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PART I

Acts, Ordinances, President's Orders and Regulations

NATIONAL ASSEMBLY SECRETARIAT

Islamabad, the 8th March, 1974

The following Act of Parliament received the assent of the President on the 5th March, 1974, and is hereby published for general information :—

ACT No. XVII OF 1974

An Act to provide for the management and development of marketing facilities in petroleum products

WHEREAS it is expedient to provide for the management and development of marketing facilities in petroleum products and for matters connected therewith ;

It is hereby enacted as follows :—

1. **Short title, extent and commencement.**—(1) This Act may be called the Marketing of Petroleum Products (Federal Control) Act, 1974.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

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

(a) "bank rate" means the bank rate determined and made public under the provisions of the State Bank of Pakistan Act, 1956 (XXXIII of 1956) ;

(b) "Board of Management" means the Board of Management set up under section 7 ;

(c) "corporation" means a corporation or authority wholly owned or controlled by the Federal Government to which a marketing company is transferred under this Act ;

(d) "creditor" means any person to whom a marketing company owes any amount of money ;

(85)

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- (e) "debtor" means a person who owes any amount of money to a marketing company;
- (f) "managed company" means a company in respect of which a Managing Director has been appointed;
- (g) "Managing Director", in relation to a marketing company, means the Managing Director appointed by the Federal Government under this Act, in respect of such company;
- (h) "marketing company" means a company which has, during the twelve months preceding the commencement of this Act, been wholly or mainly engaged in purchasing or obtaining petroleum products from local refineries, or from or through sources abroad, for selling, distributing or marketing directly or through its agents or dealers at its dispensing outlets or filling stations;
- (i) "petroleum products" means motor gasoline, diesel oils, kerosene and furnace oil;
- (j) "previous management" means a person, board of directors or other body or authority in which the management of a marketing company vested immediately before the appointment of a Managing Director in respect thereof;
- (k) "shareholder" means a shareholder in the share capital of a company, and includes a stockholder;
- (l) words and expressions used but not defined in this Act, shall have the same meaning as in the Companies Act, 1913 (VII of 1913).

3. **Declaration.**—It is hereby declared that development under Federal control of marketing in petroleum products is necessary in the public interest.

4. **Act to override other laws.**—The provisions of this Act shall have effect notwithstanding anything contained in the Companies Act, 1913 (VII of 1913), or the Companies (Managing Agency and Election of Directors), Order, 1972 (P. O. No. 2 of 1972), or any other law for the time being in force or any agreement, contract, memorandum or articles of association of a company.

5. **Power to take over management or acquire shares or business of marketing company.**—(1) The Federal Government may, if it considers necessary in the public interest so to do, by an order,—

- (a) take over the management of any marketing company and, as from the date of such order, the previous management shall stand divested of such management;
- (b) acquire the whole or a portion of the shares from all or any of the shareholders of such marketing company and, as from the date of such order, the shares so acquired shall vest in the Federal Government:

Provided that no order shall be made under this section for the acquisition of the shares held in a marketing company by an institution owned or controlled by the Federal Government, including the National Investment Trust and the Investment Corporation of Pakistan or the shares held by a foreign investor:

Provided further that the Federal Government may, by notification in the official Gazette, exempt from acquisition shareholdings of any shareholder up to such maximum amount as may be specified in the notification.

(2) Where the Federal Government makes an order under sub-section (1) for taking over the management of any marketing company, no dealings or business relating to the shares of such company shall be transacted on any stock exchange and no transfer of such shares shall be registered in the share register of the company for a period of ninety days from the date of such order or such shorter period as may be notified by the Government.

6. Appointment of Managing Director.—(1) Where the Federal Government has made an order under section 5 in respect of a marketing company, it may appoint a Managing Director in respect of such company.

(2) Upon the appointment of a Managing Director in respect of a marketing company, the administration and the management of the affairs of the company shall vest in the Managing Director, and any person or authority exercising or having the right to exercise, immediately before such appointment, any powers or functions in relation to the management of the company shall cease to exercise or to have the right to exercise such powers or functions.

(3) The Managing Director shall—

- (a) hold office during the pleasure of the Federal Government;
- (b) in the discharge of his functions, be subject to such orders and such directions of the Federal Government and of the Board of Management as the Federal Government or the Board of Management may from time to time give in writing; and
- (c) receive such remuneration and be subject to such other terms and conditions of appointment and service as the Federal Government may determine.

(4) The Managing Director appointed in respect of a marketing company shall exercise and perform all the powers and functions of the board of directors of the company.

7. Board of Management.—(1) The Federal Government may set up a Board of Management to control, manage and direct the affairs of the marketing companies in respect of which Managing Directors have been appointed.

(2) The Board of Management shall consist of a Chairman and such number of members, not exceeding nine, as the Federal Government may appoint.

(3) The Board of Management shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property and shall by its name sue and be sued.

(4) The Chairman and members of a Board of Management shall hold office during the pleasure of the Federal Government on such terms and conditions as it may determine.

8. Functions of Board.—(1) The functions of the Board of Management shall be to ensure that the marketing companies in respect of which it is to exercise and perform its powers and functions under this Act are managed efficiently and in accordance with sound business principles and in respect of any such marketing company the Board may, from time to time,—

- (a) exercise such of the powers of the Managing Director and issue such directions to him as it may consider necessary;
- (b) require the Managing Director to furnish it with such information relating to the affairs of the company in respect of which he is the

Managing Director as the Board of Management may require in connection with the performance of its functions; and

- (c) remove from office its auditor and appoint another person who is a Chartered Accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961), to hold that office for such period and on such remuneration payable by the marketing company as the Board of Management may determine.

(2) The exercise by the Board of Management under sub-section (1) of the powers of a Managing Director shall have effect as if it were the exercise of those powers by the Managing Director himself.

(3) It shall be the duty of a Managing Director to comply with all directions issued to him by the Board of Management under sub-section (1) and to furnish the Board of Management with the information required by it.

(4) The Federal Government may entrust to the Board of Management such other functions in relation to any other company or establishment as it may deem fit and upon such entrustment reference to 'Managing Director' in this section and in clause (b) of sub-section (2) of section 6 and sub-section (2) of section 9 shall be deemed to include a reference to the person or authority in whom the management of the affairs of the company or establishment vests.

9. Fund of the Board.—(1) There shall be constituted for the Board of Management a fund to which shall be credited all sums received by the Board under sub-section (2) and out of which shall be defrayed all expenditure incurred by the Board of Management, including expenditure on the emoluments of the Chairman, members, officers, servants, experts and consultants of the Board.

(2) The Managing Director in respect of every company shall make to the Board of Management each year such payment to enable it to defray its expenses as the Board may, with the prior approval of the Federal Government in writing, demand of him :

Provided that the aggregate amount of payments so demanded of the Managing Directors in any year shall not exceed by more than ten per cent the amount of the estimated expenditure of the Board of Management in that year.

10. Officers, etc., of the Board.—(1) The Board of Management may from time to time appoint such officers, servants, experts and consultants as it may deem fit.

(2) The Board of Management may appoint one or more committees of the Board with such composition and to perform such functions as it may determine.

11. Adoption of balance sheet.—The general meeting of a marketing company before which a balance-sheet is laid shall not, if the Federal Government by order in writing so directs, have the authority to refuse to adopt the balance-sheet, but nothing in this section shall be construed to prevent any shareholder from expressing his views on the financial affairs of the company and a record of the proceedings of every such meeting shall be forwarded to the Federal Government not later than fifteen days of the meeting.

12. Regulations.—(1) The Board of Management may, with the prior approval of the Federal Government, make such regulations as appear to it to be necessary for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for the manner of payment and collection

of the payment required to be made by the Managing Directors under sub-section (2) of section 9.

13. Delegation of powers, etc.—(1) The Federal Government may, by notification in the official Gazette, direct that all or any of its powers under this Act shall, in such circumstances and subject to such conditions as may be specified in the notification, be exercisable also by the Board of Management.

(2) The Federal Government may from time to time issue such directions to, and call for such information or report from, the Board of Management as it may deem necessary.

(3) The Board of Management may, with the previous approval in writing of the Federal Government, direct that all or any of its powers under this Act shall, in such circumstances and subject to such conditions as may be specified by the Board of Management, be exercisable by the Managing Director.

14. Acquisition of shares.—Where, under section 5 of this Act, the Federal Government orders acquisition of the whole or a portion of the shares of a marketing company, it shall acquire the shares from the shareholders of the company within a period of ninety days on payment of such compensation as may be determined by the Federal Government on the basis of the principles set out in the Schedule.

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15. Reorganisation of marketing company.—(1) In respect of any marketing company, where the Federal Government holds or has acquired the whole or majority portion of the shares in the company carrying the controlling voting rights, the Board of Management may draw up a plan for the reorganisation of such a company with a view to increasing its efficiency and rationalising its operations, hereafter in this section referred to as the reorganisation plan.

(2) The reorganisation plan may include provision for amalgamation of managed companies and may provide for a scheme for the reconstruction of any such company or companies, or amalgamation of any such two companies or more companies and such a scheme may provide for all or any of the matters contained in section 153 or 153B of the Companies Act, 1913 (VII of 1913), or for alteration of shares capital or loan structure and alteration of existing or adoption of fresh memorandum or articles of association of such companies.

(3) The reorganisation plan shall be submitted to the Federal Government for approval and shall be simultaneously published in the official Gazette accompanied by a certified statement showing the value of the holdings of the shares or proprietary interests of the Federal Government, in the company covered by the plan on the date of the submission of the plan, and, from the date of such submission, dealings in shares of companies covered by the plan in any of the stock exchanges shall remain suspended until the Federal Government has approved the reorganisation plan.

(4) The reorganisation plan shall be implemented and shall take effect in such manner and at such time and with such modifications as may be approved by the Federal Government.

Explanation.—For the purposes of this section and section 27, the Federal Government shall be deemed to have a majority portion of the shares in a marketing company if the face value of the shares of such company owned or controlled by the Federal Government exceeds fifty per cent of the total voting rights in the issued and paid up share capital of the company.

16. Continuance in service.—In the case of a managed company, all persons employed in, by or for the purpose of the business of the company, by whomsoever appointed or engaged, shall continue in their respective employments on the same remuneration and other conditions of service as were applicable to them immediately before the appointment of the Managing Director in respect of that company, unless the Managing Director directs otherwise in a particular case of their terms and conditions of service are altered in accordance with the law or any rules applicable to such managed company.

17. Prohibition to obstruct.—No person, other than the Board of Management, shall, except under the authority of the Federal Government, give any instructions to a Managing Director, nor shall any person in any manner obstruct him in the discharge of his functions.

18. Debtor.—(1) The Federal Government may, by notice in writing, call upon a debtor to pay to the Federal Government, or to the marketing company specified in such notice, the amount of money due from him to the company, within a period of thirty days, commencing from the date of receipt of such notice by the debtor.

(2) Where a debtor fails to pay the amount due, within the time specified in the notice, the Managing Director of the company to which such amount is due shall have the same powers of effecting recovery of such amount as the Industrial Development Bank of Pakistan has under sections 39, 40 and 41 of the Industrial Development Bank of Pakistan Ordinance, 1961 (XXXI of 1961), in respect of sums due to the said Bank.

19. Creditor.—(1) A creditor of a managed company may apply to the Federal Government for payment to him of the amount due to him from the company.

(2) The Federal Government may, on receipt of an application under sub-section (1) and after such enquiry as it may deem fit, direct the managed company—

- (a) to repay the amount due to the creditor in such instalments and within such period as may be specified in the direction; or
- (b) to convert the amount due to the creditor into share capital of the company.

(3) If a managed company fails to comply with a direction issued to it by the Federal Government under sub-section (2), the Federal Government may order that the amount specified in the direction be recovered from it as an arrear of land revenue and paid to the creditor.

20. Revocation of contracts.—If any contract or agreement entered into or any obligation undertaken by any previous management of a managed company is declared by the Federal Government, after such inquiry as it may deem fit and giving an opportunity to the person or persons with whom such contract or agreement was entered into or to whom such obligation was undertaken to show cause why such declaration shall not be made, to be against the interest of the company, such contract, agreement or obligation shall stand revoked and the marketing company shall not be liable for any loss or damage suffered by the previous management by reason of such revocation :

Provided that this section shall not be construed as preventing any party to a contract, agreement or obligation so revoked from initiating action in a court of law against the previous management.

21. **Right of shareholders.**—Any person having a share in a marketing company shall be entitled to complain to the Board of Management or the Federal Government in respect of any action taken by the Managing Director in relation to the affairs of the marketing company.

22. **Vesting of business acquired by Federal Government in a corporation.**—Where the Federal Government has taken over the management and acquired the whole of the shares of a marketing company under section 5, it may transfer the management, and may also transfer such shares in such marketing company, to any corporation wholly owned or controlled by the Federal Government or a corporation to be set up for the purpose, on such terms and conditions as the Federal Government may specify.

23. **Transfer of service of employees of a marketing company to corporation.**—(1) Where the management of a marketing company is transferred to a corporation under section 22, every whole time employee of the marketing company who was employed by such company immediately before the date of transfer of the management to the corporation shall, on and from the date of such transfer, become an employee of the corporation and shall hold his office therein on the same terms and conditions, including remuneration, tenure of office, rights and privileges as to pension and gratuity and other matters, as were applicable to him immediately before the date of transfer until his employment in the corporation is terminated or his terms and conditions of service are altered in accordance with law or any rules applicable to such corporation.

(2) Where any employees of a managed company have, under the provisions of sub-section (1), become the employees of a corporation, the corporation may, for the purpose of rationalising the pay scales of such employees or for any other good and adequate reason, alter the terms and conditions of service of the employees as to their remuneration in such manner as it thinks fit, and, if the alteration is thus not acceptable to any employee, the corporation may terminate his employment by giving him compensation equivalent to his remuneration for three months or, if his contract of service provides for a shorter notice for termination of employment, for the period so provided.

Explanation.—The compensation payable to an employee under this sub-section shall be in addition to and not in derogation of any of his rights as to pension, gratuity, provident fund money or other benefit to which he may be entitled under his contract of service.

(3) If any question arises as to whether any person was a whole time employee of a marketing company immediately before its management was transferred to a corporation under section 22, the question shall be referred to the Federal Government whose decision shall be final.

(4) The transfer of the services of any employee of a marketing company to a corporation shall not, except as provided in this section, entitle any such employee to any compensation and no such claim shall be entertained by any court, tribunal or other authority.

24. **General effect of vesting of management in a corporation.**—(1) Where the management of a managed company has been vested in a corporation under section 22, all contracts, agreements and other instruments of whatever nature subsisting or having effect immediately before the date of vesting, to which such marketing company was a party or which were in favour of or against such marketing company shall, subject to the provisions of section 20, be of as full force and effect against or in favour of the corporation, as the case may be, and may

be enforced or acted upon as fully and effectually, as if, instead of the company the corporation had been a party thereto or as if they had been entered into or issued in favour of the corporation.

(2) If, on the date of transfer of the management of a managed company to a corporation, any suit, appeal or other legal proceeding of by or against such company whatever nature, is pending, it shall not abate, be discontinued or be in any way prejudicially affected by reason of such transfer or anything done under this Act, but the suit appeal or other proceeding may be continued, prosecuted and enforced by or against the corporation.

25. Duty to deliver possession of property and documents relating thereto.—(1) Where the management of a marketing company has been transferred to a corporation under section 22, then—

- (a) every person in whose possession, custody or control there is any property of such marketing company shall deliver the property to the corporation forthwith; and
- (b) any person who, on the date of transfer of the management of the company to the corporation, has in his possession, custody or control any books, documents, or other record relating to such marketing company shall be liable to account for the said books, documents and record to the corporation, and shall deliver them to the corporation or to such person as the corporation may direct.

(2) Without prejudice to the other provisions of sub-section (1), it shall be lawful for the corporation to take all necessary steps for acquiring possession of all properties which have been transferred to and vested in it under this Act.

26. Provident, superannuation and other like funds.—(1) Where a marketing company the management of which has been transferred to a corporation under section 22, has established a provident or superannuation fund or any other like fund for the benefit of its employees and has constituted a trust in respect thereof (hereafter in this section referred to as an existing trust), the moneys standing to the credit of any such fund on the occasion of such transfer, together with any other assets belonging to such fund, shall, subject to the provisions of sub-section (2), stand transferred to and vest in the corporation on the date the company is transferred to it, free from any such trust.

(2) Where all the employees of any such company do not become employees of a corporation under section 23, the moneys and other assets belonging to any such fund as is referred to in sub-section (1) shall be apportioned between the persons responsible for the fund and the corporation in such manner as may be prescribed by rules, and, in the case of any dispute regarding such apportionment, the decision of the Federal Government shall be final.

(3) A corporation shall, as soon as may be after the management of a marketing company is transferred to it under section 22, constitute in respect of the moneys and other assets which are transferred to and vested in it under this section, one or more trusts having objects as similar to the objects of the existing trust as in the circumstances may be practicable.

(4) Where all the moneys and other assets belonging to an existing trust are transferred to and vested in a corporation under this section, the persons responsible for such trust shall, as from the date of such transfer, be discharged

from the trust, except as respects things done or omitted to be done before the date of transfer of the management of the marketing company.

27. Minimum return.—(1) Where the Federal Government takes over the management of a marketing company but does not hold majority portion of shares in the company carrying voting rights therein, it shall, on behalf of such company, guarantee to the shareholders of such company a minimum annual rate of return equivalent to one per cent above the bank rate.

(2) The rate of return referred to in sub-section (1) shall be worked out on the paid up capital of the marketing company.

28. Bar of jurisdiction.—(1) No court, shall call in question or permit to be called in question, any provision of this Act or of any order made or anything done or any action taken thereunder.

(2) No court shall grant any injunction or make any order or entertain any proceedings, in relation to anything done or intended to be done under this Act.

29. Indemnity.—No suit, prosecution or other legal proceeding shall lie against the Federal Government, the Board of Management, a Managing Director or any other person for anything done in good faith under this Act or any rule or order made thereunder.

30. Penalties.—Whoever contravenes the provisions of section 17 or section 25 shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

31. Provision as to composite marketing companies.—(1) Where a marketing company is engaged in a business not directly related to the purchasing, obtaining, selling, distributing or marketing of petroleum products and an order under section 5 is made in respect of such marketing company, the Managing Director shall prepare, as soon as possible, a plan for the separation of the business relating to the purchasing, obtaining, selling, distributing or marketing of petroleum products from the other business. The plan shall include provision for separation of physical assets and apportionment of assets and liabilities, including apportionment of paid up capital on a *pro rata* basis between the respective business. In preparing the plan, the Managing Director shall follow the provisions of the Companies Act, 1913 (VII of 1913), to the extent it is not inconsistent with the provisions of this Act.

(2) The Managing Director shall submit the plan for approval to the Federal Government, which shall publish the plan in the official Gazette to ascertain the views of the shareholders of the company within a specified period.

(3) The Federal Government shall, after considering the views of the shareholders, either retain the business not directly related to the purchasing, obtaining, selling, distributing or marketing of petroleum products and the assets and liabilities of such business, or dispose of the business alongwith the assets and liabilities apportioned as relating thereto, in such manner as the Federal Government may deem fit.

32. Savings.—Nothing contained in this Act shall apply to any marketing company in which the whole or a substantial proportion of shares is held by foreigners or affect any agreement between a foreign investor or creditor and any citizen of Pakistan which has been expressly approved by the Federal Government.

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 Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for, or may empower the Board of Management to make orders providing for, all or any of the following matters, namely :—

- (a) ensuring the safety of the properties of a managed company ;
- (b) ensuring the due performance of their duties by the persons connected with a managed company ;
- (c) prohibiting anything likely to interfere with the proper functioning of a managed company ;
- (d) the administration, management and disposal by way of transfer or otherwise of any property belonging to, or held or managed by or on behalf of, a managed company ;
- (e) prohibiting, save with the leave of the Managing Director or any other person authorised in this behalf by the Federal Government or the Board of Management, the departure from any area of any person connected with the administration, control or functioning of a managed company ;
- (f) the taking over or control of any business, trade, industry, firm or company which, in the opinion of Federal Government, is a subsidiary of a marketing company ;
- (g) the requisitioning of any property, movable or immovable, belonging to a managed company ;
- (h) the requisitioning of any property, movable or immovable, the requisition of which is, in the opinion of the Federal Government, required for the proper functioning of a managed company ;
- (i) preventing the entry of any person into any place, yard, factory, mill, shop or office used for the purpose of a managed company or of any of its subsidiaries ;
- (j) the taking of any steps for collecting, controlling and disposing of the assets, movable and immovable, of any managed company ; and
- (k) in relation to any managed company to which the provisions of section 31 apply—
 - (i) the determination of the question whether any property pertains to the business of such company directly related to the purchasing, obtaining, selling, distributing or marketing of petroleum products or whether any assets, rights, debts, liabilities or obligations were acquired or incurred, or any contract, agreement or other instrument was made, in respect of or for the purposes of any such business or whether any documents relate to those purposes ;
 - (ii) the allocation of the paid-up capital, or assets representing paid-up capital, as the case may be, between such business of the company and any other business ;
 - (iii) the substituting of any agreement entered into partly for the purposes of such business and partly for other purposes by a separate agreement relating solely to such business and for any apportionment of rights, obligations and indemnities consequent thereon ;

- (iv) the severance of leases comprising property of which part only is used for purposes of such business of the company and for apportionment of rights and liabilities consequent on such severance;
- (v) the apportionment and the making of financial adjustments with respect to any debts, liabilities or obligations incurred by the company partly for the purposes of such business and partly for other purposes; and
- (vi) the apportionment of the moneys and other assets belonging to any provident or superannuation funds, or any, other like fund to which the provisions of section 26 do not apply, between persons employed in connection with such business and other persons.

34. Removal of difficulties.—If any difficulty arises in giving effect to any provisions of this Act, the Federal Government may make such order, not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purposes of removing the difficulty :

Provided that no such power shall be exercised after the expiry of one year from the commencement of this Act.

35. Repeal.—The Marketing of Petroleum Products (Federal Control) Ordinance, 1974 (II of 1974) is hereby repealed

THE SCHEDULE

(See section 14)

Principles and the manner for payment of compensation in respect of the shares of a marketing company acquired by the Federal Government.

1. Where the whole or a portion of the shares of such marketing company is acquired by the Federal Government, the value of the compensation for the shares so acquired shall be assessed at the break-up value.

2. The compensation payable in accordance with the principles indicated above shall be paid by the Federal Government in cash or in the form of Government Bonds redeemable at any time at the option of the Federal Government within a period of 15 years carrying a rate of interest one per cent above the bank rate notified by the State Bank of Pakistan from time to time. The Bonds shall be negotiable and eligible as security for advances.

3. In this Schedule—

“Break up Value” shall mean the value of the shares of a company as determined by the auditors of such company on the basis of its latest audited annual Balance Sheet, in accordance with clause (c) of rule 8 of the Wealth-Tax Rules.

ASLAM ABDULLAH KHAN,
Secretary.