

Chapter 93.
Pawnbrokers Act 1951.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 93.

Pawnbrokers Act 1951.

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SCHEDULE 1

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Pawnbrokers Act 1951,

Being an Act relating to pawnbrokers.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**articles**” includes any goods or chattels;

“**licence**” means a licence under Section 4, to carry on the trade or business of a pawnbroker;

“**pawnbroker**” means a person who carries on the business of, or seeks his livelihood in or by, advancing—

(a) on interest; or

(b) for or in expectation of profit, gain or reward,

a sum of money on the security, whether collateral or otherwise, of an article taken by the person by way of pawn, pledge or security;

“**pawnbroker’s duplicate**” means a duplicate of an entry required by Section 12 to be given to a person pawning an article.

2. APPLICATION.

This Act does not apply to loans or advances made on any goods, chattels, livestock, wool, bonds, bills, title-deeds or other security by merchants, bankers, commission agents, brokers or licensed auctioneers in the ordinary and *bona fide* course of mercantile or banking transactions if the interest on the loans or advances does not exceed 10% per annum.

PART II. – LICENCES.

3. PAWNBROKING WITHOUT A LICENCE.

A person who carries on the trade or business of a pawnbroker without first obtaining a licence is guilty of an offence.

Penalty: A fine not exceeding K40.00.

4. OBTAINING LICENCE.

(1) A person wishing to obtain a licence may make application to the Clerk of a District Court for the province in which he intends to carry on the trade or business of a pawnbroker.

(2) An application–

(a) shall be in Form 1; and

(b) shall be accompanied by a certificate in Form 2 signed by five householders residing in the province.

(3) If it is satisfied as to the character of the person applying for a licence under Subsection (1), the Court may grant a licence in Form 3 to that person.

(4) An application for a licence shall be heard and determined in open court.

(5) The hearing of an application is a judicial inquiry.

(6) The fee for a licence is K40.00.

5. DURATION OF LICENCE.

Subject to this Act, a licence remains in force for one year from the date of grant.

6. RECORD OF LICENCES.

The Clerk shall keep an alphabetical record of all licences granted by the court.

7. SEPARATE LICENCES FOR EACH SHOP, ETC.

A separate licence shall be taken out and paid for each house, shop or other place which a person keeps for taking goods or chattels in pawn.

8. PARTNER'S LICENCE.

Persons in partnership and carrying on the trade or business of a pawnbroker in one house, shop or place only are not obliged to take out more than one licence in any one year for carrying on that trade or business.

PART III. – BUSINESS OF PAWNBROKING.

9. PAWNBROKER’S NAME, ETC., TO BE PAINTED ON PREMISES.

A licensee who fails to have constantly and permanently remaining, and plainly to be seen and read, over the door of each house, shop or place kept or used by him for carrying on the trade or business of a pawnbroker–

- (a) his name at length painted in legible characters at least 5 cm deep; and
- (b) the words “licensed pawnbroker”,

is guilty of an offence.

Penalty: A fine not exceeding K20.00.

10. PRODUCTION OF LICENCE.

(1) A licensee must, on demand at the licensed house, shop or place where the licence is exercised, produce his licence to–

- (a) a justice; or
- (b) an officer authorized in writing by a justice to demand the production of the licence.

(2) Unless he gives a reasonable excuse for the non-production of the licence to the satisfaction of the court, a licensee who fails to produce his licence when required to do so under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K20.00.

11. ENTRIES TO BE MADE ON TAKING PLEDGE.

(1) Before advancing any money on the article, a pawnbroker taking in pawn an article on which money is to be advanced must cause to be entered in a fair and legible manner in some book kept for the purpose–

- (a) a fair and reasonable description of the article; and
- (b) the sum of money advanced on the article, with the rate of interest to be charged by the week or month as the case may be; and
- (c) the date on which the article is pawned; and
- (d) the name of the party by or for whom the article is pawned and his place of residence according to the statement of the person pawning; and
- (e) where a longer time for redemption than three months is agreed on in accordance with Section 15, the time so agreed on.

(2) Before advancing any money, the pawnbroker must ask the person pawning, whether the entry required by Subsection (1)(d) is correct.

(3) Entries under Subsection (1) must be numbered consecutively, starting with the number “1”, throughout the year.

Penalty: A fine not exceeding K20.00.

12. DUPLICATE TO BE GIVEN.

(1) At the time of taking an article in pawn, a pawnbroker must give the person pawning the article a duplicate, in accordance with Subsection (2), of the entry relating to that article.

Penalty: a fine not exceeding K20.00.

(2) The duplicate must—

- (a) be fairly and legibly written or partly written and partly printed and signed by the pawnbroker; and
- (b) contain all particulars inserted in the original entry; and
- (c) correspond with the original entry in number; and
- (d) be given free of charge.

Penalty: A fine not exceeding K20.00.

(3) A pawnbroker must not receive or retain a pledge unless, at the time, a pawnbroker's duplicate is accepted by the person pawning.

Penalty: A fine not exceeding K40.00.

(4) A pawnbroker's duplicate shall be produced to the pawnbroker before he is obliged to deliver the articles, or any of them, mentioned in the duplicate.

13. LOST OR STOLEN DUPLICATE.

Where—

- (a) a pawnbroker's duplicate is lost, or is mislaid by, or fraudulently taken or obtained from, the owner of the duplicate; and
- (b) the articles mentioned in the duplicate remain unredeemed; and
- (c) the person representing himself to be the owner produces and leaves with the pawnbroker who gave the duplicate a statutory declaration setting out the circumstances of the loss or otherwise satisfactorily accounting for the non-production of the duplicate,

the pawnbroker must, at the request of the person, give a copy of the pawnbroker's duplicate to him.

Penalty: A fine not exceeding K40.00.

14. HOLDERS OF DUPLICATES DEEMED OWNERS OF GOODS PAWNED.

(1) A person who produces a pawnbroker's duplicate to the pawnbroker who gave it and requires delivery of the articles specified in the duplicate, claiming to be the owner or representing himself to be authorized by the owner of the articles, shall

be deemed to be the owner, or to be so authorized, and is entitled to redeem the articles unless—

- (a) the pawnbroker has notice from the real owner that the pawnbroker's duplicate was lost or was fraudulently taken or obtained from him; or
- (b) the pawnbroker has been informed by some credible person that the articles were stolen.

(2) Where a pawnbroker refuses to deliver the articles to the person producing a pawnbroker's duplicate he must immediately give—

- (a) information of the refusal and the particular grounds for the refusal; and
- (b) a description of the person or if known to the pawnbroker the person's name and place of residence,

to a justice or to an officer.

Penalty: A fine not exceeding K40.00.

15. PERIOD FOR SALE OF PLEDGES.

(1) The period during which an article taken in pawn may be redeemed is three months, or such longer period as is expressly agreed, at the expiration of which period the article shall be deemed to be forfeited.

(2) An agreement for the forfeiture of an article before the expiration of six months is void.

16. SELLING BEFORE EXPIRATION OF PRESCRIBED PERIOD.

(1) A pawnbroker who—

- (a) sells or otherwise disposes of a pawned article; or
- (b) causes or knowingly permits a pawned article to be sold or disposed of,

before the expiration of the period of three months or such longer period as is agreed on in accordance with Section 15, is guilty of an offence.

Penalty: A fine not exceeding K40.00.

(2) A penalty under Subsection (1) is in addition to any damages for which the pawnbroker is liable to the owner or person injured.

17. MODE OF SALE.

(1) All forfeited articles on which more than 50 t has been lent must be sold by public auction.

(2) A notice of every sale under Subsection (1) containing—

- (a) a catalogue of all articles to be sold; and
- (b) the time when the individual articles were taken in pawn,

must be twice inserted in a newspaper published in the country at least four days before the proposed day of sale.

(3) A pawnbroker who contravenes this section shall forfeit a sum not exceeding K40.00 to the owner of any article sold contrary to this section.

18. PAWNBROKER NOT TO PURCHASE.

A purchase or pretended purchase by a pawnbroker, or a person on his behalf, of an article pawned with him is not valid as against the owner.

19. APPLICATION OF PROCEEDS OF SALE.

Where a pawned article is sold for more than the full amount of the principal and interest that was due at the time of the sale, the surplus, after deducting the necessary charges of the sale, must, if claimed within 12 months after the sale, be paid on demand by the pawnbroker to—

- (a) the person by or for whom the article was pawned; or
- (b) the agent or assign of the person; or
- (c) in the case of death to the executor or administrator of the person.

Penalty: A fine not exceeding K20.00.

20. ENTRY OF ALL ARTICLES SOLD.

A pawnbroker must, from time to time, enter in a book to be kept by him for that purpose a true and just account of the sale of every pawned article that is sold or otherwise disposed of by him, specifying—

- (a) the date when the article was pawned; and
- (b) the true number of the entry made in respect of the article; and
- (c) the name of the person who pawned the article; and
- (d) the day when, and the amount for which, the article was sold.

Penalty: A fine not exceeding K20.00.

21. INSPECTION OF ENTRIES.

(1) Where a pawned article is sold or otherwise disposed of, a person by or for whom the article was pawned shall be permitted to inspect the entry of the sale.

(2) A pawnbroker or a person employed by a pawnbroker who refuses—

- (a) to permit a person who produces the pawnbroker's duplicate relating to the articles respecting which an inspection is required under Subsection (1) to inspect the entry; or

- (b) to produce the book containing the entry,

is guilty of an offence.

Penalty: A fine not exceeding K10.00.

22. PLEDGES FROM CHILDREN OR DRUNKEN PERSONS.

A pawnbroker, or an agent or servant of a pawnbroker, who purchases, receives or takes in pawn an article from a person apparently—

- (a) under the age of 14 years; or
- (b) intoxicated with liquor,

is guilty of an offence.

Penalty: A fine not exceeding K20.00.

23. ADVANCE, ETC., OF THING OTHER THAN MONEY.

Where the value of the article or the amount agreed to be advanced on the article does not exceed K20.00, a pawnbroker, or an agent or servant of a pawnbroker, who—

- (a) advances on an article pawned or offered in pawn anything but money; or
- (b) gives, sells or exchanges in respect of an article pawned or offered in pawn any goods or property instead of or in return for, money,

is guilty of an offence.

Penalty: A fine not exceeding K20.00.

24. HOURS FOR TAKING PLEDGES.

A pawnbroker who receives or takes in, or permits to be received or taken in, any goods by way of pawn or in exchange before 8 a.m. or after 8 p.m. is guilty of an offence.

Penalty: A fine not exceeding K20.00.

25. BUSINESS NOT TO BE DONE ON CERTAIN DAYS.

A pawnbroker who exercises or carries on his trade or business as pawnbroker on a Sunday, Christmas Day or Good Friday is guilty of an offence.

Penalty: A fine not exceeding K20.00.

26. UNLICENSED PERSONS KEEPING UP SIGNS, ETC.

A person other than a licensee who keeps up any sign, writing, painting or other mark on or near to his house, shop or premises that implies or gives reasonable cause to believe that the shop, house or premises is or are the house, shop or premises of a licensed pawnbroker is guilty of an offence.

Penalty: A fine not exceeding K20.00.

27. LENDING LICENCE.

(1) A licensee who lends the licence to another person for the purpose of the latter's carrying on business as a pawnbroker under colour of the licence is guilty of an offence.

Penalty: A fine not exceeding K50.00.

(2) Where a person is convicted of an offence against this section, the court that convicts him may declare the licence void.

(3) A person convicted of an offence against this section whose licence has been declared void shall not be granted a licence during the period of two years from the date of the conviction.

PART IV. – MISCELLANEOUS.**28. RECORD EVIDENCE.**

In any legal proceedings against a person alleged to be a pawnbroker the record kept under Section 6 is evidence—

- (a) of the personal identity of the person named in the record; and
- (b) that the person is a licensee.

29. PRESUMPTION THAT PAWNBROKER UNLICENSED.

In any proceedings under this Act against a person carrying on the trade or business of a pawnbroker without a licence the person shall, for all purposes connected with the proceedings, be deemed to be unlicensed unless he produces to the court—

- (a) the licence authorizing him to carry on the trade or business; or
- (b) other satisfactory proof of his holding a licence.

30. PAWNBROKER MAY BE COMPELLED TO PRODUCE BOOKS, ETC.

(1) Where in the course of any legal proceedings under this Act or otherwise it appears to the court to be material or proper to require the production of any book, note, voucher, entry, memorandum, licence or other paper that—

- (a) is required to be kept by this Act; or
- (b) ought to be in the custody of a pawnbroker,

the court may summon the pawnbroker to attend before it and produce the book, note, voucher, entry, memorandum, licence or other paper.

(2) A pawnbroker summoned under Subsection (1) who, without reasonable excuse—

- (a) does not—
 - (i) attend before the court; or
 - (ii) produce to the court any book, note, voucher, entry, memorandum, licence or other paper,

as required under the summons; or

- (b) produces the book, note, voucher, entry, memorandum, licence or other paper in an altered state,

is guilty of an offence.

Penalty: A fine not exceeding K20.00.

31. STOLEN ARTICLES.

- (1) Where an article—

- (a) is stolen or unlawfully obtained from a person; or
- (b) having been lawfully obtained is unlawfully deposited, pawned, pledged, sold or exchanged,

a District Court, on complaint being made to it that the article is in the possession of a pawnbroker, may issue a summons or warrant for—

- (c) the appearance of the pawnbroker before the Court; and
- (d) the production of the article.

(2) Where a pawnbroker is summoned under Subsection (1), the Court may order the article produced to be given to the owner—

- (a) without any payment; or
- (b) on payment of such sum and at such time as the Court considers fit.

(3) An order made under Subsection (2) does not prevent a licensed pawnbroker from recovering, by suit or action at law, possession of the article from the person into whose possession it comes by virtue of the order of the Court if the action is commenced within three months after the order is made.

(4) A pawnbroker who—

- (a) refuses to deliver an article in accordance with an order under Subsection (2); or
- (b) disposes of or makes away with an article, the subject of Subsection (2), after notice that it was stolen or unlawfully obtained,

shall forfeit, to the owner of the article, the full value of the article as determined by the Court.

32. COURT MAY ORDER DELIVERY OF PAWNED GOODS.

A District Court may order an article unlawfully pawned, pledged, or exchanged which is brought before it and the ownership of which is established to the satisfaction of the Court, to be given to the owner by the person with whom they were unlawfully pawned, pledged or exchanged—

- (a) without compensation; or
- (b) with such compensation to the party in question as the Court considers fit.

33. PROCEEDINGS WITHOUT WRITTEN INFORMATION.

On the hearing of the matter of a complaint under this Act—

- (a) the court may proceed although no information was laid or made before the court; and
- (b) all proceedings by summons without information are as valid and effectual as if a written information had been laid or made.

SCHEDULE 1

PAPUA NEW GUINEA.

Pawnbrokers Act 1951.

Form 1 – Form of Application for a Pawnbroker’s Licence..

Sec. 4(1) and (2)(a). Form 1.

To the Clerk of the District Court at

I, . . . , (*insert trade or occupation*), . . . of . . . give notice that it is my intention to apply to the District Court to be held at . . . on . . . 20 . . . for a licence to carry on the trade or business of a pawnbroker in the house, shop or place at (*describe the house, shop or place proposed to be licensed, specifying the situation of it, the person from whom rented, the present occupier and whether now licensed*), which I intend to keep as a pawnbroker’s shop.

Dated . . . 20

(*Signature of Applicant.*)

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Form 2 – Form of Householder’s Certificate to be Appended to Form 1..

We, the undersigned, householders residing in the Province of . . . certify that . . . is a person of good fame and reputation and fit and proper to be licensed to carry on the trade or business of a pawnbroker.

Dated . . . 20

(*Signatures of Householders.*)

PAPUA NEW GUINEA.

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Form 3 – Pawnbroker’s Licence..

District Court of

WHEREAS . . . of . . . has applied to the District Court held at . . . on . . . 20 . . . for a licence to carry on the business of a pawnbroker in the house and premises (or as the case may be) now occupied by him situated at

Now this Court having inquired into the character of and being satisfied that he is a fit person to have the licence granted to him authorizes him to carry on the trade or business of a pawnbroker in the house and premises (or as the case may be).

This licence continues in force for the period of 12 months from this date.

Dated . . . 20...

(*Signature.*)

Office of Legislative Counsel, PNG