

SECURITIES AND EXCHANGE ORDINANCE, 1969

ORDINANCE NO. XVII OF 1969

(28th June, 1969)

AN

ORDINANCE

To provide for the protection of investors, regulation of markets and dealings in securities

WHEREAS it is expedient to provide for the protection of investors, regulation of markets and dealings in securities and for matters ancillary thereto;

AND WHEREAS the national interest of Pakistan in relation to the achievement of uniformity requires Federal legislation in the matter;

NOW, THEREFORE , in pursuance of the Proclamation of the 25th day of March 1969, read with the Provisional Constitution Order, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

CHAPTER - I

PRELIMINARY

1. Short title, extent and commencement.-(1) This Ordinance may be called the Securities and Exchange Ordinance, 1969.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint.

2. Definitions.-(1) In this Ordinance, unless there is anything repugnant in the subject or context,-

(a) “agent” means a person appointed by a member to act on his behalf for the purposes recognized by an exchange;

(ab) “associate” means any partner, employee, officer or director of a member;

(ac) “asset management company” means a company which offers investment schemes under trust deeds and issues redeemable securities”;

(ad) “balloter” means a person who provides services to an issuer for selecting the required number of applicants of public issue through a computer draw;

(b) “bank” means a banking company as defined in the Banking Companies Ordinance,1962 (LVII of 1962);

(c) “broker” means any person engaged in the business of effecting transactions in securities for the account of others;

(ca) “central depository” means a company formed to establish and operate a system for the central handling of securities, whether or not listed on an exchange, whereby such securities are deposited with and held in custody by, or registered in the name of, the company as a nominee for the depositors and dealings in respect of such securities are effected by means of entries in securities accounts without the physical delivery of scrips.”

(cb) “Commission” means the Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);

(cc) “Commodity Exchange” means a company that provides or, proposes to provide, the physical facilities necessary for trading in Commodity Futures Contracts;

(cd) Commodity Futures Contracts” means an agreement to purchase or sell a particular commodity for delivery [or settlement]¹ in the future at a price that is determined at the initiation of the contract that obligates each party to the contract to fulfill the contract at the specified price and that may be settled by delivery, cash or offset at an organized Exchange duly registered with the Commission and in relation to Commodity Futures the expression “commodity” includes,-

¹ The words “or settlement” inserted through Finance Act, 2008 dated June 27 2008.

(i) agricultural, livestock, fishery, forestry, mining or energy goods, and any product that is manufactured or processed from any such goods; and

(ii) any other matter as may be notified by the Commission in the Official Gazette;

(ce) “corporatisation” means the conversion of a Stock Exchange from a company limited by guarantee to a company limited by shares;

(cf) “demutualisation” means the segregation of the ownership of a Stock Exchange from the right to trade on such Stock Exchange;

(d) “equity security” means any stock or transferable share (preferred or common) or similar security representing ownership; any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; any such warrant or right itself; and such other security as may be prescribed;

(da) “Exchange” means a Stock Exchange or a Commodity Exchange;

(dd) “free reserves” for the purpose of an investment company, include any amount which, having been set aside out of the revenue or other surpluses is free in that it is not retained to meet any diminution in value of the assets, specific liability, contingency or commitment of that company known to exist at the date of the balance sheet;

(de) “integration” means the merger of two or more Stock Exchanges in accordance with a scheme approved by the Commission;

(e) “investment adviser” includes, person who is, for compensation, engaged in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, but does not include,-

(i) a bank;

(ii) any lawyer, accountant, engineer or teacher whose performance of such services is solely incidental to the practice of his profession;

(iii) any broker, jobber, member or associate whose performance of such services is solely incidental to the conduct of his business as a broker, jobber, member or associate and who receives no separate compensation therefor;

(iv) the publisher of any newspaper, news magazine, or other publication of general and regular circulation; or

(v) the Investment Corporation of Pakistan;

(f) “Investment Company” means a company engaged principally or wholly in buying and selling securities of other companies and includes a company, not being a holding company, the investment of which in the share capital of other companies at any one time is of an amount equivalent to eighty per cent of the aggregate of its own paid up capital and free reserves, but does not include a bank or an insurance company or a corporation which is a member of a Stock Exchange;

(g) “issuer” means any person who has issued or proposes to issue any security;

(h) “jobber or dealer” means any person engaged in the business of effecting transactions in securities for his own account, through a broker or otherwise, but does not include any person who trades in securities for his own account, either individually or in some fiduciary capacity, otherwise than as a part of a regular business;

(i) “member” means a member of an Exchange;

[(ii) Omitted]

(j) “person” includes a Hindu undivided family, a firm, an association or body of individuals, whether incorporated or not, a company and every other artificial juridical person;

(k) “prescribed” means prescribed by rules made under this Ordinance;

(l) “security” includes-

- (i) any stock, transferable share, scrip, [Modaraba Certificate], note, debenture, debenture stock, [articulation term certificate] bond, investment contract, [forward or futures contract], and pre-organization certificate or subscription, and, in general, any interest or instrument commonly known as a “security” and, any certificate of deposit for, certificate of interest or participation in, temporary or interim certificate for, receipt for, or any warrant or right to subscribe to or purchase, any of the foregoing but does not include currency or any note, draft, bill of exchange or banker’s acceptance
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or any note which has a maturity at the time of issuance of not more than twelve months, exclusive of days of grace, or any renewal thereof whose maturity is likewise limited;

- (ii) any Government security as defined in the Securities Act, 1920 (X of 1920);
- (iii) any bonus entitlement voucher issued by the State Bank of Pakistan in accordance with any scheme announced by the Commission; and
- (iv) Commodity Futures Contract;
- (m) “stock exchange” means any person who maintains or provides a market place or facilities for bringing together buyers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a Stock Exchange, as that term is generally understood, and includes such market place and facilities;
- (n) “sub-underwriter” means a person who has made a contract with an underwriter to take up a part of the securities not fully subscribed by the public issue;
- (o) “transfer agent” means a person appointed by the issuer to assist in the maintenance of record for issuance and transfer of securities and to perform functions of persons commonly known as Registrar;
- (p) “underwriter” includes a person who has made a contract with an issuer to subscribe and pay in cash for those securities as are not fully subscribed by the public issue or a person who has initially bought the securities from an issuer for the purpose of selling such securities by means of a public offer; and
- (q) “venture capital company” includes a company which is engaged principally in financing through direct equity investment in another company and provides managerial expertise thereto;

Explanation :-In clause (1) “Modaraba Certificate” has the same meaning as in the Modaraba Companies and Modarabas (Floatation and Control) Ordinance, 1980 (XXXI of 1980).

- (2) The words and expressions used but not defined in this Ordinance shall have the same meaning as are assigned to them in the Companies Ordinance, 1984 (XLVII of 1984).

CHAPTER II

REGISTRATION AND REGULATION OF STOCK EXCHANGES

3. **No Exchange to operate without registration.**-(1) No Exchange shall operate or carry on its functions, and no person shall use or utilize, for the purpose of any transaction or dealing in any security, the facilities or services of a Exchange, unless such Exchange is registered under this Ordinance.

(2) The Authority shall determine the number and places for the establishment of exchanges.

4. **Eligibility for registration.**- (1) Any Exchange which fulfill such conditions or complies with such requirements as may be prescribed to ensure fair dealings [17] [, protection of investors and its sustainable economic viability] shall be eligible for registration under this Ordinance.

(2) The conditions or requirements which may be prescribed for the purposes of sub-section (1) may, among other matters, relate to-

- (a) qualifications for membership and admission, exclusion, suspension, expulsion and re-admission of members therein to or therefrom;
- (b) constitution and powers of the governing body and the powers and duties of the office bearers;
- (c) representation [from a class or classes of persons or professions] on the governing body of an Exchange or any of its Committees;
- (d) the manner in which business should be transacted including restrictions on the business of the members;
- (e) Memorandum and Articles of Association, rules, regulations and by-laws of an Exchange; and
- (f) the maintenance of accounts [and records] including those of members, and their audit.

5. **Registration.**- (1) Any Exchange which is eligible for registration under section 4 may, in such form[, manner and on payment of such fee] as may be prescribed, apply to the [Commission] for registration.

(2) The [Commission], if it is satisfied, after such inquiry and after obtaining such further information as it may consider necessary,-

- (i) that the Exchange is eligible for registration; and
- (ii) that it would be in the interest of the trade and also in the public interest to register the Exchange;

may grant a certificate of registration to the Exchange.

(3) No application for registration shall be refused except after giving the applicant an opportunity of being heard.

5A. **Brokers or agents not to engage in business without registration.-** No person shall act as broker or agent to deal in the business of effecting transactions in securities unless he is registered with the Commission in such manner, on payment of such fees and charges and on such conditions as may be prescribed.

6. **Accounts, annual reports, returns, etc.-** (1) Every Exchange and every director, officer and member thereof shall prepare and maintain such books of accounts and other documents in such manner as may be prescribed; and every such book of accounts or document shall be subject to inspection at all reasonable times by any person authorised by the [Commission] in this behalf.

(2) Every Exchange shall submit to the [Commission], in such manner and containing such particulars as may be prescribed, an annual report and periodical returns relating to its affairs.

(3) Without prejudice to the provisions of sub-section (1) and sub-section (2), every Exchange and every director, officer or member thereof shall furnish such documents, information or explanation relating to the affairs of the Exchange or, as the case may be, relating to the business on the Exchange of such director, officer or member as the [Commission] may, at any time, by order in writing require.

7. **Cancellation of registration, etc.-** (1) Where the [Commission] is of opinion that Exchange or any member, director or officer of an Exchange has contravened any provision, or has otherwise neglected or failed to comply with any requirement, of this Ordinance, or of any rule, regulation or direction made or given thereunder, the [Commission] may, if it considers it necessary for the protection of investors or to ensure fair dealings or fair administration of the Exchange so to do, by order in writing-

- (a) suspend for such period as may be specified in the order the transaction of any business on the Exchange;
- (b) cancel the registration of the Exchange;

- (c) supersede the governing body or other authority of the Exchange;
- (d) [suspend or] remove the director, officer or member from his office in, or membership of, the Exchange;

Provided that no such order shall be made except after giving the governing body or other authority or, as the case may be, the director, officer or member, an opportunity of being heard.

(2) An order made under clause (c) or clause (d) of sub-section (1) may also direct that the functions of the governing body or other authority which has been superseded or of the director or officer who has been removed shall be performed by such authority or person as may be specified therein.

(3) An order under sub-section (1) shall have effect notwithstanding anything contained in any other law for the time being in force or in any Memorandum or Articles of Association;

Provided that no order made under clause (a) or clause (b) of sub-section (1) shall affect the validity of any contract lawfully entered into before the date of such order.

8. Restriction on dealings in securities.- (1) No person shall transact any business in securities on any Exchange otherwise than as may be prescribed.

(2) No business shall be transacted on a Exchange in a security, other than a Government security [], which is not listed on such Exchange.

Provided that business may be transacted in a delisted security for a period which may extend to six months in such manner as the Commission may direct.

(3) No person shall act as a dealer in a security listed on a Stock Exchange outside such Stock Exchange;

(4) No person other than a member shall act as a broker or a jobber for any security not listed on a stock exchange:

Provided that the prohibition in this sub-section shall not apply to discounting of any security evidencing a loan.

9. Listing of Securities.- (1) An issuer who intends to get any of his securities listed on a Stock Exchange shall submit an application therefore, in the prescribed form to the Stock Exchange and submit a copy of the application to the [Commission].

(2) Upon receipt of an application under sub-section (1), the Stock Exchange may, if it is satisfied after making such inquiry as it may consider necessary that the applicant

fulfils the conditions prescribed in this behalf, list the security for dealings on the Stock Exchange.

(3) Where a Stock Exchange refuses to list a security, the [Commission] may, either on petition by the applicant made within the prescribed time or on its own motion, direct the Stock Exchange to list the security.

(4) Where after the listing of a security, the [Commission] or Stock Exchange finds that the application is deficient in any material respect or that the issuer has failed to comply with any prescribed condition or requirement and that the continued listing of the security would not be in the public interest, the [Commission] or, as the case may be, the Stock Exchange may, by order, either require the issuer to correct the deficiency or comply with the prescribed condition or requirement within the time specified in the order or revoke the listing.

(5) A listed security may be delisted on application by the issuer to the Stock Exchange which may deny the application or grant it on such conditions as appear necessary or appropriate for the protection of investors.

(6) Where a Stock Exchange refuses to delist a security, the [Commission] may, on petition by the applicant made within the prescribed time, direct the Stock Exchange to delist the security.

(7) The Commission or a Stock Exchange may, if it considers it to be in the interest of trade or in the public interest so to do, by order recording the reasons, suspend for a period not exceeding sixty days the trading of any listed security and may, from time to time, for the said reasons and in the said manner extend the suspension for further periods not exceeding sixty days at any time.

[Omitted]

(9) No application submitted under sub-section (1) shall be refused, and no listing shall be revoked under sub-section (4), unless the issuer has been given an opportunity of being heard.

10. Compulsory listing of securities.- Where the Commission, having regard to the nature of, and the dealings in, any security, is of the opinion that it is necessary or expedient in the public interest so to do, it may, after consulting a Stock Exchange and giving the issuer of such security an opportunity of being heard, direct the Stock Exchange to list the security.

CHAPTER III
REGULATION OF ISSUER

11. **Submission of returns.** Omitted
12. **Submission of statement of beneficial owners of securities.** Omitted **listed equity**
13. **Prohibition of short-selling.** Omitted
14. **Trading by directors, officers and principal shareholders.** Omitted
15. **Regulation of proxies.** Omitted

CHAPTER III-A

INSIDER TRADING

[15A. *Prohibition of insider trading.*—(1) No person shall indulge in insider trading.

(2) Insider trading shall include, –

- (a) an insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains, or using others to transact such deals;
- (b) any other person to whom inside information has been passed or disclosed by an insider person transacting any deal, directly or indirectly, using inside information involving listed securities to which the inside information pertains, or using others to transact such deals;
- (c) transaction by any person as specified in clauses (a) and (b), or any other person who knows, or ought to have known under normal and reasonable circumstances, that the information possessed and used for transacting any deal is inside information;
- (d) an insider person suggesting or recommending to another person to engage in dealing in any listed securities to which the inside information possessed by the insider person pertains, without the inside information being disclosed to the person who has dealt in such securities;

(3) Nothing in this section shall apply to—

- (a) any transaction performed under an agreement that was concluded before the time of gaining access to inside information; or
- (b) the disclosure of inside information by an insider person as required under law.

(4) No contract shall be void or unenforceable by reason only of an offence under this section.

15B. *Inside information.*—(1) The expression “inside information” means, –

- (a) information which has not been made public relating, directly or indirectly, to listed securities or one or more issuers and which, if it were made public, would be likely to have an effect on the prices of those listed securities or on the price of related securities;
- (b) in relation to derivatives on commodities or information which has not been made public, relating, directly or indirectly, to one or more such derivatives and which are traded in accordance with accepted market practices on those markets; or
- (c) in relation to persons responsible for the execution of orders concerning listed securities, information which is conveyed by a client to such person and related to the client’s pending orders.

15C. *Insiders.*—(1) Insiders shall include, –

- (a) sponsors, executive officers and directors of an issuer;
- (b) sponsors, executive officers, directors and partners of a legal person or unincorporated business association, in which the issuer holds shares or voting rights, directly or indirectly, of twenty *per cent* or more;
- (c) sponsors, executive officers, directors and partners of a legal person or unincorporated business association who holds, directly or indirectly, shares or voting rights of ten *per cent* or more in an issuer;
- (d) sponsors, executive officers and directors of an organization, that has been engaged in the placement of listed securities or the public offer of securities or the issuing and marketing of such securities, who has had access to insider information during his employment till a period of one year after leaving employment;

- (e) any natural person holding, directly or indirectly, ten *per cent* or more shares of an issuer;
- (f) sponsors, executive officers and directors of credit institutions in which the issuer has an account;
- (g) any person obtaining inside information as part of his employment or when discharging his usual duties in an official capacity, or in any other way relating to work performed under contract of employment or otherwise;
- (h) any person obtaining inside information through unlawful means; and
- (i) a spouse, lineal ascendant or descendant, partner or nominee of a person referred to in clauses (a) to (h).

15D. *Listed companies responsibilities to disclose inside information.*—(1) Listed companies shall inform the public, in the manner specified by the Commission, as soon as possible of inside information which directly concerns the listed securities.

(2) Listed companies may delay the public disclosure of inside information, as referred to in sub-section (1) in order not to prejudice their legitimate interests, provided that such delay does not mislead the public and provided that the company is able to ensure the confidentiality of the information and the company shall inform the Commission of the decision to delay the public disclosure of inside information forthwith.

(3) Whenever a listed company or a person acting on its behalf, discloses any inside information to any third party in the normal exercise of employment, profession or duties, complete and effective public disclosure of that information must be made simultaneously in the manner specified by the Commission:

Provided that the provisions shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, regulations, articles of association or contract.

(4) Listed companies or persons acting on its behalf, shall maintain and regularly update a list of persons employed, under contract or otherwise in the manner specified by the Commission who have access to inside information and provide such list to the Commission whenever the Commission requests it.

(5) Persons discharging managerial responsibilities within a listed company and, where applicable, persons closely associated with them, shall notify the Commission of transactions conducted on their own account relating to the securities of such listed company in the manner specified by the Commission.

(6) The Exchanges shall adopt structural provisions, operating procedures and surveillance techniques to detect and prevent insider trading and market abuse practices, within such time as may be specified by the Commission and according to the regulations made hereunder.

15E. *Liability for contravention.*—(1) Any person who contravenes the provisions of sub-section (1) of section 15A shall, on being found guilty of contravention by the Commission, be liable to fine, which may extend to ten million rupees or three times the amount of gain made or loss avoided by such person, or loss suffered by another person, whichever amount is higher.

(2) In addition to the fine imposed under sub-section (1), such person,—

(a) may be directed by the Commission, –

(i) to surrender to the Commission, an amount equivalent to the gain made or loss avoided by him; or

(ii) to pay any other person who has suffered a loss, an amount equivalent to the loss so suffered by such person; and

(b) may, where such person is an executive officer, director, auditor, advisor, consultant of a listed company, be removed from such office by an order of the Commission and debarred from auditing any listed company for a period of upto three years; or

(c) may, where such person is registered as a broker or agent, be liable to cancellation of registration.

(3) Where an insider person discloses inside information to any other person who is not required to possess such information for any reason, the insider person shall be liable to fine, to be imposed by the Commission, which may extend to thirty million rupees.

(4) The Commission may, by notification in the official Gazette, make regulations to regulate persons who produce or disseminate research concerning listed securities or issuers of listed securities and persons who produce or disseminate other information recommending or suggesting investment strategy, intended for distribution channels or for the general public.]²

² Section 15-A and 15 B substituted by 15 A to 15 E through Finance Act, 2008 dated June 27 2008.

The substituted section 15-A and 15B read as under:

15-A. **Prohibition on stock exchange deals by insiders.** No person who is, or has been, at any time during the preceding six months, associated with a company shall, directly or indirectly, deal on a stock exchange in any listed securities of that or any other company or cause any other person to deal in securities of such company, if he has information which

a) is not generally available;

b) would, if it were so available, be likely to materially affect the price of those securities; or

CHAPTER IV

PROHIBITIONS AND RESTRICTIONS

16. **Credit, pledging and lending of customers' securities.**- No member or associate shall, in contravention of any rules made under this Ordinance, directly or indirectly,-

- (a) extend or maintain credit, or arrange for the extension or maintenance of credit, to or for any person for the purpose of purchasing or carrying any security; or
- (b) borrow on any security or lend or arrange for the lending of any security carried for the account of a customer ; or
- (c) pledge or arrange for the pledging of any security carried for the account of any customer.

17. **Prohibition of fraudulent acts, etc.**_ No person shall, for the purpose of inducing, dissuading, effecting, preventing or in any manner influencing or turning to his advantage, the sale or purchase of any security, directly or indirectly,-

c) relates to any transaction (actual or contemplated) involving such company.

Explanation. For the purpose of this section, the expression "associated with" shall mean a person associated with a company, if he.

- (i) is an officer or employee of that company or an associated company; or
- (ii) occupies a position which gives him access thereto by reason of any professional or business relationship between him or his employer or a company or associated company of which he is a director.

15 B. **Liability for contravention of section 15A.**- (1) Where a person contravenes the provisions of section 15A, the Authority may, by a notice in writing, ask such person to show cause for compensating any person who has suffered loss for such contravention and initiating prosecution against him.

(2) Where a person to whom a notice has been issued under sub-section (1) satisfy the Authority that -

- (a) any dealing on stock exchange or communication of any information was not made with the intent of making any profit or causing a loss to any person or company; or
- (b) the dealing on stock exchange or any information was communicated in good faith in discharge of his legal responsibilities.

the Authority may withdraw such notice.

(3) Where the Authority is not satisfied with the explanation of the person given in response to the show cause notice served upon him under sub-section (1), it may direct him to pay any other person who has suffered loss for any contravention of section 15A, compensation which shall not be less than the amount of loss sustained by any other person as a result of such dealing or communication of information:

Provided that where the person who has suffered any loss for any contravention of section 15A is not determined, the amount of compensation equivalent to the gain accrued or the loss avoided by such contravention, shall be payable to the [Commission].

(4) In addition to compensation payable under sub-section (3), a person contravening the provisions of section 15A shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to three times the amount of gain accrued or loss avoided by such contravention, or with both.

(5) Any compensation payable under this section shall be recoverable as arrear of land revenue.

- (a) employ any device, scheme or artifice, or engage in any act, practice or course of business, which operates or is intended or calculated to operate as a fraud or deceit upon any person; or
- (b) make any suggestion or statement as a fact of that which he does not believe to be true; or
- (c) omit to state or actively conceal a material fact having knowledge or belief of such fact; or
- (d) induce any person by deceiving him to do or omit to do any thing which he would not do or omit if he were not so deceived; or
- (e) do any act or practice or engage in a course of business, or omit to do any act which operates or would operate as a fraud, deceit or manipulation upon any person, in particular-
 - (i) make any fictitious quotation;
 - (ii) create a false and misleading appearance of active trading in any security;
 - (iii) effect any transaction in such security which involves no change in its beneficial ownership;
 - (iv) enter into an order or orders for the purchase and sale of security which will ultimately cancel out each other and will not result in any change in the beneficial ownership of such security;
 - (v) directly or indirectly effect a series of transactions in any security creating the appearance of active trading therein or of raising of price for the purpose of inducing its purchase by others or depressing its price for the purpose of inducing its sale by others;
 - (vi) being a director or an officer of the issuer of a listed equity security or a beneficial owner of not less than ten per cent of such security who is in possession of material facts omit to disclose any such facts while buying or selling such security.

18. Prohibition of false statements, etc.- No person shall, in any document, paper, accounts, information or explanation which he is, by or under this Ordinance, required to furnish , or in any application made under this Ordinance, make any statement or give any information which he knows or has reasonable cause to believe to be false or incorrect in any material particular.

18A. Prohibition of making fictitious and multiple applications for new issues .- (1) No person or any other person on his behalf shall make a fictitious application or submit more than one application for share of companies offered to the public.

(2) In case of contravention of the provisions of sub-section (1), the application money shall be liable to confiscation:

Provided that no action under this sub-section shall be taken without giving the applicant an opportunity of being heard.

19. Maintenance of secrecy.- No person shall, except with the permission of the [Commission] , communicate or otherwise disclose to any person not legally entitled thereto any information which has been entrusted to him or which he has obtained or to which he had access in the course of the performance of any functions under this Ordinance.

20. Prohibitory orders.- (1) Where the [Commission] is of opinion that any person is engaged or is about to be engaged in any act or practice which constitutes or is calculated to constitute a contravention of the provisions of this Ordinance or of any rules made thereunder, or that any person has neglected, or is not likely, to do an act the omission or failure to do which constitutes such contravention, it may, by order in writing, direct such person to abstain from doing the act or committing the practice which constitutes or is calculated to constitute such contravention, or to do the act, the omission or failure to do which constitutes such contravention.

(2) Every person to whom a direction under sub-section (1) is given shall comply therewith in such manner, if any, and within such time, as may be specified therein.

CHAPTER V

ENQUIRIES, PENALTIES, ORDERS AND APPEALS

21. (1) The [Commission] may, on its own motion or on representation of not less than [one-tenth] in number of the members of the Exchange or, in the case of the business or any transaction mentioned in clause (b), on the representation of the Exchange or any person interested in or affected by such business or transaction, at any time by order in writing, cause an enquiry to be made by any person appointed in this behalf into-

(a) the affairs of, or dealings in, any Exchange; or

- (b) the dealings, business or any transaction in securities by any [person or]³ broker, member, director or officer of an Exchange.

(2) Where any enquiry under sub-section (1) has been undertaken every past or present member, director, manager or other officer of the Exchange [or any other person]⁴ to which the enquiry relates, and every other person who has had any dealing in the course of his business with such [person or]⁵ Exchange or with the director, manager or officer thereof, shall furnish such information and documents in his custody or power or within his knowledge relating to or having bearing on the subject-matter or the enquiry as the person conducting the enquiry may require.

(3) The person conducting an enquiry under sub-section (1) may, for the purpose of such enquiry, enter into any premises belonging to or in the occupation of the Exchange or the issuer or of the person to whom the enquiry relates, and call for and inspect and seize books of accounts or documents in the possession of any such Exchange, issuer or person.

(4) The person holding an enquiry under sub-section (1) shall, for the purpose of such enquiry have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit, in respect of the following matters, namely :-

- (a) enforcing the attendance of a person and examining him on oath or affirmation;
- (b) compelling the production of documents;
- (c) issuing commissions for the examination of witnesses;

and any proceedings before such person shall be deemed to be “judicial proceeding” within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860).

22. Penalty for certain refusal or failure. -(1) If any person-

- (a) refuses or fails to furnish any document, paper or information which he is required to furnish by or under this Ordinance; or
- (b) refuses or fails to comply with any order or direction of the [Commission] made or issued under this Ordinance; or

³ The words “person or” inserted through Finance Act, 2008 dated June 27, 2008.

⁴ The words “or any other person” inserted through Finance Act, 2008 dated June 27, 2008.

⁵ The words “person or” inserted through Finance Act, 2008 dated June 27, 2008.

- (c) contravenes or otherwise fails to comply with the provisions of this Ordinance or any rules or regulations made thereunder;

the [Commission] may, if it is satisfied after giving the person an opportunity of being heard that the refusal, failure or contravention was willful, by order direct that such person shall pay to the [Commission] by way of penalty such sum not exceeding [fifty million] rupees as may be specified in the order and, in the case of a continuing default, a further sum calculated at the rate of [two hundred] thousand rupees for every day after the issue of such order during which the refusal, failure or contravention continues.

(2) Any sum directed to be paid under sub-section (1) shall be recoverable as an arrear of land revenue.

(3) No prosecution for an offence against this Ordinance shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

23. Civil liabilities.- (1) Every contract made in contravention of any provision of this Ordinance or any rule made thereunder shall be voidable as regards the rights of any party to the contract contravening such provision or any person not being a party to the contract who acquires any right under the contract with actual knowledge of the facts by reason of which its making or performance was in such contravention and any person affected by such contract not being himself a party to the contravention may sue to rescind any such contract to the extent it has been consummated or for damages when rescission is not possible.

(2) Any person who makes or causes to be made, in any application, report, or document filed with the [Commission] or a Stock Exchange pursuant to this Ordinance or any rule made thereunder, any statement which was false or misleading with respect to any material fact, at the time and in the light of the circumstances under which it was made, shall be liable to any person who has purchased or sold a security in reliance on such statement for damages caused by such reliance, without regard to the presence or absence of any contractual relationship between the two, unless the person who made or caused to be made the application, report or document proves that he acted in good faith and had no knowledge or reasonable ground to believe that the statement was false or misleading.

(3) Any person who participates in any act or transaction in contravention of section 17 shall be liable to any person who has purchased or sold a security in reliance on such act or transaction for damages caused by such reliance, without regard to the presence or absence of any contractual relationship between the two, unless the person so contravening proves that he acted in good faith and had no knowledge or reasonable ground to believe that there was any fraud, untruth or omission.

(4) Every person who directly or indirectly exercises control over the affairs of any person liable under this section shall also be liable to the same extent as the person whose

affairs are so controlled, unless he proves that he acted in good faith and did not directly or indirectly induce the act or acts giving rise to the cause of action.

(5) Liability under this section shall be joint and several, and every person who becomes liable may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment, unless the plaintiff was, and the defendant was not, guilty of fraudulent misrepresentation.

(6) No suit for the enforcement of any right or remedy provided for in this section shall lie after the expiry of three years from the date of the accrual of the cause of action.

(7) The rights and remedies provided by this Ordinance shall be in addition to any other rights and remedies available under any other law for the time being in force.

24. **Penalty.** (1) Whoever contravenes the provisions of section 17 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to [five hundred] thousand rupees, or with both.

(2) Where the person guilty of an offence referred to in sub-section (1) is a company or other body corporate, every director, manager or other officer responsible for the conduct of its affairs shall, unless he proves that the offence was committed without his knowledge or that he exercised all diligence to prevent its commission, be deemed to be guilty of the offence.

25. **Cognizance of offence.**- No court shall take cognizance of any offence punishable under this ordinance except on a report in writing of the facts constituting the offence by an officer authorised in this behalf by the [Commission]; and no court inferior to that of a court of Session shall try any such offence.

26. [Omitted]

CHAPTER VI

MISCELLANEOUS

27. **Advisory Committee.**- The [Commission] may, for the purpose of obtaining advice and assistance in carrying out the purposes of this Ordinance, constitute an Advisory Committee consisting of such persons representing interests affected by this Ordinance or having special knowledge of the subject-matter thereof as it may think fit.

28. [Omitted]

29. **Exemption.-** The [Commission] may, by notification in the official Gazette, exempt any person or class of persons or any security or class of securities or any transaction or class of transactions from the operation of all or any of the provisions of this Ordinance.

30. **Indemnity.-** No suit, prosecution or other legal proceedings shall lie against the [Commission] or an officer or authority subordinate to it or specially appointed for the purpose of this Ordinance for anything which is in good faith done or intended to be done under this Ordinance or any rules or orders made thereunder.

31. **Securities acquired in good faith.-** (1) A person who, without fraud and for a lawful consideration, becomes the possessor of a certificate of an equity security, scrip, debenture, debenture stock or bond, and who is without notice that the title of the person from whom he derived his own title was defective shall hold such certificate and all rights attached thereto free from any defect of title of prior parties and free from defences available to prior parties among themselves.

(2) An Exchange may regulate the documentation, procedures and guarantees required to transfer property in securities and the effects thereof on the respective rights and liabilities of the parties and such regulations, if approved by the [Commission] , shall constitute binding and enforceable terms and conditions of contracts effected on the exchange, shall govern the rights and liabilities of the parties thereto, and shall govern the rights and liabilities with respect to transfers of shares on its books of the issuer of listed securities notwithstanding any provisions to the contrary contained in the Contract Act, 1872 (IX of 1872), the Negotiable Instruments Act, 1881 (XXVI of 1881), the Transfer of Property Act, 1882 (IV of 1882) or the Companies Ordinance, 1984, or any other law for the time being in force.

32. **Regulation of business of asset management companies, investment advisers, investment companies and venture capital companies.-** The business of asset management companies, investment advisers and investment companies and venture capital companies shall be regulated in such manner as may be prescribed.

32-A. **Regulation of central depository companies.-** (1) No company shall function as a central depository company unless it is incorporated under the Companies Ordinance, 1984 (XLVII of 1984), and is registered with the Authority in the manner and on payment of such fee as may be prescribed.

(2) A certificate of registration granted under this section shall be valid for one year and shall be renewable on payment of such fee as may be prescribed.

(3) No application for registration shall be refused except after giving the applicant an opportunity of being heard.

(4) Where the Authority is of the opinion that a central depository company has contravened any provision, or has otherwise neglected or failed to comply with any requirement of this Ordinance or the rules, the Authority may suspend the registration for a specified period or cancel the registration of such company:

Provided that the registration shall not be suspended or canceled except after giving the central depository company a notice to show cause.

32-B. Registration of credit rating companies.- (1) No company shall function as a credit rating company unless it is incorporated under the Companies Ordinance, 1984 (XLVII of 1984), and is registered with the Authority in the manner and on payment of such fee as may be prescribed.

(2) A certificate of registration granted under this section shall be valid for one year and shall be renewable on payment of such fee as may be prescribed.

(3) No application for registration shall be refused except after giving the applicant an opportunity of being heard.

(4) Where the Authority is of the opinion that a credit rating company has contravened any provision, or has otherwise neglected or failed to comply with any requirement of this Ordinance or the rules, the Authority may suspend the registration for a specified period or cancel the registration of such company:

Provided that the registration shall not be suspended or cancelled except after giving the credit rating company a notice to show cause.

32-C. Regulation of business of transfer agents, balloters and underwriters, etc.- (1) The business of transfer agents, balloters, underwriters, sub-underwriters, consultants to a public issue and other ancillary business relating to stock market shall be regulated in such manner and on payment of such fees and charges as may be prescribed.

32-D. Regulation of business of Commodity Futures Contract.- The business of Commodity Futures Contract shall be regulated in such manner and on payment of such fees and charges and may be prescribed.

32E. Corporatisation, demutualisation and integration of the stock exchanges.- (1) Notwithstanding anything in any other law for the time being in force, the stock exchanges shall stand corporatized and demutualised from 31st December, 2006 or from such later date as may be specified by the Commission, in such manner and in accordance with such conditions as may be prescribed.

[(1A) Without prejudice to the generality of the foregoing power and sub-section (2) of section 33, the rules made in pursuance of this section may *inter alia* provide for—

- (a) the matters to be included in any scheme of demutualization and corporatization and the manner of its approval by the members of the stock exchange;
- (b) the power of the Commission to approve any scheme of demutualization and corporatization including the power to impose any conditions;
- (c) the process and procedure to be followed for purposes of demutualization and corporatization;
- (d) matters regarding appointment of directors and chairman of the board of a stock exchange after demutualization, including but not limited to restrictions, if any, on such appointments;
- (e) restriction of rights, if any, attached to the shares issued pursuant to corporatization;
- (f) matters including restrictions, if any, on disinvestment, further issue and sale and purchase of shares of a stock exchange after demutualization;
- (g) matters regarding limits or restriction on holding of shares by different categories of shareholders of a stock exchange, and the requirement for divestment of shares by shareholders in particular circumstances; and
- (h) matters regarding trading rights on a stock exchange and restrictions if any in this regard.]⁶

(2) From the date of effect of corporatisation and demutualization as aforesaid, no stock exchange shall undertake any activity unless it is corporatised and demutualised.

(3) Any two or more stock exchanges may, upon filing a scheme of integration to the Commission for its approval, in such manner and in accordance with such conditions as may be prescribed, be merged so as to transfer to and vest in the successor stock exchange, all the assets, undertaking, liabilities, rights and obligations of any stock exchange which, upon such merger, is proposed to cease to exist.

(4) Without prejudice to the provisions of sections 7 and 22, the Commission may, by notice in writing, for the purpose of effecting the corporatisation and demutualisation of the stock exchanges, issue such directions to the stock exchanges, including in respect of their memorandum and articles of association, their management and the transfer of their shares or business, as the Commission may deem expedient.

⁶ Sub-section (1A) inserted through Finance Act, 2008 dated June 27, 2008.

(5) Where a stock exchange fails to comply with any directions issued by the Commission under sub-section (4), such stock exchange shall be liable to be fined by the Commission by an amount not exceeding one hundred thousand rupees.

33. Power to make rules.- (1) The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for -

(a) any of the matters which are to be or may be prescribed for the purposes of clause (d) of section 2 and section 4, 5, [5A,] 6, 9, 11, 12, 15, 16 [, 32, 32A, 32B, 32 C and 32 E]; and

(b) any of the matters with respect to which the Exchange may make regulations.

34. Power to make regulations.- (1) An Exchange may, subject to the previous approval of the [Commission], make regulations not inconsistent with the rules to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(i) constitution, powers and functions of the governing body of the Exchange;

(ii) qualification for membership of the Exchange; admission, suspension and expulsion of members; disciplinary matters, including punishment of the members;

(iii) classification of members into categories with regard to-

(a) whether they are or are not active in dealings on the Exchange,

(b) whether they have or have not a place of business in the city where the Exchange is located, and

(c) whether a substantial part of their business is in listed or unlisted securities;

(iv) a member's financial responsibility whether by way of minimum capital or a ratio between net capital or aggregate indebtedness, or both;

- (v) regulation of dealing by members for their own account; method of soliciting business by members; manner of maintaining books of accounts and financial reports by members;
 - (vi) methods of selection of officers and committees to ensure a fair representation of the membership;
 - (vii) qualifications and functions of the directors, officers and other functionaries of the Exchange; disciplinary matters, including punishment of the directors, officers and functionaries;
 - (viii) listing and delisting of securities;
 - (ix) the procedure for registration of an issuer and particulars to be furnished for the purpose;
 - (x) regulation of days and hours of trading in securities; suspension of trading;
 - (xi) types of contracts and settlements in the Exchange and regulation of contracts generally, including the consequences of default or insolvency; confirmation of contracts;
 - (xii) regulation of forward trading, badlas and carry over facilities in relation to transactions and securities;
 - (xiii) manner of making and publishing quotations, fixing of trade units and differentials and publication of transactions both individually and by volume;
 - (xiv) setting up of a clearing house in relation to transactions in securities;
 - (xv) regulation of fictitious and numbered accounts; blank transfers, short sales, options, odd lots and margins, in relation to transactions and securities;
 - (xvi) lending and pledging of customers' securities;
 - (xvii) regulation of brokerages and other charges, including fixation of minimum commission;
 - (xviii) separation of the functions of broker and jobber;
 - (xix) procedure for the settlement of claims or disputes, including arbitration; and
 - (xx) any other matter for which a regulation is required to be or may be made.
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(3) All regulations made under this section shall be published in the official Gazette and shall take effect upon such publication.

(4) Where the [Commission] considers it expedient so to do, it may, by order in writing, direct an Exchange to make any regulation, or to amend or rescind any regulation already made, within such period as it may specify in this behalf.

(5) If an Exchange fails or neglects to comply with any direction under sub-section (4) within the specified period, the [Commission] may make or amend, with or without modifications, or rescind, any regulation directed to be made, amended or rescinded; and a regulation so made, amended or rescinded by the [Commission] shall be deemed to have been made, amended or rescinded by the Exchange in accordance with the provisions of this section and shall have effect accordingly.