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PART I

Acts, Ordinances, President's Orders and Regulations

SENATE SECRETARIAT

Islamabad, the 26th December, 1997

No. F. 9(51)/97-Legis.—The following Act of Majlis-e-Shoora (Parliament) received the assent of the Acting President on the 19th December, 1997, is hereby published for general information :—

ACT No. XLII OF 1997

An Act to provide for the establishment of the Securities and Exchange Commission of Pakistan and to provide for matters connected therewith and incidental thereto.

WHEREAS it is expedient to provide for the establishment of the Securities and Exchange Commission of Pakistan for the beneficial regulation of the capital markets, superintendence and control of corporate entities and for matters connected therewith and incidental thereto;

(1749)

Price : Rs. 20.50

[1563(97) Ex. Gaz.]

It is hereby enacted as follows :—

PART I

PRELIMINARY

1. **Short title and commencement.**—(1) This Act may be called as the Securities and Exchange Commission of Pakistan Act, 1997.

(2) It extends to the whole of Pakistan.

(3) Save for section 43, the Act shall come into force at once and section 43 shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint.

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

(a) “appointed day” means the day on which section 43 comes into force;

(b) “Authority” means the Corporate Law Authority constituted under the Companies Ordinance, 1984 (XLVII of 1984) ;

(c) “Board” means the Securities and Exchange Policy Board established under section 12;

(d) “Chairman” means the Chairman of the Commission;

(e) “civil servant” means a civil servant as defined in section 2 of the Civil Servants Act, 1973 (LXXI of 1973);

(f) “clearing house” means a clearing house by whatever name or designation established or arranged to be established by a Stock Exchange for the registration of dealing in securities or settlement of trading in futures contracts;

(g) “Commission” means the Securities and Exchange Commission of Pakistan established under section 3;

- (h) "Commissioner" means a Commissioner of the Commission and shall include the Chairman thereof;
- (i) "committee" means a committee of the Board constituted under section 15;
- (j) "dealing in securities" means making or offering to make, whether as principal or agent, with any person or inducing or attempting to induce any person to enter into or to offer to enter into—
 - (i) any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities, or
 - (ii) any agreement the apparent or ostensible purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities;
- (k) "employee" means any officer or servant of the Commission;
- (l) "Fund" means the fund established under section 23;
- (m) "Member" means a Member of the Board;
- (n) "NBFI" means a non-banking financial institution and includes a development finance institution, a *Modaraba*, a leasing company, a housing finance company and an investment bank but shall not include a banking company as defined in clause (c) of section 5 of the Banking Companies Ordinance, 1962 (LVII of 1962);
- (o) "Ordinance" means the Companies Ordinance, 1984 (XLVII of 1984);
- (p) "private sector person" means a person who is not in the service of Pakistan or of any statutory body or any body which is owned or controlled by the Federal Government or a Provincial Government not including a University or an educational institution;
- (q) "regulations" means the regulations made by the Board or the Commission; and
- (r) "rules" means the rules made by the Federal Government.

PART II

THE COMMISSION

3. **Establishment of the Commission.**—(1) There is hereby established a Commission to be called the Securities and Exchange Commission of Pakistan.

(2) The Commission shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its own name and, subject to and for the purposes of this Act, may enter into contracts and may acquire, purchase, take, hold and enjoy moveable and immovable property of every description and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of or deal with, any moveable or immovable property or any interest vested in it, upon such terms as it deems fit.

4. **Head Office.**—The head office of the Commission shall be in Islamabad. The Commission may establish and close down offices at such other places in Pakistan as it considers necessary.

5. **The Commissioners.**—(1) Subject to sub-section (2), the Commission shall consist of such number of Commissioners, including the Chairman, appointed by the Federal Government as may be fixed by the Federal Government but such number shall not be less than five and more than seven. A Commissioner shall be a person who is known for his integrity, expertise, experience and eminence in any relevant field, including the securities market, law, accountancy, economics, finance and industry.

(2) The majority of the Commissioners shall always be of private sector persons.

(3) Subject to the provisions of this Act, the Commission shall, in discharge of its functions and exercise of its powers, conduct its proceedings in accordance with the regulations made by the Board.

6. **The Chairman.**—(1) The Federal Government shall appoint one of the Commissioners to be the Chairman of the Commission, and no Commissioners shall be appointed Chairman for more than two consecutive terms.

(2) The Chairman shall be the chief executive officer of the Commission and shall, together with the other Commissioners, be responsible for the day to day administration of the affairs of the Commission and shall, subject to the regulations made by the Commission, be assisted by the other Commissioners in carrying out the functions of the Commission.

7. Term of office of the Commissioners.—(1) Not less than three of the Commissioners (excluding the Chairman) first appointed under this Act, to be selected at random ballot in accordance with such procedure as may be approved by the Board (the "Term A Commissioner") shall hold office for a term of two years, shall retire on the expiration of that term and may be re-appointed for a further term of three years. The Commissioners, other than the Term A Commissioners (including the Chairman, the "Term B Commissioners") shall hold office for a term of three years, shall retire on the expiration of that term and may be re-appointed for a further term of three years.

(2) At the end of each term, (initial or further) or at the end of the cumulative period of five years, in the case of the Term A Commissioners, or six years, in the case of the Term B Commissioners, as provided for under sub-section (1), the relevant number of Commissioners shall cease to hold office and any vacancy thus arising shall in each case be filled by the appointment of the requisite number of qualified persons as Commissioners, each for a term of three years reckoned from the date the vacancy being filled occurred. At the end of each such three-year term, a commissioner whose term has expired shall retire (unless being eligible for re-appointment he is duly re-appointed).

8. Appointment of employees of the Commission.—(1) 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 with the approval of the Board.

(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 procedure laid down by the Commission with the approval of the Board.

9. Appointment of advisers and consultants.—(1) Subject to sub-section (2), the Commission may, employ and pay consultants and agents and

technical, professional and other advisers including, without limitation, bankers, stock-brokers, surveyors, valuers, actuaries, 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 Act.

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

10. Delegation of the Commission's functions or powers.—(1) The Commission may, subject to such conditions and limitations as it may deem fit to impose, delegate any of its functions or powers to one or more Commissioners or any officer of the Commission.

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

11. The Commission to furnish information.—The Commission shall furnish to the Federal Government or the Board such information with respect to the policy it is pursuing or proposes to pursue in the performance of any of its functions under this Act as the Federal Government or the Board may, from time to time, require.

PART III

THE BOARD

12. The Securities and Exchange Policy Board.—(1) The Federal Government shall appoint a Securities and Exchange Policy Board consisting of seven Members.

(2) Of the Members—

(a) four shall be—

(i) *ex-officio* the Secretary to the Government of Pakistan, Finance Division;

(ii) *ex-officio* the Secretary to the Government of Pakistan, Law Division;

- (iii) *ex-officio* the Chairman of the Commission; and
 - (iv) a Deputy Governor of the State Bank of Pakistan nominated by the Governor of the State Bank of Pakistan; and
- (b) three appointed by the Federal Government from private sector each of whom is well-known for his integrity, expertise and experience in the spheres of commerce and industry (including in particular the securities industry), corporate law, accountancy, financial services, investment banking, academia or other related relevant fields of expertise.
- (3) A Member, not being an *ex-officio* Member, shall hold office for a term of four years and shall be eligible for re-appointment for one further four-year term but not more.
- (4) An *ex-officio* Member shall hold office as Member till such time as he holds the office by virtue of which he is a Member and upon his transfer therefrom or retirement, resignation or removal from office, the person appointed in such Member's place shall be the Member.
- (5) if an *ex-officio* Member is absent from Pakistan or is unable to attend a meeting of the Board he may authorize an officer, not below the rank of Additional Secretary, of his Division, to act as Member and such officer, if approved by the Board, may act as Member.
- (6) If an *ex-officio* Member is disqualified to be a Member or resigns his office, the Federal Government shall,—
- (a) in case he is a person referred to in sub-clause (i) or sub-clause (ii) of clause (a) of sub-section (2), appoint another Secretary as Member, so long such person holds the post; and
 - (b) in case of a Deputy Governor appoint another Deputy Governor as Member.
- (7) The Federal Government shall designate one of the Members to be the Chairman of the Board who shall, in the event of a tie, have a casting vote.
13. **Procedure of the Board.**—(1) The Board shall meet as often as may be necessary for the performance of its functions but not less than four times in a calendar year.

(2) The quorum for a meeting of the Board shall be four Members, including the Chairman.

(3) Subject to the provisions of this Act, the procedure and conduct of business of the Board shall be regulated by the regulations made by the Board.

14. **Board may invite others to meetings.**—The Board may invite any person to attend any of its meetings or deliberations (including any of its committees) for the purpose of advising it on any matter under discussion but any person so attending shall have no right to participate in any decision or vote at the said meeting or deliberation.

15. **Committees of the Board.**—(1) The Board may constitute such number of its committees as it considers necessary or expedient to assist it in the performance of its functions under this Act.

(2) A committee constituted under this section shall act in accordance with the regulations made by the Board.

(3) Except as otherwise provided in the regulations made by the Board, the meetings of a committee shall be held at such times and places as the chairman of the committee may determine.

(4) The Members, other than *ex-officio* Members, Commissioners or employees, and any other person invited to attend any meeting of the Board or a committee shall be entitled to such compensation and reimbursement of expenses as the Board may from time to time determine by regulations.

PART IV

CONFLICT OF INTEREST

16. **Disclosure of interest by Commissioners and Members.**—(1) For the purpose of this and the next following section, a person shall be deemed to have an interest in a matter if he has any interest, pecuniary or otherwise, in such matter which could reasonably be regarded as giving rise to a conflict between his duty to honestly perform his functions under this Act and such interest, so that his ability to consider and decide any question impartially or to give any advice without bias, may reasonably be regarded as impaired.

(2) A Commissioner or a Member having any interest in any matter to be discussed or decided by the Commission or the Board or a committee shall,

prior to any discussion of the matter, disclose in writing, respectively, to the Commission, the Board or a committee, as the case may be, the fact of his interest and the nature thereof.

(3) A disclosure of interest under sub-section (2) shall be recorded in the minutes of the Commission, the Board, or a committee, as the case may be, prior to any discussion of, or decision on, the matter and, after the disclosure, the Commissioner or, as the case may be the Member—

(a) shall not, save, in the case of Commissioners, as provided in sub-sections, (7) to (9), take part nor be present in any deliberation or decision of the Commission, the Board or a committee, as the case may be, and

(b) shall be disregarded for the purpose of constitution of a quorum of the Board, the Commission or a committee, as the case may be.

(4) Any Commissioner, Member or the member of a committee who fails to disclose his interest as required by this section shall be guilty of an offence and shall on conviction be liable to imprisonment for a term which may extend to one year, or a fine not exceeding one million rupees, or both.

(5) It shall be a valid defence for a person charged with an offence under sub-section (4) if he proves that he was not aware of the facts constituting the offence and that he exercised due care and diligence in discovering those facts which he ought reasonably to have known in the circumstances.

(6) Each Commissioner shall give written notice to the Federal Government of all direct or indirect pecuniary interests that he has or acquires in a body corporate carrying on a business in Pakistan. The nature of such interests and the particulars thereof shall be disclosed in the annual report of the Commission made under section 25.

(7) If a Commissioner is not the Chairman and the Chairman becomes aware that a Commissioner has the interest, the Chairman shall,—

(a) if the Chairman considers that the Commissioner should not take part, or continue to take part, as the case may require, in determining the matter, direct the Commissioner accordingly, or

(b) in any other case, cause the Commissioner's interest to be disclosed to the persons concerned in the matter (including any person whose application is pending decision or adjudication by the Commission).

(8) The Commissioner in respect of whom a direction has been given under clause (a) of sub-section (7) shall comply with the direction.

(9) If the Commissioner is the Chairman, he shall disclose his interest to the persons concerned in the matter (including any person whose application is pending decision or adjudication by the Commission).

(10) Subject to sub-section (7), the Chairman or the Commissioner who has any interest in any matter referred to in this section shall not take part, or continue to take part, as the case may require, in determining the matter unless everyone concerned in it consents to the Chairman or, as the case may be, the Commissioner so taking part.

17. **Notification of interest by others.**—(1) Where a person who, in the course of,—

- (a) performing a function, or exercising a power, as a delegate of the Commission,
- (b) performing functions or service as an employee, or
- (c) performing a function or services in any capacity by way of assisting or advising the Commission, the Board, any committee or any delegate of the Commission,

is required to consider a matter in which he has an interest, such person shall forthwith give to the Commission a written notice stating that he is required to consider the matter and has an interest in it and setting out particulars of the interest.

(2) The person referred to in sub-section (1) shall also declare his interest in accordance with the said sub-section whenever it is necessary to avoid the conflict of interest.

PART V

DISQUALIFICATION, REMOVAL, RESIGNATION AND VACANCIES

18. **Disqualification of Members and Commissioners.**—No person shall be appointed or continue as a Member or Commissioner if he—

- (a) has been convicted of an offence involving moral turpitude;

- (b) has been or is adjudged insolvent;
- (c) is incapable of discharging his duties by reasons of physical, physiological or mental unfitness and has been so declared by a registered medical practitioner appointed by the Federal Government.
- (d) being a Member, absents himself from three consecutive meetings of the Board, without leave of the Board and, in the case of a Member *ex-officio*, or fails to appoint another person to act as member under sub-section (5) of section 12, or
- (e) fails to disclose any conflict of interest at or within the time provided for such disclosure by or under this Act or contravenes any of the provisions of this Act pertaining to unauthorized disclosure of information.

19. **Removal, resignation and vacancies.**—(1) Subject to sub-section (2), appointment of any Member or Commissioner may, at any time, be revoked and he may be removed from his office by order of the Federal Government if it is found that such person stands disqualified under section 18.

(2) Unless a disqualification referred to in section 18 arises from the judgement or order of a court or tribunal of competent jurisdiction under any relevant provision of applicable law, a Member or Commissioner shall not be removed or his appointment revoked without an enquiry by an impartial person or body of persons constituted in accordance with such procedure, as may be prescribed by rules made by the Federal Government, and such rules shall provide for a reasonable opportunity for him to be heard in his defence.

(3) A Member or a Commissioner may at any time resign his office by a written notice addressed to the Federal Government.

(4) The office of a Member or Commissioner shall ipso facto be vacated if he dies.

PART VI

POWERS AND FUNCTIONS

20. **Powers and functions of the Commission.**—(1) The Commission shall have all such powers as may be necessary to perform its duties and functions under this Act.

(2) The Commission may, having regard to its functions and to exercise its powers efficiently, organize itself into divisions, wings or such other sub-divisions as it may consider expedient.

(3) The Commission may, from time to time, identify the matters requiring the Board to make policy decisions and may also make recommendations regarding policy to the Board for its consideration.

(4) The Commission shall be responsible for the performance of the following functions :

- (a) regulating the issue of securities;
- (b) regulating the business in Stock Exchange and any other securities markets;
- (c) supervising and monitoring the activities of any central depository and Stock Exchange clearing house;
- (d) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with the securities markets in any manner;
- (e) proposing regulations for the registration and regulating the working of collective investment schemes, including unit trust schemes;
- (f) promoting and regulating self-regulatory organizations including securities industry and related organizations such as Stock Exchanges and associations of mutual funds, leasing companies and other NBFIs;
- (g) prohibiting fraudulent and unfair trade practices relating to securities markets;
- (h) promoting investors education and training of intermediaries of securities markets;
- (i) conducting investigations in respect of matters related to this Act and the Ordinance and in particular for the purpose of investigating insider trading in securities and prosecuting offenders;

- (j) regulating substantial acquisition of shares and the merger and take-over of companies;
 - (k) calling for information from and undertaking inspections, conducting inquiries and audits of the Stock Exchanges and intermediaries and self-regulatory organizations in the securities market;
 - (l) considering and suggesting reforms of the law relating to companies and bodies corporate, securities markets, including changes to the constitution, rules and regulations of companies and bodies corporate, Stock Exchanges or clearing houses;
 - (m) encouraging the organized development of the capital market and the corporate sector in Pakistan;
 - (n) conducting research in respect of any of the matters set out in this sub-section;
 - (o) performing such functions and exercising such powers of the Authority, including any powers of the Federal Government delegated to the Authority, (other than the power to make any rules or regulations) under the provisions of the Ordinance, and under any other law for the time being in force under which any function or power has been conferred on the Authority including, but not limited to, the functions and powers set out in the Schedule to this Act;
 - (p) performing such functions and exercising such powers (other than the power to make any rules or regulations) under the Ordinance or any other law for the time being in force as may, after the commencement of this Act, be delegated to it by the Federal Government and exercising any power or performing any functions conferred on it by or under any other law for the time being in force; and
 - (q) proposing regulations in respect of all or any of the aforesaid matters for the consideration and approval of the Board.
- (5) Without prejudice to the provisions of sub-section (4), the approval of the Commission shall be required by—
- (a) all public companies incorporated in Pakistan which intend to issue or offer for sale securities in markets outside Pakistan or to list such

securities on a Stock Exchange outside Pakistan, in each case, whether directly or through an intermediary;

- (b) all bodies corporate incorporated outside Pakistan which or persons who intend to issue or offer for sale, securities to the public in Pakistan or to list such securities on a Stock Exchange; and
- (c) all bodies corporate incorporated outside Pakistan which are already listed on a Stock Exchange, for the listing of and quotation for any additional securities.

(6) In performing its functions and exercising its powers, the Commission shall strive—

- (a) to maintain facilities and improve the performance of companies and of securities markets, in the interest of commercial certainty, reducing business costs, and efficiency and development of the economy;
- (b) to maintain the confidence of investors in the securities markets by ensuring adequate protection for such investors;
- (c) to achieve uniformity in how it performs those functions and exercise those powers;
- (d) to administer laws effectively but with a minimum of procedural requirements;
- (e) to receive, process, and store, efficiently and quickly, the documents lodged with, and the information given to, it under this Act, the Ordinance or any other law;
- (f) to ensure that the documents, and the information referred to in clause (e) are available as soon as possible for access by the public; and
- (g) to take whatever action it can take, and is necessary, in order to enforce and give effect to the Act and the Ordinance or any other law.

21. **Functions and powers of the Board.**—(1) Subject to the provisions of this Act, the Board shall—

- (a) when so asked to do and after consultation with the Commission, advise the Federal Government on all matters relating to—

- (i) the securities industry;
 - (ii) regulation of companies and corporate sector and protection of the interests of investors;
 - (iii) measures to encourage self-regulation by the Stock Exchanges and NBFIs by specifying the standards for such self regulatory organizations;
 - (iv) measures to promote the development of and to regulate the securities market; and
 - (v) other related matters;
- (b) consider and approve (with or without modification) any regulations proposed to be made by the Commission under the Act;
 - (c) consider and approve (with or without modification) the budget for each financial year of the Commission prepared and submitted to it pursuant to the provisions of sub-section (2) of section 24;
 - (d) express its opinion in writing on any policy matter referred to it by the Federal Government or the Commission;
 - (e) oversee the performance of the Commission to the extent that the purposes of this Act are achieved;
 - (f) exercise all such powers and perform all such functions as are conferred or assigned to it under this Act; and
 - (g) specify fees, penalties and other charges chargeable by the Commission for carrying out the purposes of this Act.

(2) All policy decisions, including any change in previously established policy, in respect of all and any matters within the jurisdiction of the Commission shall be made only by the Board. The Board may make policy decisions *suo motu* or adopt such policy recommendation of the Commission, with or without modification, as the Board may deem fit in its sole discretion.

22. **Supplementary provisions.**—(1) All guidelines decisions and directives whether of the Board or the Commission shall be in writing expressed by resolutions, orders or in such other form as may be appropriate in the circumstances and shall be authenticated in the manner prescribed by the

regulations, and where so provided by regulations, also sealed with the seal of the Commission.

(2) All policy decisions and directives of the Board and the Commission respectively shall be published in the official gazette and the Board and the Commission shall make" such publications available to the public.

(3) The Commission shall, in adjudicating upon the rights of any person whose application on any matter it is required to consider in the exercise of any power or function under this Act, give the reasons for its decision after giving the person concerned a personal hearing, in addition to any written applications or submission which may be required to be made.

(4) The Commission when exercising its powers under this Act shall have regard, so far as relevant to the circumstances of the particular case, to—

- (a) the viability of the company or body corporate;
- (b) the quality and capability of the management of the company or body corporate;
- (c) the suitability for listing of the company or body corporate or a Stock Exchange where applicable;
- (d) the interest of public investors, existing or potential, in the company or body corporate;
- (e) any policy decision or directives of the Board; and
- (f) the general public interest.

(5) Subject to the compliance of the provisions of sub-section (3), section 24A of the General Clauses Act, 1897 (X of 1897), shall apply to any order made or direction given under this Act.

PART VII

FINANCE

23: **The Fund.**—(1) There is hereby established, for the purposes of this Act, a Fund to be administered and controlled by the Commission.

- (2) The Fund shall consist of—
 - (a) such sums as the Federal Government may from time to time, grant;

- (b) 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;
- (c) fees, penalties or other charges levied by the Commission in exercise of its powers under this Act, and the Ordinance; and
- (d) 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.

(3) It shall be the duty of the Commission to conserve the Fund by performing its functions and exercising its powers under this Act so as to ensure that the total revenues of the Commission are sufficient to meet all sums properly chargeable to its revenue account.

24. Expenditure to be charged on the Fund.—(1) The Fund shall be expended for the purpose of—

- (a) paying any expenditure lawfully incurred by the Commission, including the remuneration of Commissioners and employees appointed and employed by the Commission, including provident fund contributions, superannuating allowances or gratuities and legal fees and cost and other fees and costs;
- (b) 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 Act;
- (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 Act;
- (d) repaying any financial accommodation received or moneys borrowed under this Act and the profit, return, mark-up or interest due thereon (howsoever called); and
- (e) generally, paying any expenses for carrying into effect the provisions of this Act.

(2) Within ninety days of its establishment, the Commission shall prepare and submit to the Board for its approval, a budget for the period up to and

including the end of the then current financial year and thereafter it shall, not later than thirty days from the end of each financial year, submit to the Board for approval a budget for the next financial year.

(3) No expenditure shall be made for which provision has not been made in any approved budget except if made from any previously approved contingency funds, unless further approval is sought and obtained from the Board.

(4) The Commission shall act as the secretariat of the Board and provide all the necessary facilities to enable the Board to exercise its powers and perform its functions under this Act and the necessary and proper expenses in that connection shall form part of the budget of the Commission.

25. **Annual report and accounts.**—(1) Within ninety days from the end of each financial year, the Commission shall, in consultation with the Board, cause a report to be prepared on the activities of the Commission (including investigations and enquiries made by the Commission under this Act or the Ordinance) during that financial year and release to the public and simultaneously send a copy of the report to the Federal Government.

(2) The Commission shall cause proper accounts to be kept and shall as soon as practicable after the end of each financial year cause to be prepared for that financial year a statement of accounts of the Commission which shall include a balance sheet and an account of income and expenditure.

(3) The Commission shall cause the statement of accounts to be audited by joint auditors one to be appointed by the Federal Government and the other by the Commission each of whom shall be a firm of chartered accountants. Any casual vacancy in the office of any auditor elected under this section may be filled by the Federal Government or the Commission as the case may be.

(4) The auditors shall make a report to the Federal Government, upon the annual balance sheet and accounts, and in any such report they shall state whether in their opinion the balance sheet is a full and fair balance sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the affairs of the Commission and, in case they have called for any explanation or information from the Commission, whether it has been given and whether it is satisfactory.

(5) The Federal Government may if it deems fit also required the accounts of the Commission for any financial year to be audited by the Auditor General of Pakistan.

(6) The Board shall, within one hundred and twenty days of the end of each financial year, together with the annual report of the Commission under sub-section (2), send a copy of the statement of accounts of the Commission certified by the auditors and a copy of the auditors' report to the Federal Government which shall cause them to be published in the official Gazette and laid before both Houses of the Majlis-e-Shoora (Parliament) within two months of their receipt.

26. Power to obtain finance, borrow money and receive grants.—(1) The Commission may, from time to time, and with the approval of the Federal Government, obtain finance or borrow money from sources within Pakistan or from abroad, as the case may be, with such rate of return, profit, mark-up or interest payable thereon, as the case may be, and for such period and upon such terms as to the time and method of repayment and otherwise, 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 also accept, if so decided by the Board, and with the approval of the Federal Government, grants from entities both domestic and international, including multilateral agencies.

27. Investment.—(1) Subject to sub-section (2), the Commission may, in so far as its moneys are not required to be expended under this Act, invest in such manner as set out in section 20 of the trusts Act, 1882 (II of 1882).

(2) The Commission shall not invest its money in listed securities or any derivative thereof whether listed or not.

28. Bank Accounts.—The Commission may open and maintain its accounts at such scheduled banks as it may from time to time determine and with the approval of the Board open and maintain account in any foreign currency.

PART VIII

ENFORCEMENT AND INVESTIGATION

29. Investigation and proceedings by the Commission.—(1) The Commission may *suo motu* conduct investigations in respect of any matter that is an offence under this Act.

(2) The Commission may appoint such number of investigating officers to be known as investigating officers of the Commission as it considers necessary for the purposes of carrying out investigation of any offence or inspection under this Act, the Ordinance or any other law in respect of which it has been

empowered to exercise the powers of the Authority and such investigating officer shall have all the powers given to any person for the purposes of carrying out investigation of any offence under this Act, the Ordinance and any other law.

30. **Powers of the investigating officers of the Commission.**—(1) An investigating officer carrying out an investigation or inspection may, only after the written order of the Commission signed by any two Commissioners, enter any place or building—

- (a) to inspect and make copies of or take extracts from any book, minute book, register or document ; and
- (b) where he has reason to believe that an offence has been committed under this Act or the Ordinance or any other law in respect of which the Commission has power to make investigation or inspection, to search for, seize, take possession of and detain any object, article, material, thing, accounts book or other document, including any travel or other personal document which may be used as evidence.

(2) When an order has been made under sub-section (1) an investigating officer of the Commission may, by notice in writing, require any person to produce before him such books, registers or documents as are in the custody or under the control of that person.

(3) A person who—

- (a) fails deliberately to produce any such books, registers or documents as are required by the Commission or an investigating officer ; or
- (b) obstructs or hinders an investigating officer while exercising any of the powers under this section ;

shall be guilty of an offence and shall be liable on conviction to a fine which may extend to one million rupees or to imprisonment for a term not exceeding one month, or to both.

(4) Any accounts, book or other document seized and taken possession of by the investigating officer of the Commission under sub-section (1) may be inspected by any person if such person is entitled to inspect such accounts, book or document under this Act, and if so authorized to do in writing by the Commission.

(5) Sub-section (1) shall not be construed as limiting or affecting any similar powers conferred on any person under any other law.

(6) Any person aggrieved by the conduct of an investigating officer may lodge a complaint in respect thereof to the Commission.

(7) The Commission shall, within fifteen days of receipt of the complaint under sub-section (6) commence a hearing to determine the veracity of such complaint in accordance with such procedure as may be prescribed by rules made by the Federal Government.

31. **Forcible entry.**—(1) For the purpose of exercising his powers under sub-sections (1) and (2) of section 30, an investigating officer of the Commission may enter any place or building by force, if necessary.

(2) Notwithstanding anything contained in sub-section (1), no investigating officer of the Commission shall enter any premises by the use of force without a written order of the Commission signed by any two Commissioners.

(3) If, on enquiry conducted in accordance with the rules it is found that the exercise by an investigating officer of his power under sub-section (2) was vexatious, excessive or with *mala fide* intent such officer shall be dismissed from service, and shall be guilty of an offence punishable with fine which may extend to five hundred thousand rupees and imprisonment for a term not exceeding one year.

(4) Whenever a criminal court imposes a fine under sub-section (3) it shall, when passing judgement, order that a sum equal to the whole or any part of the fine recovered, be paid to the person on whose complaint the investigating officer was convicted, and in case the fine is not recovered the sum shall be paid out of the Fund.

(5) Any sum paid under sub-section (4) shall be without prejudice to the right of the aggrieved person to avail any other remedies available to him under the law but at the time of awarding compensation in any subsequent proceedings relating to the same matter the court shall take into account any sum recovered from the convict and paid to the aggrieved person.

32. **Power to call for examination.**—(1) For the purpose of sub-section (1) of section 29, the Commission may by notice in writing require any person acquainted with the facts and circumstances of the case to appear before an investigating officer authorized by it in this regard. Such person shall be examined orally and any statement made by such person during the course of the examination shall be reduced into writing.

(2) Such person shall be bound to answer all questions relating to such case put to him by the investigating officer, as the case may be, and to state the

truth, whether or not the statement is made wholly or partly in answer to questions.

(3) Subject to sub-section (4), a statement made by any person under this section shall be taken down in writing and signed by the person making it or affixed with his signature and thumb print, as the case may be, after it has been read to him and after he had been given an opportunity to make any correction he may wish.

(4) Where the person examined refuses to sign and affix his thumb print on the statement, the investigating officer of the Commission shall endorse thereon under his hand the fact of such refusal and the reason therefor, if any, stated by the person examined.

(5) Any person who :—

- (a) fails to appear before an investigating officer of the Commission as required under sub-section (1) ;
- (b) refuses to answer any question put to him by an investigating officer of the Commission as required under sub-section (2) ; or
- (c) knowingly furnishes to an investigating officer of the Commission information or statement that is false or misleading in any material particular ;
- (d) wilfully refuses to obey or disregards any lawful order of the Commission ;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand rupees or to imprisonment for a term not exceeding one year, or to both.

33. Appeal to the Appellate Bench of the Commission.—(1) An appeal shall lie to an Appellate Bench of the Commission in respect of an order of the Commission made by one Commissioner. The person aggrieved by such order may within thirty days of the passing of the order prefer an appeal to the Appellate Bench of the Commission.

(2) The Commission shall constitute an Appellate Bench of the Commission comprising not less than two Commissioners to hear appeals under sub-section (1).

(3) If any Commissioner who is included in the Appellate Bench has participated or been concerned in the decision being appealed against the Chairman shall nominate an other Commissioner to sit in the Bench to hear that appeal.

(4) The form in which an appeal is to be filed and the fees to be paid therefor and other related matters shall be prescribed by rules.

34. **Appeal to the Court.**—(1) An appeal shall lie to the Court referred to in Part II of the Ordinance in respect of an order of the Commission comprising two or more Commissioners or the Appellate Bench.

(2) The appeal under sub-section (1) may be filed within sixty days of the date of the decision and shall be accompanied by a fee of one hundred rupees.

PART IX

CONFIDENTIALITY OF INFORMATION

35. **Obligation of confidentiality.**—(1) Subject to this section, any person who is or was at any time—

- (a) acting as a Member of the Board, or
- (b) engaged as a Commissioner or employee of the Commission, or
- (c) authorized to perform or exercise any function or power of the Commission or any function or power on behalf of the Commission or to render services to the Commission in the capacity of a consultant or adviser ;

shall not, except to the extent necessary to perform his official duties, or in performance or exercise of such a function or power, either directly or indirectly, make a record of, or disclose to any person, any information that is or was acquired by him because of having been so appointed, engaged or authorized, or make use of any such information, for any purpose other than the performance of his official duties or the performance or exercise of that function or power.

(2) Any person who contravenes sub-section (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one million rupees or to imprisonment for a term not exceeding one year or, to both.

(3) The Commission shall take all reasonable measures to protect from unauthorized use or disclosure the information given to it in confidence in or in connection with the performance of its functions or the exercise of its powers.

(4) For the purpose of sub-section (1) the disclosure of information as required or permitted by any law for the time being in force in Pakistan or any other jurisdiction shall be taken to be authorized use and disclosure of the information.

(5) For the purposes of sub-section (1), the disclosure of information by a person for the purposes of—

- (a) performing his functions as—
 - (i) a Commissioner or employee of the Commission, or
 - (ii) a person who is acting as a Commissioner or employee or who is authorized to perform or exercise a function or power of, or on behalf of, the Commission, or
- (b) The performance of functions or service by the person by way of assisting a Commissioner or a delegate of the Commission,

shall be taken to be authorized use and disclosure of the information.

(6) Where the Chairman is satisfied that particular information—

- (a) will enable or assist the Board to perform or exercise any of its functions or powers ;
- (b) will enable or assist the government, or an agency of the government to perform a function or exercise a power ; or
- (c) will enable or assist the government, or an agency of the government, of a foreign country to perform a function, or exercise a power, conferred by a law in force in that foreign country ;

the disclosure of the information to such persons by a person whom the Chairman authorizes for the purpose shall be taken to be authorized use and disclosure of the information.

(7) The Chairman may impose conditions to be complied with in relation to information disclosed under sub-section (6).

(8) The disclosure of information to a body specified in sub-section (9) is authorized use and disclosure of the information if :

(a) the Chairman is satisfied that the information will enable or assist the body to monitor compliance with, enforce, or perform functions or exercise powers under—

(i) any law for the time being in force ;

(ii) the rules and regulations (including the listing rules if any), of the body ; and

(b) the disclosure is made by a person authorized by the Chairman for the purpose.

(9) A body to whom disclosure of information under sub-section (8) may be authorized is—

(a) a Stock Exchange ; or

(b) a clearing house ; or

(c) a central depository ; or

(d) such other body corporate as the Federal Government may by notification in the official Gazette specify for the purposes of this sub-section.

(10) The Chairman may impose conditions to be complied with by the body and its officers, employees and agents in relation to the information disclosed to it under sub-section (8) and persons in respect of whom conditions are imposed shall be bound to comply with them.

(11) If information is disclosed to a body under sub-section (8) the body, or any officer, employee or agent of the body shall not, without the written consent of the Chairman :

(a) disclose the information to a person who is not an officer, employee, professional adviser or agent of the body corporate ; or

(b) use the information otherwise than for the purpose of monitoring compliance with, enforcing, or performing functions or exercising powers under :

(i) the Ordinance and any other law for the time being in force ;
or

- (ii) the rules and regulations (including the listing rules, if any), of the body corporate.

(12) The Chairman may delegate all or any of his functions and powers under sub-sections (6), (7), (8), (10), or (11) to a Commissioner or an employee.

(13) Nothing in any of sub-sections (4), (5), (7) and (8) shall limit :

- (a) anything else in any of those sub-sections ; or
- (b) what may otherwise constitute, for the purposes of sub-section (1), authorized use or disclosure of information.

36. **Permitted disclosure.**—Nothing in section 35 shall preclude a person from :

- (a) producing a document to a court in the cause of criminal proceedings or in the course of any proceedings under this act, the Ordinance or any other law for the time being in force.
- (b) disclosing to a court in the course of any proceedings referred to in clause (a) any matter or thing, that came under his notice in the performance of official duties or in the performance of a function or the exercise of a power referred to in that section ; or
- (c) producing a document or disclosing information to a person to whom, in the opinion of the Commission, it is in the public interest that the document be produced or the information be disclosed ; or
- (d) producing a document or disclosing information that is required or permitted by any law for the time being in force in Pakistan or any other jurisdiction to be produced or disclosed, as the case, may be ; or
- (e) producing a document or disclosing information to the Commission.

PART X

COGNIZANCE AND PROSECUTION OF OFFENCES

37. **Cognizance of offences.**—Notwithstanding anything contained in the Code of Criminal procedure, 1898 (Act No. V of 1898) no court other than the court of session shall have jurisdiction to try any offence under this Act.

38. **Conduct of prosecution.**—(1) No prosecution for any offence under this Act against any person shall be instituted except with the consent in writing of the Commission signed by any two Commissioners.

(2) Prosecution of any offence under this Act shall be conducted by any officer of the Commission authorized in writing by the Commission.

PART XI

RULES AND REGULATIONS

39. **Power to make rules.**—(1) Subject to sub-section (2), the Federal Government may, by notification in the official Gazette, make rules for all or any of the matters in respect of which it is required to make rules to carry out the purposes of this Act.

(2) The power to make rules conferred by this section shall be subject to the condition of previous publication and before making any rules the draft thereof shall be published in the official Gazette for eliciting public opinion thereon within a period of not less than sixty days from the date of publication.

40. **Power to make regulations.**—(1) Subject to sub-section (2),—

- (i) the Board, *suo motu* or on the recommendation of the Commission and in consultation with the Federal Government ; and
- (ii) the Commission with the approval of the Board,

may make such regulations as may be required to carry out the purposes of this Act.

(2) The power to make regulations conferred by this section shall be subject to the condition of previous publication and before making any regulations the draft thereof shall be published in two newspapers of wide circulation for eliciting public opinion thereon within a period of not less than sixty days from the date of publication.

PART XII

GENERAL

41. **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 Board.

42. **Public servants.**—(1) The Members, Commissioners, employees and other persons authorized to perform or exercise any function or power under this Act or rendering services to Commission as consultant or adviser shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

(2) Save as otherwise provided by this Act and only for the purposes so provided, nothing therein contained shall be construed to mean that any person referred to in sub-section (1) is or shall be deemed to be in the service of Pakistan or is to be regarded or treated as a civil servant.

43. **Dissolution of the Authority.**—The Authority is hereby dissolved and at all times thereafter,—

- (a) section 11 and sub-section (3) to (7) (inclusive) of section 12 of the Ordinance shall stand repealed and except as hereinafter provided, all references to the Authority appearing in the Ordinance and any other law for the time being in force shall be deemed to mean and refer to the Commission;
- (b) the power to make rules and regulations under the Ordinance shall be exercised by the Board ;
- (c) save as otherwise provided in clause (b), all powers exercisable by the Federal Government under any provisions of the Ordinance or any other law for the time being in force, which immediately before the appointed day had been delegated to the Authority, shall be exercised by the Commission ;
- (d) all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash and bank balance, reserve funds, investments and all other interests and rights in, or arising out of, such property and all debts, liabilities and obligations of whatever kind of the Authority subsisting immediately before its dissolution shall stand transferred to and vest in the Commission ;
- (e) no officer, employee, servant, or any other person holding any post in connection with the affairs of the Authority, shall have any right or lien to appointment to any post in the Commission ;

- (f) any person referred to in clause (e) who is appointed by the Commission shall have the option either to remain a civil servant or to be an employee of the Commission. The option once exercised shall be irrevocable ;
- (g) in the event of a person referred to in clause (e) opting to be an employee of the Commission, he shall cease to be a civil servant for all purpose and shall be entitled to such remuneration, allowances and other terms and conditions of employment as are applicable to the employees of the Commission. For the service rendered in the Authority such person shall be entitled to such benefits including the transfer of benefits to the Commission as may be prescribed by the rules. But, in the event of such a person opting to remain as a civil servant, he shall be entitled to the same remuneration, allowances and other rights and privileges as are admissible to civil servants but, in other respects such as organizational structure, right to promotion and discipline, he shall be subject to the regulations made by the Commission, and for the period he served the Commission, the Commission shall contribute to the pension, gratuity and final payment of provident fund in accordance with the rules.
- (h) a person referred to in clause (e) who is not appointed by the Commission shall continue to draw his pay allowances privileges or other benefits as he was drawing while holding the post in the Authority and unless sooner he is appointed by the Federal Government to another post or otherwise ceases to remain in Government service on account of retirement, dismissal, removal, discharge from service or in any other manner applicable to a civil servant, the cost for paying salary, allowance and other benefits to such person shall be borne by the Commission.
- (i) save as otherwise provided in clauses (e) and (h), 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 Authority before the appointed day shall be deemed to have been incurred, entered into, acquired or engaged to be done by, with or for the Commission, as the case may be ; and
- (j) all suits and other legal proceedings instituted by or against the Authority before the appointed day shall be deemed to be suits and proceedings by or against the Commission as the case may be and may proceed and be dealt with accordingly.

44. **Savings.**—Save as otherwise provided in this Act, nothing in this Act shall affect or be deemed to affect any thing done, action taken, investigation or proceedings commenced, order, rule, regulation, appointment, document, or agreement made, fee directed, resolution passed, direction given, proceedings taken, or instrument executed or issued under or pursuant to any law amended or repealed by this Act and any such thing, action, investigation, proceedings, order, rule, regulation, appointment, document, agreement, fee resolution, direction, proceedings or instrument shall, if in force at the commencement date and not inconsistent with any of the provisions of this Act, continue in force and have effect as if it had been respectively done, taken, commenced, made, directed, passed, given, executed or issued under this Act or the law as amended by this Act.

45. **Act to override other laws.**—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

THE SCHEDULE

POWERS AND FUNCTIONS CONFERRED ON THE AUTHORITY UNDER THE ORDINANCE TO BE EXERCISED BY THE COMMISSION

(See clause (o) of sub-section (4) of section 20)

1. To call for any information, document etc. for purposes of any proceeding or inquiry (section 12(4) of the Ordinance).
2. To allow alteration in the Memorandum of Association (section 21 of the Ordinance).
3. To decide whether a name of a company is appropriate and permissible (section 37 of the Ordinance).
4. To grant licence to an association not for profit to be registered as a company (section 42 of the Ordinance).
5. To accord approval for conversion of a public company into a private company (section 44 of the Ordinance).
6. Approval of prospectus (section 57 of the Ordinance).
7. To allow issue of securities outside Pakistan (section 62A of the Ordinance).
8. To specify minimum amount of shares to be applied for and the form of application for shares (section 67 of the Ordinance).

9. To prescribe maximum rate of commission on issue of shares (section 82 of the Ordinance).
10. To sanction issue of shares at discount (section 84 of the Ordinance).
11. To grant extension in time for holding AGM in the case of listed companies (section 158 of the Ordinance).
12. To allow a company to make a loan to a director (section 195 of the Ordinance).
13. To grant exemption for appointment of managing agent and to approve appointment of sole sale/purchase/distribution agents (section 206 of the Ordinance).
14. To recover tenderable gains (section 224 of the Ordinance).
15. To prescribe cost accounting records for manufacturing companies (section 230 of the Ordinance).
16. To extend period for laying annual accounts in the AGM by listed companies (section 233 of the Ordinance).
17. To direct a change in financial year of holding companies and their subsidiaries (section 238 of the Ordinance).
18. To call for additional statements of accounts from companies (section 246 of the Ordinance).
19. To appoint auditors in certain cases (section 252(6) of the Ordinance).
20. to conduct investigation into the affairs of the companies (section 263 and 265 of the Ordinance).
21. To prosecute a company or person found guilty as a consequence of investigation (section 270 and 271 of the Ordinance).
22. To appoint administrator (section 295 of the Ordinance).
23. To make application to the Court for winding up a company (section 309 of the Ordinance).
24. To recommend a panel of persons to the Court for appointment as official liquidator (section 321 of the Ordinance).

25. To order restoration of the names of defunct companies (section 439(9) of the Ordinance).
26. To exercise similar powers in the case of foreign companies (section 457 of the Ordinance).
27. To accord special permission to take over original documents from custody of Registrar (section 467 of the Ordinance).
28. To prescribe additional fees for filing of documents (section 469 of the Ordinance).
29. To force companies to comply with the provisions of the Ordinance (section 472 of the Ordinance).
30. To impose fine as penalty (section 476 of the Ordinance).
31. To hear appeals against the orders of Registrar (section 477 of the Ordinance).
32. To exercise powers of court in relation to enquires and proceedings (section 478 of the Ordinance).
33. To direct appearance of officers of companies (section 479 of the Ordinance).
34. To apply amount of the towards payments of costs, compensations, etc. (section 483 of the Ordinance).
35. To hear revision petition against the orders of Registrar, etc. (section 484 of the Ordinance).
36. To grant relief in certain cases (section 488 of the Ordinance).
37. To impose penalty for wrongful withholding of company profit (section 493 of the Ordinance).
38. To impose penalty for non-compliance with directions (section 495 of the Ordinance).

ABDUL QAYYUM KHAN,
Secretary.