



MARKETING OF PETROLEUM PRODUCTS (FEDERAL CONTROL) (REPEAL) ORDINANCE, 2002

ORDINANCE LXXXIX OF 2002

[26-10-2002]

*An Ordinance to repeal the Marketing of Petroleum Product
(Federal Control) Act 1974*

WHEREAS it is expedient to repeal the Marketing of Petroleum Products (Federal Control) Act, 1974 (XVII of 1974), and to provide for matters connected therewith or incidental thereto:

AND WHEREAS development of the oil marketing sector under Federal Government control is no longer viewed as necessary in the public interest and circumstances render it more favourable for development to be undertaken by the private sector;

AND WHEREAS Pakistan State Oil Company Limited is the only oil marketing; company in respect of which an Order has been issued under the aforesaid Act and to which that Act currently applies;

AND WHEREAS the Federal Government is in the process of deregulating the downstream oil sector and in encouraging private investment in this sector as well as privatising certain of its own interests in the downstream oil sector ncluding by way of divestment of its shares in Pakistan State Oil Company Limited.

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the Fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No.9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:

1. Short title, extent and commencement.—(1) This Ordinance may be called the Marketing of Petroleum Products (Federal Control) (Repeal) Ordinance, 2002. (2) It extends to the whole of Pakistan.

(3) It shall come into force at once except sections 3 to 7 which shall come into force upon the occurrence of the effective date.

2. Definitions.—In this Ordinance, unless there is anything repugnant in the subject or context,-

(a) "Act" means the Marketing of Petroleum Products (Federal Control) Act, 1974 (XVII of 1974);

- (b) "Board" means the Board of Management or the Board of Directors, as the case may be:
- (c) "Board of Directors" means the Board of PSO reconstituted as a board of directors pursuant to section 4 of this Ordinance;
- (d) "Board of Management" means a Board of Management set up under section 7 of the Act;
- (e) "Chief Executive" has the same meaning as in the Companies Ordinance;
- (f) "Companies Ordinance" means the Companies Ordinance, 1984 (XLVII of 1984);
- (g) "Director" has the same meaning as in the Companies Ordinance;
- (h) "effective date" means the date as may be appointed by the Federal Government in the Official Gazette for the purposes of subsection (2) of section 3:
- (i) "marketing company" has the same meaning as in the Act;
- (j) "Order" means the order issued pursuant to section 5 of the Act for the take over of the management of PSO contained in statutory notification S. R. O. No. 100 (I)/77 dated 31st January, 1977;
- (k) "PSO" means the Pakistan State Oil Company Limited:
- (l) "Managing Director" means the person appointed to act as Managing Director of PSO by the Federal Government pursuant to the Act;
- (m) "Monopolies Ordinance" means the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (VI of 1970); and
- (n) "Privatisation" has the same meaning as in the Privatisation Commission Ordinance, 2000 (LII of 2000)

3. Repeal and rescission.—(1) The Act shall stand repealed on the occurrence of the effective date and the Order shall stand rescinded concurrently therewith.

(2) For the purposes of this Ordinance, the effective date shall be the date of transfer of all the shares in PSO as are owned by the Federal Government to one or more private sector investors pursuant to a "privatisation" effected under and pursuant to the Privatisation Commission Ordinance, 2000 (XLII of 2000) and any rules made (sic).

Explanation—For the purposes of this section the expression "transfer" means the registration of the transfer of the shares as contemplated above in the register of members of the PSO.

4. Consequences of repeal on PSO.— Immediately upon the repeal of the Act on the effective date and notwithstanding anything contained in any other law for the time being in force—

- (a) the Board of Management of PSO shall be immediately and automatically reconstituted as a Board of Directors with the same number of directors (including the chief executive) who shall all be deemed to have been elected as directors of PSO under and pursuant to the terms of section 178 of the Companies Ordinance and PSO's own Articles of Association and to have fulfilled all requisite procedural and notification requirements:

Provided that the term of office of such reconstituted Board shall be only until an election of directors is held as provided in section 6:

Provided further that there shall be no need for the directors on the reconstituted Board of Directors to file consents under section 184 of the Companies Ordinance to act as directors of PSO until fifteen days after the Board has been reconstituted or their appointment takes effect:

Provided also that in case of any conflict between the Articles of Association of PSO and this Ordinance, the provisions of this Ordinance shall prevail.

- (b) PSO shall cease to be a "managed company" under the Act and all powers of the Federal Government under the Act shall cease including any power to manage PSO or to appoint any Managing Director or other chief executive officer for PSO. The Managing Director and other members of any Board of Management (including the Chairman of the Board of Management) shall nevertheless continue in office as directors of the Board of Directors (and as Chairman and chief executive of the Board of Directors) until and unless their respective terms of office expire or they (or any of them) earlier resign or become disqualified from being a director under the Companies Ordinance or otherwise cease to hold office;
- (c) neither the business of PSO as carried on at the effective date nor any situation existing or prevailing in regard to PSO at the effective date shall be treated as constituting unreasonable monopoly power under the Monopolies Ordinance and no relationship, acquisition or merger or action taken immediately and directly consequent to the transfer (as defined in section 3(2) of shares in PSO and PSO ceasing to be subject to the Order or the control of the Federal Government under the Act shall be deemed or treated as bringing about, maintaining or continuing unreasonable monopoly power as described in section 5 of the Monopolies Ordinance or as authorising the Monopoly Control Authority constituted under the Monopolies Ordinance as having power to take any action against PSO or any investor acquiring shares in PSO on the basis that the business of PSO as carried on at the effective date or situation existing or prevailing at the effective date any relationship, acquisition or merger having the effect of creating, bringing about or maintaining any unreasonable monopoly power.

5. Application of Companies Ordinance.—(1) As and from the effective date PSO and the management of PSO shall be governed under the Companies Ordinance and its own memorandum and articles of association without reference to the Act or the Order

(2) Upon reconstitution of the Board of Management as a Board of Directors, the provisions of the Companies Ordinance shall apply to the directors of the reconstituted Board except that notwithstanding the provisions of section 180 of the Companies Ordinance the term of office of the directors of the Board of Directors shall be until an election of directors is held as provided in section 6. As and from the first election of directors of PSO pursuant to section 6, the term of the directors shall be as stipulated in the Companies Ordinance read with PSO's own Memorandum and Articles of Association.

(3) Nothing in this Ordinance, shall limit the ability of the chief executive or any director on the Board of Directors from resigning at any time after the effective date. For avoidance of doubt, any vacancy in the office of chief executive and any casual vacancy occurring among the directors may be filled by the remaining directors and the person so appointed shall hold office for the remainder of the term of the person in whose place he has been appointed.

6. Holding of elections—An election of directors shall be held by PSO within such period not exceeding twelve months as may be practicable after the effective date;

Provided that in exceptional circumstances the Federal Government may extend the time within which elections are to be held by such period not exceeding twelve months as the federal Government thinks appropriate in the circumstances.

7. Savings—(1) Any reconstituted Board of Directors (including the individual directors) shall not, be liable for any prosecution or penalties in respect of the acts or inaction of its predecessor Board of Management.

(2) Notwithstanding the provisions of subsection (1), the repeal of the Act shall not affect any contract or agreement properly made authorised and entered into by PSO during the time it was subject to the Order or the control of the Federal Government under the Act or of its impact on the terms and conditions of employment of employees of PSO. The PSO shall be bound to honour all commitments made prior to the effective date in the same manner as if made subsequent to the effectiveness of the repeal.

(3) No suit, prosecution or other legal proceedings shall lie against any member of a Board of Management for anything done or intended to be done pursuant to the Act or Order.