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THE PUNJAB COMMERCIAL COURTS ORDINANCE 2021 (XIX of 2021)

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TEXT

**'THE PUNJAB COMMERCIAL COURTS ORDINANCE 2021
(XIX of 2021)**

[13th April 2021]

An
Ordinance

to provide for establishment of Commercial Courts in the Punjab.

WHEREAS commerce and trade are intrinsically linked with economic growth and prosperity of the people;

AND WHEREAS expeditious disposal of claims arising from commercial transactions and resolution of commercial disputes is considered necessary for the uplift of commerce, trade and ease of doing business;

AND WHEREAS commerce, trade and business matters require special expertise for their expeditious disposal and the establishment of the Commercial Courts shall facilitate investment in the country and provide speedy justice;

AND WHEREAS Government of the Punjab intends to provide an effective legal regime for early resolution of commercial disputes and expeditious disposal of commercial litigation of specified value and has decided to establish Commercial Courts for Province of the Punjab;

AND WHEREAS Provincial Assembly of the Punjab is not in session and Governor of the Punjab is satisfied that circumstances exist which render it necessary to take immediate action;

THEREFORE, in exercise of the powers conferred under clause (1) of Article 128 of Constitution of the Islamic Republic of Pakistan, Governor of the Punjab is pleased to make and promulgate the following Ordinance:

1. Short title, extent and commencement.- (1) This Ordinance may cited as the Punjab Commercial Courts Ordinance 2021.

(2) This Ordinance extends to whole of the Punjab.

(3) This Ordinance shall come into force at once.

2. Definitions.- (1) In this Ordinance:

(a) "Chief Justice" means the Chief Justice of the Lahore High Court;

(b) "Code" means the Code of Civil Procedure, 1908 (V of 1908);

(c) "Commercial Court" means a Court established under this Ordinance;

¹This Ordinance was Promulgated by the Governor of the Punjab on 13 April 2021; and, was published in the Punjab Gazette (Extraordinary), dated: 13 April 2021, pp. 8099-8109.

- (d) "commercial dispute" means any dispute, claim or counterclaim arising out of a contractual dispute where the value of the claim or counterclaim is five hundred thousand rupees or more, or such other value as the Government may notify, related to or connected with any transaction of trade, business or commerce excluding sale or purchase of immovable property:
- i. between the domestic companies; or
 - ii. between a domestic company and a foreign company or a firm; or
 - iii. between the firms; or
 - iv. between a firm and a domestic or foreign company; or
 - v. between the foreign companies; or
 - vi. between a domestic company, foreign company or a firm and a private person.
- (e) "district" means a district notified under the Punjab Land Revenue Act, 1967 (XVII of 1967);
- (f) "domestic company" means a company incorporated and registered under the Companies Act, 1913 (VII of 1913), the Companies Ordinance, 1984 (XLVII of 1984), the Companies Ordinance, 2016 (VI of 2016), the Companies Act, 2017 (XIX of 2017) or any other law for the time being in force for registration of a company;
- (g) "firm" means a firm registered under the Partnership Act, 1932 (IX of 1932);
- (h) "foreign company" means any company or body corporate incorporated outside Pakistan, which has a place of business or liaison office in Pakistan whether by itself or through an agent, physically or through electronic mode;
- (i) "High Court" means the Lahore High Court;
- (j) "Government" means Government of the Punjab;
- (k) "rules" means the rules made by the Government under this Ordinance;
- (l) "Secretariat" means the Secretariat established under this Ordinance;
- (m) "Registrar" means the Registrar of the Secretariat;
- (n) "prescribed" means prescribed by the rules framed under this Ordinance; and
- (o) "Tribunal" means the Commercial Appellate Tribunal established under this Ordinance.

(2) The words and expressions used and not defined in this Ordinance but defined in the Code and the Qanoon-e-Shahadat Order, 1984 (X of 1984) shall have the same meanings respectively assigned to them in that Code and the Order.

3. Commercial Courts.- (1) The Government may, by notification in the Official Gazette, establish as many Commercial Courts for an area comprising one or more districts as it considers necessary to exercise jurisdiction under this Ordinance and where it establishes more Commercial Courts than one, it shall specify in the notification the territorial limits within which each of the Commercial Courts shall exercise its jurisdiction.

(2) A Commercial Court shall hold sitting at such places within its territorial jurisdiction as may be determined by the Government.

(3) The Government shall, in consultation with the Chief Justice, appoint a person as the Judge of a Commercial Court, if he is a District Judge or an Additional District Judge.

(4) Subject to the provisions of this Ordinance, a Commercial Court shall, in exercise of its jurisdiction, have all the powers vested in a Civil Court under the Code.

(5) Subject to the provisions of this Ordinance, all suits proceedings arising from or connected with commercial disputes shall be entertained, heard and decided by the Commercial Court.

4. Secretariat.- (1) The Government shall, in consultation with the Chief Justice, establish a Commercial Court Secretariat for purposes of this Ordinance.

(2) Subject to the provisions of this Ordinance and the rules, the Secretariat shall perform the following functions:

- (a) to maintain and update record and statistical data in physical and electronic form, regarding the number and nature of cases filed, pendency of such cases, status of each case and disposal of cases by Commercial Courts and the tribunal and all matters connected therewith as may be prescribed;
- (b) to maintain case laws repository;
- (c) to arrange trainings and continuous education of Judges; and
- (d) any other function entrusted by the Chief Justice of the High Court.

(3) The officers and staff of the Secretariat shall be appointed by the Government on such terms and conditions as may be prescribed, and until so prescribed as may be determined by the Government.

5. Registrar.- (1) The Government shall, in consultation with the Chief Justice, appoint a person as the Registrar of the Secretariat for a period of three years, if he is or has been or is qualified to be a District Judge.

(2) The Registrar shall be responsible for performance of functions of the Secretariat and such other functions as may be assigned to him by the Government in consultation with the Chief Justice.

6. Application of the Code.- (1) Subject to the provisions of this Ordinance and the rules, issuance and service of summons, notices, hearing, trial and disposal of a suit under this Ordinance shall, as nearly as possible, be in accordance with the procedure applicable under the Code.

(2) Notwithstanding the provision of subsection (1), a Commercial Court shall, unless it directs otherwise for reasons to be recorded, order any or all the facts to be proved or disproved by affidavit and may, for the purposes of expeditious disposal, apply such other procedure as the circumstances of the case may warrant.

7. Presentation and verification of plaint.- (1) Every suit under this Ordinance shall be instituted by presentation of a plaint duly verified in accordance with the provision of the Code.

(2) On presentation of the plaint and before issuing the notices or summons it shall be the duty of the Commercial Court to *prima facie*, satisfy itself of the jurisdiction, cause of action and limitation through a speaking order.

(3) The plaint shall be accompanied with:

- (a) such number of copies of the plaint with all documents annexed therewith for each defendant along with two additional copies;
- (b) list of legal heirs of the plaintiff under Order VII Rule 26 of the Code;
- (c) complete list of witnesses and their affidavits containing a gist of their testimonies;
- (d) list of documents to be produced or relied upon by the plaintiff under Order VII Rule 14 of the Code;
- (e) Case Management Questioner as provided in Form 14 in "Appendix C" of the Code; and
- (f) such other documents as may be prescribed.

(4) On a plaint being presented to the Commercial Court, the Commercial Court shall issue summons in accordance with section 10 of this Ordinance:

Provided that no plaint shall be entertained for hearing by the Commercial Court if it does not fulfill the requirements of this Ordinance and the rules.

8. Leave to defend.- (1) In any case in which the summons has been served on the defendant, the defendant shall not be entitled to defend the suit unless he obtains leave from the Commercial Court as hereinafter provided to defend the same; and, in default of his doing so, the allegations of fact in the plaint shall be deemed to be admitted and the Commercial Court may pass a decree in favour of the plaintiff on the basis thereof or such other material as the Commercial Court may require in the interests of justice.

(2) The defendant shall file the application for leave to defend within thirty days of the date of first service by any one of the modes laid down in section 10.

Provided that where service has been validly affected only through publication in the newspapers, the Commercial Court may extend the time for filing an application for leave to defend, if satisfied that the defendant did not have knowledge thereof.

(3) The application for leave to defend shall be in the form of a written statement, and shall contain a summary of the substantial questions of law as well as fact in respect of which, in the opinion of the defendant, evidence needs to be recorded.

(4) The plaintiff shall be given an opportunity of filing a reply to the application for leave to defend.

(5) After filing of the application for leave to defend, the Commercial Court shall within fifteen days complete proceedings as prescribed under Order IX-A, rule 1 of the Code.

(6) The Commercial Court, if it deems necessary for expeditious disposal of application for leave to defend, for reasons to be recorded in writing, shall on its own motion have the power to summon official record maintained by the public authorities in respect of any matter connected with or arising from the subject matter of the suit.

(7) The Commercial Court shall grant the defendant leave to defend the suit if upon consideration of the contents of the plaint, the application for leave to defend, the reply thereto and the proceedings mentioned in subsection (5) and (6) above, it is of the view that substantial questions of law or fact have been raised in respect of which evidence needs to be recorded.

(8) In granting leave under subsection (6), the Commercial Court may impose such conditions as it may deem appropriate in the circumstances of the case.

(9) Where the application for leave to defend is accepted, the Commercial Court shall treat the application as a written statement, and in its order granting leave shall frame issues relating to the substantial questions of law or fact, and, subject to fulfillment of any conditions attached therein, fix a date for recording of evidence thereon and disposal of the suit.

(10) Where the application for leave to defend is rejected or where a defendant fails to fulfill the conditions attached to the grant of leave to defend, the Commercial Court shall forthwith proceed to pass judgment and decree in favour of the plaintiff against the defendant.

(11) Subject to section 14, where a suit already pending before a Court is transferred to a Commercial Court and a Written Statement has been filed before the coming into force of this Ordinance, the defendant shall be allowed a period of twenty-one days from the date of coming into force of this Ordinance, or from the date of first hearing thereafter, whichever is later, for filing an application for leave to defend in accordance with the provisions of this Ordinance.

(12) The application for leave to defend shall be duly verified in accordance with the provisions of the Code and shall be accompanied by:

- (a) such number of copies of the leave to defend with all documents annexed therewith for each plaintiff along with two additional copies;
- (b) the list of legal heirs of the plaintiff;
- (c) complete list of witnesses and their affidavits containing a gist of their testimonies;
- (d) list of documents to be produced or relied upon by the defendant;
- (e) Case Management Questionnaires as provided in Form 15 in "Appendix C" of the Code; and
- (f) such other document as may be prescribed.

Provided that no application for leave to defend shall be entertained for hearing by the Commercial Court if it does not fulfill the requirements of this Ordinance.

9. E-filing of pleadings etc.- (1) The Government in consultation with the Chief Justice shall frame rules for filing of pleadings and written submissions and hearing of parties including recording of evidence under this Ordinance and all matters connected therewith or incidental thereto, through electronic means.

(2) The Commercial Court Secretariat shall maintain a physical and electronic record of all the cases filed and pending before the Commercial Court along with the details of the proceedings that have taken place therein.

10. Process of summons.- (1) The summons shall be served simultaneously as provided in the Code.

(2) Location of bailiff for process-server serving the summons shall be monitored by modern devices, in a manner prescribed, and a photograph shall be taken of the defendant or the premises or the person accepting summons on behalf of defendant and be made part of the record as a proof of delivery.

11. Disposal of suits.- (1) A Commercial Court shall dispose of a suit pending before it within a period of one hundred and eighty days from the date of filing of such suit.

(2) For expeditious disposal of suits and appeals under this Ordinance, the Commercial Court shall not grant unnecessary adjournments and in no case more than two adjournments shall be granted for a specific purpose:

Provided that the Commercial Court under exceptional circumstances may adjourn hearing of a case for not more than seven days subject to payment of such costs as may be determined by the Court.

(3) If the defendant fails to appear, the Commercial Court shall proceed to dispose of the suit on the basis of material before it.

(4) The Commercial Court, if it deems necessary for expeditious disposal of the suit, for reasons to be recorded in writing, shall on its own motion have the power to summon official record maintained by the public authorities in respect of any matter connected with or arising from the subject matter of the suit.

12. Determination of costs.- (1) Notwithstanding anything contained in any other law for the time being in force, a Commercial Court shall have full powers to determine the costs of the suit and by whom it is payable and to give all necessary directions in this regard.

Explanation: For the purposes of this section the expression “costs” shall mean reasonable costs relating to:

- (a) the fees and expenses of the witnesses incurred;
- (b) legal fees and expenses incurred; and
- (c) any other expenses incurred in connection with the proceedings.

(2) Where the Commercial Court directs that costs shall not be granted, the Court shall state its reasons in writing.

13. Execution of decrees.- (1) Subject to this Ordinance and the rules, the Commercial Court shall in the conduct of execution proceedings in respect of decrees passed by it or the execution petitions or proceedings transferred under section 14 of this Ordinance, as the case may be, follow the provisions of the Code.

(2) Notwithstanding anything contained in the Code or any other law for the time being in force:

- (a) the Commercial Court shall follow the summary procedure for purposes of investigation of claims and objections in respect of attachment or sale of any property or maintainability of execution proceedings, and shall complete such investigation within thirty days of filing of the claims or objections; and
- (b) if the claims or objections are found by the Commercial Court to be *mala fide* or filed merely to delay the sale of the property, the Court shall impose such penalty as it deems fit in the facts and circumstances of the case.

14. Transfer of pending cases.- On commencement of this Ordinance:

- (a) all suits and execution petitions connected with or arising from commercial disputes pending in any court on the original civil jurisdiction shall stand transferred to the Commercial Court;
- (b) on transfer of suits and execution petitions under this section, the Commercial Court may proceed with the case from the stage at which it was pending immediately before such transfer and it shall not be bound to re-hear any witness who has recorded his evidence; and

- (c) all appeals and revisions arising from the orders, judgment and decree in respect of commercial disputes pending before any court before the commencement of this Ordinance shall stand transferred to the Tribunal for adjudication.

15. Commercial Appellate Tribunals.- (1) The Government may, by notification in the official Gazette, establish as many Tribunals as it considers necessary and, where it establishes more than one Tribunal, it shall specify territorial limits within which each one of them shall exercise jurisdiction under this Ordinance.

(2) A Tribunal shall consist of a Chairperson and two members who are, or have been, or are qualified for appointment as, a Judge of the High Court, to be appointed in consultation with the Chief Justice.

(3) For every sitting of the Tribunal, the presence of the Chairperson and not less than one member shall be necessary.

(4) A decision of the Tribunal shall be expressed in terms of the opinion of the majority, or if the case has been decided by the Chairperson and only one of the members and there is a difference of opinion between them, the decision of the Tribunal shall be expressed in terms of the opinion of the Chairperson.

(5) A Tribunal shall not, merely by reason of a change in its composition, or the absence of any member from any sitting, be bound to recall and rehear any witness who was given evidence, and may act on the evidence already recorded by, or produced, before it.

(6) A Tribunal may hold its sittings at such places within its territorial jurisdiction as the Chairperson may decide.

(7) No act or proceedings of a Tribunal shall be invalid by reason only of the existence of vacancy in, or defect in the constitution of, the Tribunal.

(8) The terms and conditions of service of the Chairperson and members of the Tribunal shall be such as may be prescribed.

16. Appeals.- (1) Subject to the provisions of this Ordinance, any person aggrieved by the judgment and decree of the Commercial Court or an order passed under subsection (2) of section 13, may file an appeal to the Tribunal, in accordance with the provisions of the Code within a period of thirty days from the date of such judgment and decree or final order.

(2) Notwithstanding anything contained in any other law for the time being in force, no appeal shall lie from any decree, judgment or order of a Commercial Court otherwise than in accordance with this section.

(3) The Tribunal shall dispose of the appeal within 120 days from the date of the filing of the appeal.

(4) Any order, decree or judgment passed by the Tribunal involving substantial question of law and public importance shall be appealable within thirty days of such order, decree or judgement before Supreme Court of Pakistan subject

to the satisfaction of the Supreme Court and grant of leave to appeal by the Supreme Court.

17. Alternative Dispute Resolution.- Any suit or appeal relating to a commercial dispute filed or pending in a Commercial Court or Tribunal, as the case may be, shall, after leave to defend or appeal is accepted, be referred to alternate dispute resolution by the Commercial Court or Tribunal, in accordance with provisions of Order IX B of the Code.

18. Power of the High Court to issue directions.- The High Court may, by notification, issue directions to supplement the provisions of this Ordinance or the Code insofar as such provisions apply to the hearing of commercial disputes of a Specified Value under this Ordinance.

19. Overriding effect.- (1) The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Ordinance.

(2) No court other than a Commercial Court shall have or exercise jurisdiction with respect to any matter to which the jurisdiction of a Commercial Court extends under this Ordinance.

(3) Save as otherwise provided in this Ordinance, the provisions of the Limitation Act 1908 (IX of 1908) shall apply to all suits, execution petitions, and appeals instituted or filed under this Ordinance.

20. Finality of Order.- Subject to the provisions of section 21, no court including the Commercial Court shall revise or review or call, or permit to be called, into question any proceeding, judgment, decree, sentence or order of a Commercial Court or the legality or propriety of anything done or intended to be done by the Commercial Court in exercise of jurisdiction under this Ordinance:

Provided that the Commercial Court may, on its own accord or on application of any party, and with notice to the other party or, as the case may be, to both the parties, correct any clerical, arithmetical or typographical mistake in any judgment, decree, sentence or order passed by it.

21. Report.- (1) The Registrar shall prepare and present, after every six months, a report of the implementation of this Ordinance to the Committee constituted by the Chief Justice.

(2) The Committee shall consist of:

- (a) two judges of the High Court to be nominated by the Chief Justice;
- (b) Secretary to the Government, Law and Parliamentary Affairs Department or his nominee; and
- (c) Secretary to the Government, Planning and Development Board or his nominee; and

(d) Secretary to the Government, Industries, Commerce and Investment Department or his nominee.

(3) The Committee constituted under subsection (2) may from time to time propose amendments in this Ordinance to the Government.

22. Power to make rules.- The Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

23. Removal of difficulties.- If any difficulty arises in giving effect to any of the provisions of this Ordinance, the Government may, by notification in the official Gazette, make such provisions, not inconsistent with provisions of this Ordinance, as it thinks fit for removing such difficulty.