law for the time being in force or any judgment of any court, the provisions contained in this section shall prevail in relation to housing finance."
4. **Amendment of section 22, Ordinance XLVI of 2001.**- In the said Ordinance, in section 22, in sub-section (6), after the expression "sub-section (11) of section 15", the expression "or sub-section (13) of section 15A" shall be inserted.

STATEMENT OF OBJECTS AND REASONS

The Financial Institutions (Recovery of Finances) Ordinance, 2001 ("the Ordinance") provides the legal framework for the recovery of finances by financial institutions, including enforcement of mortgage rights. Over time, practical experience and judicial interpretation have highlighted the need to strengthen and clarify certain provisions to ensure timely recovery, fair treatment of mortgagors, and effective enforcement of secured interests.

2. The Financial Institutions (Recovery of Finances) Amendment Act, 2025 seeks to introduce procedural refinements and enforcement mechanisms to enhance the efficiency and transparency of the recovery process. The amendment further safeguards bona fide leaseholders, clarifies the limited circumstances in which injunctive relief may be granted by Banking Courts, and prescribes specific conditions for such relief to prevent abuse of process.

3. A significant feature of the amendment is the introduction of a statutory mechanism empowering financial institutions to seek assistance from the concerned authorities for taking possession of mortgaged property, thereby addressing implementation challenges and ensuring swift enforcement. The amendment also provides legal protection for acts done in good faith under the Ordinance, increases the penalty for certain violations, and updates cross-references for legislative consistency.

4. The proposed amendments aim to strike a balance between the rights of financial institutions and the protection of legitimate interests of borrowers and occupants, thereby promoting confidence in secured lending, reducing non-performing loans, and strengthening the overall credit environment in Pakistan.

5. The Financial Institutions (Recovery of Finances) Amendment Bill, 2025 is designed to achieve the aforementioned purposes.



Senator Muhammad Aurangzeb
Minister for Finance and Revenue