

EXTRAORDINARY

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PART I

GOVERNMENT OF SINDH

LAW DEPARTMENT

NOTIFICATION

Karachi, the 16th **JULY**, 2001.

No. S.LEGIS:1(25)/2000:—The following Ordinance made by the Governor of Sindh is hereby publish for general information:—

THE **SINDH PRIVATISATION COMMISSION ORDINANCE, 2001**

Sindh Ordinance No. XX V of 2001

AN ORDINANCE

to provide for the establishment of a Privatization Commission in the Province.

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

Preamble

WHEREAS the 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 privatization for the retirement of 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 Provincial Assembly stands dissolved in pursuance of the Proclamation of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999;

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

NOW, THEREFORE, in pursuance of the aforesaid Proclamation and the Provisional Constitution Order read with Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the Governor of Sindh is pleased to make and promulgate the following Ordinance-

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|--|----|-----|--|
| Short title,
extent and
commencement | 1. | (1) | This Ordinance may be called "the Sindh Privatisation Commission Ordinance, 2001". |
| | | (2) | It extends to the whole of Sindh. |

PART II - PRIVATISATION COMMISSION

3 **Establishment of the Commission:-** (1) The Sindh Privatization Commission is hereby established for carrying out the purposes of this Ordinance.

(2) The 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.

(3) The Sindh Government's Notification No.SOVI(S&GAD)/7(36)/97 dated 24TH June, 1997, No.SOVI(S&GAD)/7(36)/97(Vol.-II) dated 18th June, 1998 and three other related notifications bearing No.SO(C-IV)S&GAD/7-17/98 all dated January 09, 1999 followed by two notifications bearing No.SO(C-IV)S&GAD/7-17/2000 dated 15th November, 2000 issued from time to time establishing and reconstituting the Privatization Committees (hereinafter referred to as the existing Committees are hereby rescinded and the existing Committees shall stand dissolved on the commencement of this Ordinance.

(4) Upon the commencement of this Ordinance, the dissolution of the existing Committees and establishment of the Commission—

(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 Committees 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 Committees shall continue to be the Chairman of the Commission until a Chairman is appointed under section 6;
- (ii) the Secretary of the existing Committees referred to in sub-section (2) shall continue to be the Secretary of the Commission until a Secretary is appointed under section 6;
- (iii) a member of the existing Committees shall continue to be a member of the Commission until such member is appointed under section 6;
- (iv) all officers, consultants, advisors, auditors and other employees and staff of the existing Committees shall stand transferred and be the officers, consultants, advisors, 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 Committee shall upon their transfer to the Commission continue to be governed by the Sindh Civil Servants Act, 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 Sindh Civil Servants Act, 1973 and the rules framed thereunder;

(d) the budget provision for the existing Committees shall stand transferred to the Commission Account upon authorization by Government;

(e) the balance amount of Privatization Fund account of the existing Committees 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 Committees 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 Committees 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 Committees in any statutory instrument or document shall, unless the context otherwise requires, be read and construed as reference to the Commission.

(5) 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 Karachi. The Commission may establish regional offices at such other place or places in Sindh as it consider 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 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 Government that monopolies are not created in the process of privatisation;
- (l) 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;

- (m) 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;
- (n) invite applications for the privatisation and ensure widest possible participation;
- (o) evaluate bids received according to criteria determined by the Commission from time to time and formulate recommendations for consideration by the Cabinet;
- (p) recommend to 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;
- (q) advise measures to Government for improvement of public sector units till their privatisation;
- (r) assist in the implementation of Government policies on deregulation and privatisation and advise Government on deregulating the economy to the maximum possible extent; and
- (s) 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. Chairman, Secretary and Members:-

- (1) The Chairman, Secretary and Members shall be appointed by Government.
- (2) The Chairman shall be responsible for the day to day administration and 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 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 Government may determine.
- (5) The Chairman, Secretary and other members shall, unless they resign or are transferred or removed from office earlier by Government, hold office for such period as may be determined by Government.

- (6) No person shall be appointed or continue as a Chairman, Secretary or member if he-
- has been convicted of an offence involving moral turpitude or has been found guilty of misconduct;
 - has been or is adjudged insolvent;
 - is incapable or discharging his duties by reason of physical or mental unfitness and has been so declared by a Special Medical Board appointed by Government or
 - 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 Government. 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.

Provided that nothing herein contained shall be construed to limit or abridge the power of Government to deal with the case of any Chairman in such manner as may appear to it to be just and equitable.

(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 power of a Secretary to Government.

7. Meeting of the Commission:-

(1) Save as hereinafter provided, the Commission shall regulate the procedure for its meeting.

(2) The meeting of the Commission 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 Commission requiring a decision by the Commission.

(4) The meeting of the Commission shall be held at such time and place 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 Commission shall be taken in such meeting.

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

8. Delegation:-

(1) The Commission may constitute committees of its members to entrust them with such functions and powers as it may deem fit. The Commission 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.

(2) The Commission 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 Commission 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 Commission of the functions or powers so delegated.

9. Employees of the Commission:-

(1) To carry out the purpose of this Ordinance, the Commission may, from time to time, employ persons to be employees of the Commission, except Chairman. Secretary and members, 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 by Government, shall be governed by the Sindh Civil Servants Act, 1973 and the rules made thereunder unless absorbed in the Commission.

10. 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, auditors, and consultant shall be made by the Commission in accordance with such policy guidelines as the Commission may lay down from time to time.

