NATIONAL ACCOUNTABILITY ORDINANCE 1999 SINDH REPEAL ACT, 2017

SINDH ACT NO. XXV OF 2017

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[09th August, 2017]

       AN ACT to repeal the National Accountability Ordinance 1999 (XVIII of 1999) to the extent of Province of Sindh.

       WHEREAS the National Accountability Ordinance, 1999 enacted in pursuance of the proclamation of emergency of 14th October 1999 and Provisional Constitutional Order No.1 of 14th October 1999, was also made applicable to the Provinces and was subsequently included in Schedule VI of the Constitution of Islamic Republic of Pakistan alongwith Local Government Ordinance, 2001 and Police Order 2002, in order to prevent the provinces from repealing or amending the said laws.

Preamble.

       AND that the Proclamation of Emergency of 14th October 1999 and Provisional Constitution Order No.1 of 14th October 1999 were declared to have been made without lawful authority by the parliament and Sixth Schedule to the Constitution was omitted under 18th Constitutional Amendment.

       WHEREAS the legislative and the executive authority of the province extends to the "offences with respect to provincial subjects" and measures to combat corruption" being residual subjects under the Constitution.

       AND WHEREAS the Federation legislated on three provincial subjects of (1) Local Government, (2) Public Order and Police and (3) "Measures to combat Corruption" and "offences with respect to provincial subjects" under an unlawful Emergency and provinces have already repealed or amended Local Government Ordinance 2001 and Police Order 2002.

       AND WHEREAS emergency legislation on any provincial subject by the Parliament ceases to have any effect six months of lifting of emergency under Article 232 (5) and 234 (6) of the Constitution of Islamic Republic of Pakistan and measures to combat corruption being concurrent subject in the Constitution of 1956 now exclusively vests in the provinces not being mentioned in Federal Legislative List of the Constitution and the executive and legislative authority of the province fully extending to offences with respect to provincial subjects.

       AND WHEREAS under entry 55 of the Federal Legislative List Part I of the Constitution, the Federal Government can establish Courts on the matters enumerated only in the Federal Legislative List and the subjects of Anti-Corruption or offences with respect to provincial

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subjects not mentioned the said list, establishing any such Courts as provided under National Accountability Ordinance, 1999 extending their jurisdiction and powers to the provinces neither was nor is in consonance with the Constitution and amounts to exercising the executive authority in the province by an authority or government other than the lawfully elected provincial government.

AND WHEREAS Anti-Corruption Administration of Federal and Provincial Governments has been historically and legally independent under separate laws enacted by respective legislatures under the division of powers scheme envisaged in the Constitution and section 197 of the Code of Criminal Procedure.

AND WHEREAS the Province of Sindh has independent Anti-Corruption Administration and Laws which could not be amended, repealed or replaced by any federal law explicitly or impliedly as Majlis-e-Shoora (Parliament) is not competent to legislate on provincial or residual matters under the Constitution except in terms of Article 144, 232, 234 of the Constitution and under the aforesaid Articles also the Provincial Assembly is always competent to repeal the relevant laws enacted by Parliament to the extent of province or they cease to have effect after six months of lifting of emergency respectively.

AND WHEREAS two parallel laws could not be imposed on the people of Province of Sindh or in a Federation on the same subject and offences with respect of provincial subjects being solely within the legislative competence to the provinces under the Constitution.

Now, therefore, in exercise of the Powers under Article 142(c) read with Article 232(5) and other enabling provisions of the Constitution of Islamic Republic of Pakistan, the Provincial Assembly of Sindh is pleased to make and promulgate the following Act:

1. (1) This Act may be called "National Accountability Ordinance 1999 Sindh Repeal Act, 2017". **Short Title, extent and commencement.**

   (2) It extends to the whole of the Province of Sindh.

   (3) It shall come into force with immediate effect.

2. (1) The National Accountability Ordinance 1999, to the extent of its applicability to the Province of Sindh, is hereby repealed, hereinafter referred to as repealed Ordinance. **Repeal**

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(2) All proceedings, inquiries and investigations pending under the repealed Ordinance immediately before the commencement of this Act shall stand transferred to Sindh Anti-Corruption Establishment and shall be dealt with in accordance with the provisions of Sindh Inquiries & Anti-Corruption Act, 1991 and Rules made thereunder.

(3) All references and legal proceedings whatsoever filed or pending before Accountability Courts under the repealed Ordinance immediately before the commencement of this Act shall stand transferred to the respective Provincial Anti-Corruption Courts of the competent Jurisdiction and such courts shall proceed with the references and legal proceedings from the stage at which they were pending without the necessity of recalling any witnesses.

(4) All Appeals, Revisions and Bails applications filed, pending or arising out of order or judgment of any court under the repealed Ordinance including High Court and Supreme Court shall continue to proceed in accordance with law applicable to Appeals, Revisions and Bails application arising out of order or judgment of Provincial Anti-Corruption Courts.