



THE PRIVATISATION COMMISSION ORDINANCE, 2000



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THE PRIVATISATION COMMISSION ORDINANCE, 2000

ORDINANCE No. LII OF 2000

[28th September, 2000]

An Ordinance to provide for the establishment of the Privatisation Commission

WHEREAS it is expedient to provide for the establishment of the Privatisation Commission for implementing the privatisation policy of the Federal Government and to provide for matters connected therewith or incidental thereto;

WHEREAS the Federal Government is carrying out a programme of privatisation;

WHEREAS it is expedient to provide for a fair and transparent process of privatisation to secure transactions resulting therefrom;

WHEREAS it is expedient to provide for the utilization of the proceeds of privatisation for the retirement of Federal Government debt and for poverty alleviation.

WHEREAS it is expedient to provide for an expeditious mechanism to resolve all disputes relating to privatisation;

WHEREAS the National Assembly and the Senate stand suspended in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999;

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

NOW, THEREFORE, in pursuance of the aforesaid Proclamation of the fourteenth day of October, 1999, and Provisional Constitution Order No. 1 of 1999, as well as 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:—

PART I.—GENERAL

1. Short title, extent and commencement.—(1) This Ordinance may be called the Privatisation Commission Ordinance, 2000.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

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

(a) “Board” means the Board of the Commission;

(b) “Cabinet” means the Cabinet of the Federal Government, and where authorized, includes the Cabinet Committee on Privatisation (CCOP) as constituted by the Cabinet from time to time;

- (c) “Chairman” means Chairman of the Commission;
- (d) “Commission” means the Privatisation Commission established under section 3;
- (e) “Commission Account” means the Commission Account established under section 14;
- (f) “member” means a member of the Board;
- (g) “person” includes an individual, partnership, trust, company or association or of body corporate or body of individuals, whether or not having separate legal personality, other than the Federal Government or any enterprise owned or controlled by the Federal Government;
- (h) “prescribed” means prescribed by rules made under this Ordinance;
- (i) “privatization” includes a transaction by virtue of which any property, right, interest, concession or management thereof is transferred to any person from the Federal Government or any enterprise owned or controlled, wholly or partially, directly or indirectly, by the Federal Government;
- (j) “Privatisation Fund” means the Privatisation Fund established under section 16;
- (k) “privatisation proceeds” means the proceeds of privatisation received by the Commission;
- (l) “property” includes any right, title or interest in property, moveable or immovable and in whole or in part, and any means and instruments of production owned or controlled directly or indirectly by the Federal Government or any enterprise owned or controlled by the Federal Government whether in or outside Pakistan;
- (m) “regulations” means the regulations made under section 41 of this Ordinance;
- (n) “regulatory authority” means the Pakistan Telecommunication Authority established under the Pakistan Telecommunication (Re-Organisation) Act, 1996, (Act XVII of 1996), the National Electric Power Regulatory Authority established under the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (Act XL of 1997), the Natural Gas Regulatory Authority established under the Natural Gas Regulatory Authority Ordinance, 2000 (Ordinance I of 2000), and such other authority as may be established under any law;
- (o) “rules” means the rules made under section 40 of this Ordinance;
- (p) “Secretary” means the Secretary of the Commission; and
- (q) “staff” means the staff of the Commission and includes a deputationist and a contract employee.

PART II.—PRIVATISATION COMMISSION

3. Establishment of the Commission.—(1) The Privatisation Commission is hereby established for carrying out the purposes of this Ordinance. The Privatisation Commission shall be a body corporate having perpetual succession and a common seal, with power, subject to the provisions of this Ordinance, to enter into agreements, contracts, acquire and hold property, both moveable and immovable, and to sue and be sued in its name.

(2) The Federal Government's Notification No. F. 5(1) Adm-I/91 dated 22nd January, 1991 and other related notifications issued from time to time establishing and reconstituting the Privatisation Commission (hereinafter referred to as the "existing Commission") are hereby rescinded and the existing Commission shall stand dissolved on the commencement of this Ordinance.

(3) Upon the commencement of this Ordinance, the dissolution of the existing Commission and establishment of the Commission under this Ordinance:

- (a) all assets, rights, powers, authorities and privileges, and all property, moveable and immovable, cash and bank balances, reserve funds investment and all other interests and rights in, or arising out of, such property and all debts, liabilities and obligations of whatever kind of the existing Commission subsisting immediately before the dissolution shall stand transferred to and vest in the Commission;
- (b) Notwithstanding anything contained in this Ordinance or any other law for the time being in force or in any agreement, deed, document or other instrument:
 - (i) the Chairman of the existing Commission referred to in sub-section (2) shall continue to be the Chairman of the Commission and the Board unless and until a Chairman is appointed under section 7;
 - (ii) the Secretary of the existing Commission referred to in sub-section (2) shall continue to be the Secretary of the Commission and the Board unless and until a Secretary is appointed under section 7;
 - (iii) a member of the existing Commission referred to in sub-section (2) shall continue to be a member of the Board unless and until such member is appointed under section 7;
 - (iv) all officers, consultants, advisers, auditors and other employees and staff of the existing Commission shall stand transferred and be officers, consultants, advisers, auditors and employees and staff of the Commission;
- (c) the Chairman, Secretary, members and other persons mentioned in clause (b) above shall be deemed to have been appointed or engaged by the Commission in accordance with the same terms and conditions of service as were applicable to them, immediately before such continuance in office or transfer under this Ordinance and no Chairman, Secretary, member, officer, consultant, adviser, auditor or other employee or staff whose services are so continued or transferred shall be entitled to any compensation because of such continuance or transfer:

Provided that the civil servants appointed to or working in the existing Commission shall upon their transfer to the Commission continue to be governed by the Civil Servants Act, 1973 (Act LXXI of 1973) and rules made thereunder;

Provided further that such civil servants may subject to their option be considered for absorption in the Commission in accordance with the regulations, the Civil Servants Act, 1973 (Act LXXI of 1973) and rules made thereunder;

- (d) the budget provision for the existing Commission shall stand transferred to the Commission Account upon authorization by the Federal Government;
- (e) the balance amount of Privatisation Fund account of the existing Commission shall stand transferred to the Privatisation Fund;
- (f) all debts and obligations incurred or contracts entered into or rights acquired and all matters and things engaged to be done by, with or for the existing Commission before its dissolution shall be deemed to have been incurred, entered into, acquired or engaged to be done by, with or for the Commission;
- (g) all suits and other legal proceedings instituted by or against the existing Commission before its dissolution shall be deemed to be suits and proceedings by or against the Commission and shall be proceeded or otherwise dealt with accordingly; and
- (h) a reference to the existing Commission in any statutory instrument or document shall, unless the context otherwise requires, be read and construed as reference to the Commission.

(4) All rules, regulations, notifications, orders or instructions in force immediately before the commencement of this Ordinance, shall, so far as they are not inconsistent with any of the provisions of this Ordinance, continue to be in force until repealed or altered by rules or regulations made under this Ordinance.

4. Location of Office.— The principal office of the Commission shall be at Islamabad. The Commission may establish regional offices at such other place or places in Pakistan as it considers necessary.

5. Functions and Powers of the Commission.— The Commission shall:

- (a) recommend privatisation policy guidelines to the Cabinet;
- (b) prepare for the approval of the Cabinet, a comprehensive privatisation programme;
- (c) plan, manage, implement and control the privatisation programme approved by the Cabinet;
- (d) prepare and submit reports to the Cabinet on all aspects of the privatisation programme;

- (e) facilitate or initiate legislation as approved by the Cabinet by or on behalf of concerned Ministry in connection with the privatisation programme;
- (f) provide overall directions for the implementation of privatisation related activities including restructuring, deregulation and post- privatisation matters in sectors designated by the Cabinet;
- (g) take operational decisions on matters pertaining to privatisation, restructuring, deregulation, regulatory issues including approval of licensing and tariff rules and other related issues pertaining to the privatisation programme approved by the Cabinet;
- (h) issue directions and instructions to the management of a business undertaking falling within the purview of the privatisation programme approved by the Cabinet on all major important administrative, financial, reporting and policy matters;
- (i) publicize the activities of the privatisation programme;
- (j) propose a regulatory framework, including the establishment and strengthening of regulatory authorities, to the Cabinet for independent and fair regulation of each industry sector falling within the purview of the privatisation programme;
- (k) advise the Federal Government in selection and appointment of the head and a member of a regulatory authority;
- (l) advise the Federal Government that monopolies are not created in the process of privatisation;
- (m) appoint advisors, consultants, valuers, lawyers and such other staff, both local and foreign, on such terms as it may determine to discharge its functions under this Ordinance;
- (n) approve and take decisions and perform all acts to implement pre-privatisation restructuring, labour rehabilitation and severance schemes, and all other related matters as approved by the Cabinet;
- (o) invite applications for the privatisation and ensure widest possible participation;
- (p) evaluate bids received according to criteria determined by the Commission from time to time and formulate recommendations for consideration by the Cabinet;
- (q) recommend to the Federal Government such labour and manpower rehabilitation programmes as may be necessary during privatisation and to develop a roster of such employees who may need rehabilitation;
- (r) advise measures to the Federal Government for improvement of public sector units till their privatisation;

- (s) assist in the implementation of Federal Government policies on deregulation and privatisation and advise the Federal Government on deregulating the economy to the maximum possible extent; and
- (t) perform such other functions that are incidental or ancillary to carry out the privatisation programme approved by the Cabinet.

PART III.—MANAGEMENT AND ADMINISTRATION

6. Board of the Commission.—(1) The general management and administration of the affairs of the Commission shall vest in the Board. The Board shall consist of the Chairman, the Secretary and six other members, or such other higher number as may be determined by the Federal Government.

(2) The Chairman of the Commission shall also be the Chairman of the Board.

(3) The Secretary of the Commission shall also be the Secretary of the Board.

(4) No act or proceeding of the Board shall be invalid by reason only of the existence of a vacancy in, or defect in, the constitution of the Board.

7. Chairman, Secretary and members.—¹[(1) The Prime Minister of Pakistan shall appoint the Chairman, Secretary and members.]

(2) The Chairman shall be responsible for the day to day administration of the affairs of the Commission.

(3) The Chairman shall be an eminent professional of known integrity and competence with qualifications or experience in privatisation or any related field, including business, management, finance, or law. The Secretary and other members shall be professionals of known integrity and competence with qualifications or experience in privatisation or any related field, including business, management, finance, or law.

(4) The Chairman and Secretary shall be paid such remuneration and allowances and shall be entitled to such privileges and facilities as the Federal Government may determine, which shall not be varied to their disadvantage during their term of office. The members shall be entitled to such privileges and facilities as the Federal Government may determine.

(5) The Chairman, Secretary and other members shall, unless they resign or are removed from office earlier by the Federal Government, hold office for such period as may be determined by the Federal Government.

(6) No person shall be appointed or continue as a Chairman, Secretary or member if he—

- (a) has been convicted of an offence involving moral turpitude or has been found guilty of misconduct;
- (b) has been or is adjudged insolvent;
- (c) is incapable of discharging his duties by reasons of physical or mental

¹Subs. by the Privatization Commission (Amendment) Act, 2021 (XLV of 2021), s. 2.

unfitness and has been so declared by a Special Medical Board appointed by the ¹[Prime Minister of Pakistan]; or

- (d) fails to disclose any conflict of interest at or within the time provided for such disclosure by or under this Ordinance or contravenes any of the provisions of this Ordinance pertaining to unauthorized disclosure of information.

(7) The Chairman, Secretary or a member may at any time resign his office by a written notice addressed to the ¹[Prime Minister of Pakistan]. The office of the Chairman, Secretary or a member shall become vacant upon the death or resignation of the Chairman, Secretary or a member. A vacancy caused by resignation or any other reason shall be filled by the appointment of a person qualified to fill such vacancy.

(8) The Chairman shall not, during his term of office, engage himself in any other service, business, vocation or employment in respect of or relating to privatisation activity and before the expiration of two years thereof enter into the employment of, or accept any advisory or consultancy relationship with, any person engaged in any privatisation.

(9) The Chairman, Secretary or a member shall not have any direct or indirect financial interest, or have any connection with any person engaged in privatisation for so long as he holds office and for a period of two years thereafter.

(10) The Secretary of the Commission shall exercise all the powers of a Secretary to the Federal Government.

8. Meetings of the Board.—(1) Save as hereinafter provided, the Board shall regulate the procedure for its meetings.

(2) The meetings of the Board shall be presided over by the Chairman. In the absence of the Chairman, the members present in the meeting may select a Chairman for that meeting.

(3) At least one third of the members shall constitute a quorum for meetings of the Board requiring a decision by the Board.

(4) The meeting of the Board shall be held at such time and place as the Chairman or a majority of members may from time to time determine. Members shall have reasonable notice of the time and place of the meeting and the matters on which a decision by the Board shall be taken in such meeting.

(5) Decisions of the Board shall be taken by the majority of its members present, and in case of a tie, the person presiding the meeting shall have a casting vote.

(6) The Board shall cause minutes to be kept of proceedings of every meeting of the Board and of every meeting of a committee established by the Board. Decisions of the Board shall be recorded in writing and signed by the Chairman.

9. Delegation.—(1) The Board may constitute committees of its members to entrust them with such functions and powers as it may deem fit. The Board or any of its committees may invite any technical expert or other person possessing specialized knowledge of any subject or representative of a government institution for assistance in the performance of its functions.

¹Subs. by the Privatization Commission (Amendment) Act, 2021 (XLV of 2021), s. 2.

(2) The Board may, subject to such conditions and limitations as it may deem fit to impose, delegate any of its functions or powers to the Chairman, or Secretary or one or more members of the Board or any officer of the Commission, except—

- (a) the power to approve the audited accounts; and
- (b) the power to make or repeal regulations made under this Ordinance.

(3) A delegation under this section shall not prevent the concurrent performance or exercise by the Board of the functions or powers so delegated.

10. Employees of the Commission.—(1) To carry out the purposes of this Ordinance, the Commission may, from time to time, employ persons to be employees of the Commission who shall be paid such remuneration and allowances and shall hold their employment on such terms and conditions as may be determined by the Commission.

(2) The employees of the Commission shall hold office during the pleasure of the Commission and shall be liable to disciplinary action in accordance with the regulations made by the Commission:

Provided that the civil servants appointed to the Commission shall be governed by the Civil Servants Act, 1973 (Act LXXI of 1973) and rules made thereunder unless absorbed in the Commission.

11. Employment of agents, advisers and consultants.—(1) Subject to sub-section (2), the Commission may, employ any technical, professional and other agents, advisers, and consultants including, bankers, engineers, valuers, accountants, lawyers and other persons to transact any business or to do any act required to be transacted or done in the exercise of its powers, the performance of its functions or for the better implementation of the purposes of this Ordinance.

(2) The decision to employ and the terms of employment of agents, advisers, and consultants shall be made by the Commission in accordance with such policy guidelines as the Commission may lay down from time to time.

12. Public Servants.— The Chairman, Secretary, members, officers, employees and other persons authorized to perform or exercise any function or power under this Ordinance or rendering services to the Commission as agents, advisers or consultants shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

13. Disclosure of interest.—(1) Where a person is present at a meeting of the Board or committee of the Board and that person or his family or his professional or business partner or associate has direct or indirect interest in the subject of consideration in that meeting, that person shall—

- (a) forthwith disclose such an interest; and
- (b) not take part in any consideration on that matter unless the Board or the committee thereof otherwise directs.

(2) Where a member of the Commission, staff or other employee of the Commission, including an adviser, consultant or his family has a direct or indirect interest in any matter relating to Privatisation such person shall forthwith disclose that interest to the Commission and the Commission shall have the right to take such action as it considers appropriate.

PART IV.—FINANCIAL PROVISIONS

14. Funds of the Commission.—(1) There is hereby established, for the purposes of this Ordinance, a Commission Account to be administered and controlled by the Commission. The operations of the Commission shall be funded from the Commission Account. The funds of the Commission shall consist of—

- (a) grants from the Federal Government;
- (b) supplementary contributions from the Privatisation Fund;
- (c) income from investments;
- (d) fees and charges;
- (e) grants of money and sums borrowed or raised by the Commission for the purposes of meeting any of its obligations or discharging any of its duties; and
- (f) all other sums or property which may in any manner become payable to or vested in the Commission in respect of any matter incidental to the exercise of its functions and powers.

(2) The Commission shall in respect of each financial year prepare its budget and submit it to the Federal Government for approval, in the form and manner as may be prescribed.

(3) It shall be the duty of the Commission to conserve the Commission Account and the Privatisation Fund while performing its functions and exercising its powers under this Ordinance.

15. Expenditure to be charged on the Commission Account.— The Commission Account shall be expended for the purpose of—

- (a) paying any expenditure lawfully incurred by the Commission, including the remuneration and allowances of the Chairman, members, staff, employees, advisers, and consultants, accountants, lawyers, valuers and other experts appointed and employed by the Commission, including provident fund contributions, superannuating allowances or gratuities and legal fees and costs and other fees and costs, if any;
- (b) paying for expenditure incurred on:—
 - (i) public offering and placement of shares;
 - (ii) marketing and publicity;
 - (iii) seminars and conferences;
 - (iv) labour rehabilitation and severance schemes; and
 - (v) restructuring.

- (c) purchasing or hiring equipment, machinery and any other materials, acquiring land and erecting buildings, and carrying out any other work and undertakings in the performance of its functions or the exercise of its powers under this Ordinance;
- (d) repaying any financial accommodation received or moneys borrowed under this Ordinance and the profit, mark-up or return due thereon; and
- (e) paying any other expenses, costs or expenditure properly incurred or accepted by the Commission in the performance of its functions or the exercise of its powers under this Ordinance-

Provided that all the above expenditures shall be met from other resources before utilization of supplementary contributions from the Privatisation Fund.

16. Privatisation Fund.—(1) The Commission shall establish and maintain a distinct and separate Privatisation Fund in which all privatisation proceeds shall be deposited. The Commission shall, out of the moneys so deposited, withdraw and contribute to the Commission's Account such amount or amounts as may be needed by it from time to time but only to supplement the other resources therein if and to the extent necessary. The remaining privatisation proceeds shall be kept in trust for and distributed to the Federal Government or the enterprise owned or controlled by the Federal Government entitled to such proceeds ¹ [:]

²[Provided that the Commission may, if so required by the Federal Government, withhold a specified amount out of the privatisation proceeds, of Government of Pakistan's shares in the oil and gas fields specified in the Schedule to this Ordinance:

Provided further that the amount withheld under the foregoing proviso shall be paid to the Federal Government and shall not exceed the sum equivalent to such proceeds as may be necessary to compensate the Federal Government for the investments made by it in such oil and gas fields.]

(2) The privatisation proceeds distributed to the Federal Government pursuant to sub-section (1), shall be utilized by the Federal Government as follows:

- (a) ten percent shall be used for poverty alleviation programmes; and
- (b) the remaining ninety percent for retirement of the Federal Government debt.

17. Power to obtain finance and receive grants.— The Commission may, from time to time and with the approval of the Federal Government, obtain finance in respect of any sums required by the Commission for meeting any of its obligations or performing any of its functions.

(2) The Commission may, with the approval of the Federal Government, also accept grants from entities both domestic and international, including multilateral agencies.

¹ Subs. by the Privatisation Commission (Amdt.) Ordinance, 2002 (CXVI of 2002), s.2 for full stop.

² Provisos ins. by the Privatisation Commission (Amdt.) Ordinance, 2002 (CXVI of 2002), s.2

18. Investment.—The Commission may, in so far as its moneys are not required to be expended under this Ordinance, invest in such manner as set out in section 20 of the Trusts Act, 1882 (II of 1882).

¹**19. Bank accounts.**—(1) Subject to this section, the Commission may open and maintain its accounts at such scheduled banks as it may determine.

(2) The Commission may open an account in a scheduled bank with at least high credit quality assigned by a credit rating agency recognized by the State Bank of Pakistan.

(3) The Commission shall annually review the credit quality of a bank in which the Commission is maintaining an account and only continue to maintain account in the bank with at least high credit quality under sub-section (2).]

20. Accounts.—(1) The Commission shall maintain proper accounts and other records relating to its financial affairs to be kept in such form and manner as the Federal Government may determine in consultation with the Auditor General of Pakistan and shall as soon as practicable after the end of each financial year cause to be prepared for that financial year statements of account of the Commission which shall include a balance sheet and an account of income and expenditure.

(2) The financial year of the Commission shall be the period of twelve months ending 30th June, in each year.

21. Audit.—²[(1) The accounts of the Commission shall be audited annually by the Auditor-General of Pakistan, including audit of privatization transactions completed within the preceding financial year.

(2) The Commission, in addition to the audit by the Auditor-General of Pakistan under sub-section (1), shall cause privatization transactions completed within the preceding financial year to be audited by an external auditor:

Provided that the Commission shall ensure that every privatization transaction is audited in such manner as may be prescribed.]

(3) Within six months of the close of the financial year, the Commission shall submit to the Federal Government an audited report, statements of account of the commission including a balance sheet and an account of income and expenditure in respect of the preceding financial year.

PART V.—PRIVATISATION

22. Privatisation programme.—Subject to the provisions hereinafter provided, the Commission shall, after approval by the Cabinet, carry out the privatisation programme in the prescribed manner.

23. Advertisement of privatization.—The Commission shall, in consultation with the Federal Government and any concerned enterprise owned or controlled wholly or partially, directly or indirectly by the Federal Government, give notice of its intent to privatise. The Commission shall for each proposed privatisation publish, in at least two English newspapers and two Urdu newspapers

¹Subs. by the Privatization Commission (Amendment) Act, 2021 (XLV of 2021), s. 3.

²Subs. by the Privatization Commission (Amendment) Act, 2016 (XVI of 2016), s. 2.

with a national circulation on at least two occasions not less than seven days apart, notice of the availability of the subject-matter of the privatisation and of the salient terms and conditions thereof. Advertisements for privatisation, where necessary, will also be placed in newspapers with an international circulation.

24. Valuation of property.—The valuation of the property shall be performed, in the prescribed manner, by independent valuers who shall issue a valuation report to the Commission.

25. Modes of privatisation.—The Commission shall carry out privatisation, in accordance with the prescribed procedure, through any of the following modes—

- (a) sale of assets and business;
- (b) sale of shares through public auction or tender;
- (c) public offering of shares through a stock exchange;
- (d) management or employee buyouts by management or employees of a state owned enterprise;
- (e) lease, management or concession contracts; or
- (f) any other method as may be prescribed.

26. Publication of privatisation transaction.—(1) The Commission shall, within thirty days of the completion of each privatisation transaction, publish by notice in the official Gazette—

- (a) summary description of the transaction including name and address of the contracting party;
- (b) the consultants advising the Commission on the transaction; and
- (c) any other matter relating to the transaction considered appropriate by the Commission.

27. Investigations.—(1) The Federal Government or any of its agencies authorized by it, may of its own or on a complaint oversee, scrutinize or investigate any privatisation transaction within one year of the completion of the privatisation.

(2) After the expiry of the period referred to in sub-section (1), the Federal Government or any of its agencies shall not be empowered to carry out any such scrutiny or investigation.

PART VI.—JURISDICTION

28. Jurisdiction of High Courts.— Notwithstanding anything contained in any other law for the time being in force, the High Court shall exercise exclusive civil and criminal jurisdiction—

- (a) to adjudicate and settle all matters related to arising from or under or in connection with this Ordinance;
- (b) to adjudicate and settle all matters transferred pursuant to section 31; and

- (c) to try offences punishable under this Ordinance.

29. Procedure and power of High Court in civil matters.—(1) In exercise of its civil jurisdiction under this Ordinance, the High Court shall—

- (a) follow the procedure, as nearly as possible, as provided in the Code of Civil Procedure, 1908 (Act V of 1908) :

Provided that the High Court may, in its discretion, having regard to the facts of the case, follow the summary procedure, as nearly as possible, provided for in Order XXXVII in the First Schedule to the said Code; and

- (b) have all the powers vested in the Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908).

(2) The High Court shall decide the case before it within a period of six months.

30. Procedure and power of High Court in criminal matters.— In exercise of its criminal jurisdiction under this Ordinance, the High Court shall—

- (a) in trial of all offences before it follow the procedure provided for in Chapter XXIIA of the Code of Criminal Procedure, 1898 (Act V of 1898) ; and
- (b) in addition to the powers already vested in it, exercise the powers as are vested in the Court of Sessions under the Code of the Criminal Procedure, 1898 (Act V of 1898).

31. Transfer of cases.—(1) All legal proceedings whatsoever and matters related to or under or in connection with or arising from privatisation, the privatisation process or privatisation programme pending on the commencement of this Ordinance before any forum, tribunal or court shall stand transferred to the High Court having jurisdiction provided that nothing contained herein shall affect any proceedings pending before the Supreme Court of Pakistan.

(2) In respect of matters transferred to a High Court under sub-section (1), the High Court shall proceed from the stage at which the proceedings had reached immediately prior to the transfer and shall not be bound to recall and rehear any witness and may act on the evidence already recorded or produced before the forum, tribunal or court from which the proceedings were transferred.

32. Offences.—(1) Whoever dishonestly commits a breach of the terms of any agreement, contract, guarantee or such other instrument or document executed by him in relation to privatisation shall, without prejudice to any other action which may be taken against him under this Ordinance or any other law for the time being in force, be punishable with imprisonment of either description for a term which may extend to one year and shall also be liable to fine, and the High Court trying the offence may order the delivery or payment, or refund, to the Commission, within a time to be fixed by it any property or the amount in respect of which any agreement, contract, guarantee, instrument or document was executed.

(2) Whoever knowingly makes a statement or a declaration which is false in material respect at the time of privatisation and obtains the subject-matter of the privatisation from the Commission on the basis thereof, shall be guilty of an offence punishable with imprisonment of either description

for a term which may extend to one year, or with fine, or with both.

(3) Whoever resists or obstructs, either by himself or on behalf of the judgement debtor, through the use of force or otherwise the execution of a decree, shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

(4) Where the person guilty of an offence under this Ordinance is a company or other body corporate, the chief executive by whatever name called, and any director or officer of the company involved shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5) All offences under this Ordinance shall be non-cognizable and compoundable by or under the authority of the Commission.

(6) The High Court shall not take cognizance of any offence under this Ordinance unless a complaint has been filed by the Commission or a person authorized by it in writing.

33. Appeal.—(1) Any person, Commission and the Federal Government aggrieved by a final order, judgement, decree or sentence, passed by a single Judge of a High Court may, within thirty days of such order, judgement, decree or sentence prefer an appeal which shall be heard by a larger Bench of a High Court, within whose jurisdiction the order, judgement, decree or sentence is passed.

(2) Any person, Commission and the Federal Government aggrieved by a final order, judgement, decree or sentence, passed by a larger Bench of a High Court may, within thirty days of such order, judgement, decree or sentence prefer an appeal to the Supreme Court of Pakistan.

(3) No appeal, review or revision shall lie from any interlocutory order of the High Court.

PART VII.—REGULATORY AND OTHER PROVISIONS

34. Extent of Transfer of Property.— Notwithstanding anything contained in this Ordinance, the Federal Government shall not privatise any property except to the extent of its title, right, interest or share in such property.

35. Directions by Commission.—(1) Any enterprise or management which is approved by the Cabinet as eligible for privatisation, shall—

- (a) carry out any directions issued by the Commission in writing;
- (b) keep up-to-date business records and books of account;
- (c) not perform any action that would result in the assets of the company or business undertaking or property being lost or wasted;
- (d) not incur any liability other than in the ordinary course of business without the prior written approval of the Commission;
- (e) not give any person information other than in the ordinary course of business which might confer any advantage on that person or a potential buyer; and

(f) refrain from taking any action which may cause industrial unrest.

(2) The Commission shall after approval under sub-section (1) take all steps, including as to change of management necessary for initiating and completing the privatisation in accordance with sound commercial principles and practices conducive to efficiency and economy.

36. Information.—(1) The Commission may call for any information required by it for carrying out the purposes of this Ordinance from any person involved, directly or indirectly, in privatisation activities or any matter incidental or consequential thereto. Any such person shall be liable to provide the required information called by the Commission, failing which he shall be liable to a fine or other penalty as prescribed from time to time.

(2) The Commission shall submit to the Federal Government at such time and at such intervals as the Federal Government may specify-

- (a) such periodical reports and summaries as may be required by the Federal Government;
- (b) such periodical returns, accounts, statements and statistics as may be required by the Federal Government;
- (c) information and comments asked for by the Federal Government on any specific point; and
- (d) copies of the documents or original documents required by the Federal Government for examination or any other purpose.

37. Annual Report.—(1) As soon as practicable but not later than six months after the end of each financial year, the Commission shall prepare and publish an annual report concerning its activities during the financial year and send a copy of the said report to the Cabinet.

(2) The report referred to in sub-section (1) shall include—

- (a) activities of the Commission during the financial year;
- (b) an outline of the privatisation programme for the year ahead;
- (c) a short financial statement of the preceding year;
- (d) an audited balance sheet;
- (e) an audited statement of income and expenditure; and
- (f) any other matter which the Cabinet may direct or the Commission may consider appropriate.

38. Information to Public.—(1) The Commission shall publicize its reports and shall keep them open for information of the public during reasonable business hours.

(2) Subject to regulations regarding confidentiality, the Commission's reports shall include all relevant documents to be maintained and indexed, as the Commission deems fit.

39. Immunity of the Commission and its employees.—(1) The Chairman, Secretary, members, consultants, officers, or other employees of the Commission shall make such declaration of fidelity and secrecy as may be prescribed.

(2) No suit, prosecution or other legal proceedings shall lie against the Commission the Chairman, Secretary, members, consultants, officers or other employees of the Commission in respect of anything done or intended to be done in good faith under this Ordinance.

40. Rules.—The Commission may, with the approval of the Federal Government, by notification in the official Gazette, make rules, not inconsistent with the provisions of this Ordinance, for exercising its powers and carrying out of its functions under this Ordinance.

41. Regulations.—(1) The Commission may, by notification in the official Gazette, make regulations, not inconsistent with the provisions of this Ordinance or the rules, for exercising its powers and carrying out of its functions under this Ordinance.

(2) Without prejudice to the foregoing power, such regulations may provide for appointment of its officers, members of staff and such other persons and the terms and conditions of their service.

42. Ordinance to override other laws.—The provisions of this Ordinance shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force and any such law, rule or regulation shall, to the extent of any inconsistency, cease to have effect from the date this Ordinance comes into force.

43. Common seal.— The Commission shall have a common seal and such seal shall be kept in the custody of the Chairman or such other person as may be authorized by the regulations made by the Commission. Documents required or permitted to be executed under seal shall be specified in and authenticated in such manner as shall be authorized by regulations made by the Commission.

44. Exemption from taxes.— Notwithstanding anything contained in any other Federal law for the time being in force, the Commission shall not be liable to pay and shall be exempt from the payment of, any taxes, duties, levies, charges and fees payable under, or in pursuance to any Federal law, in respect of any of its business, assets, income, or wealth.

45. Liability of the Federal Government to be limited.— The liability of the Federal Government under this Ordinance shall be limited to the extent of its assets in the Commission.

46. Support of the Federal Government.— The Federal Government and all its agencies, particularly the concerned enterprises owned and controlled wholly or partially, directly or indirectly by the Federal Government, shall render support to the Commission to fulfill its objective and functions in pursuance of this Ordinance.

47. Dissolution.— No provision of law relating to the winding up of the bodies corporate shall apply to the Commission, and the Commission shall not be wound up except by order of the Federal Government, and in such manner as the Federal Government may direct.

48. Removal of Difficulties.— If any difficulty arises in giving effect to any provision of this Ordinance, the Federal Government may make such order, not inconsistent with the provisions of this Ordinance, as may appear to it to be necessary for the purposes of removing the difficulty.

¹[**SCHEDULE**
(*See sub-section (1) of section 16*)

1. **Badin I**
2. **Badin II (revised)**
3. **Dhurnal**
4. **Ratana**
5. **Adhi**
6. **Turkwal]**



THE PAKISTAN CODE

¹Schedule ins. by the Privatisation Commission (Amdt.) Ordinance, 2002 (CXVI of 2002).