

The

Eradication of Corrupt Business Practices Ordinance, 1998

An ordinance to provide for
the eradication of corrupt business practices.

WHEREAS it is expedient to provide for the eradication of corrupt business practices;

AND WHEREAS the National Assembly is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following Ordinance:-

1. Short title, commencement and extent:

- (1) This ordinance may be called the Eradication of Corrupt Business Practices Ordinance, 1998.
- (2) It shall come into force at once.
- (3) It extends to the whole of Pakistan and shall apply also to acts committed at any place outside Pakistan.

2. Definitions:- In this Ordinance, unless the context otherwise requires:

- (a) “company” means a company incorporated under any law relating to the incorporation of companies, and includes any foreign juridical entity;
- (b) “contract” includes an understanding giving rise to any liability (pecuniary or otherwise), the grant of a right, lease, licence, concession, premium or conferment of any privileges;
- (c) “Government” means the Federal Government, a local body and shall include any statutory body or any body in the public sector or a body established, controlled, managed or owned by the Government has a controlling share or interest;
- (d) “indirectly” includes through any broker, associate, affiliate, sponsor, promoter, director or shareholder;
- (e) “person” means a natural or juridical person; and
- (f) “specified contract” means a contract of a value exceeding one hundred million rupees in relation to such industry or industries as may be specified in the schedule.

3. Corrupt business practices:

A person is said to commit a corrupt business practice if he, directly or indirectly, gives, or agrees to give, a commission, gratification, bribe, finder” fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or modifying a contract, permission, sanction, licence or other benefit in whatsoever form from the government.

Explanation: A consultancy agreement entered into with a person in good faith and as a bona fide arms length transaction for the rendition of commercial services at market related rates and not intended as an indirect payment

intended to circumvent the above provision, shall not be deemed to be a corrupt business practice provided that it is, if so required by the government, disclosed to it for purposes of ascertainment.

4. Punishment for corrupt business practices:

- (1) Whoever commits a corrupt business practice shall be guilty of an offence punishable with imprisonment for a term which may be extended to seven years, or with fine, or with both.
- (2) In the event of a corrupt business practice having been committed by a company, the chief executive, by whatever name designated, the country manager or incharge (if any) and every director or officer involved shall be liable to be proceeded against and punished accordingly unless he had no knowledge of, or involvement in the offence.

5. Offence of strict liability: The offence punishable under section 4 shall be one of strict liabilities and it shall not be a defence to the charge that the person giving, or agreeing to give, a commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or modifying a contract, permission, sanction, licence or other benefit in whatsoever form from the government was compelled, coerced, intimidated or induced to give or agree to give, the same.

6. Contract obtained through corrupt business practice to be void: Any contract obtained by any person from the government by resort to corrupt means shall, as against the government, be void and notwithstanding anything contained in any law or contract to the contrary, no court, tribunal, arbitrator or other forum, shall, as against the government, enforce or permit to be enforced, or acted upon, any such contract.

7. Declaration not to commit corrupt business practice: (1) Any person entering into a specified contract with the government shall, on demand, furnish a declaration sworn on oath that he has not given, or agreed to give, and shall not give, any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, for obtaining or modifying any contract, permission, sanction, licence or other benefit in whatsoever form from the government.

(2) Every specified contract entered into with the government shall include, and be deemed to include, a term that the person entering into a contract has, or will on demand, furnish a declaration under sub-section (1).

8. Declaration in relation to existing contracts:

1) Every person who has entered into a specified contract with the government which has not yet been fully implemented shall, within seven days, or such further period as may be specified by the government, on service of a notice, furnish a declaration sworn on oath as to whether or not he has, directly or indirectly, given, or agreed to give, any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, to any person for obtaining or modifying the said contract.

Explanation:

- (1) A contract shall be deemed not to have been implemented in full if any obligations are subsisting thereunder and shall include cases in which contracts or modifications thereof, were obtained through promoters, sponsors, directors, share holders, affiliates, associates or brokers.

- (2) Where a company which is required to furnish a declaration fails to furnish it, the government shall stand absolved from all obligations under the contract with such person, without prejudice to its right to recover damages or compensation.
- (3) No criminal proceedings shall be initiated against a person making a true declaration, under subsection (1) in relation to existing contracts, of any commission, gratification, bribe, finder's fee or kick-back paid by him, directly or indirectly, for obtaining or modifying a contract, permission, sanction, licence or other benefit in whatsoever form from the government.
- (4) Notwithstanding the provisions of section 6, the government may, in the public interest, and for reasons to be recorded, agree to renegotiate an existing contract.

9. Declaration by companies:

(1) Where the person obtaining a specified contract from the government, or required to file a declaration is a company, the declaration shall be furnished on oath by the chief executive of the company or a person duly authorized by the board of directors of the company in this behalf. In the case of a foreign company a confirmatory declaration shall, in addition, be made on oath by the person in charge of its operation in Pakistan (if any);

(2) In the event of a false declaration having been given it shall not be a valid defence for the declaration to claim that he was personally unaware of the factual position.

10. Punishment for false declaration: Where a person furnishes a false declaration, he shall be guilty of an offence punishable with imprisonment for a term which may extend to three years, or fine, or both, and shall also be liable to pay an amount equivalent to the concealed amount to the government.

11. Cognizance of offences: No court shall take cognizance of an offence punishable under this Ordinance except on a complaint made by order of, or under authority of, the Federal Government or an officer empowered in this behalf by the said Government.

12. Inquiry in relation to offences:

(1) The Federal Government may appoint any government servant, or any other person who is an advocate of a High Court, or is a qualified chartered accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961), or is a banker to carry out an enquiry in relation to any declaration made, or required to be made, under this Ordinance and such government servant or person shall have all the powers of a Civil Court, while trying a civil suit under the Code of Civil Procedure, 1908 (Act No. V of 1908), in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the recovery and production of any documents whether within or outside Pakistan;
- (c) receiving evidence on affidavit; and
- (d) issuing commissions for the examination of witnesses or documents.

(2) Nothing contained in sub-section (1) is intended to, or shall have the effect of, restricting the powers of any police officer for or in relation to any offence committed under this Ordinance.

Schedule

1. Energy sector industry that is to say electricity and gas.