

THE PAKISTAN MARITIME SHIPPING (TRANSFER OF
MANAGED ESTABLISHMENTS) ORDINANCE, 1980

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THE PAKISTAN MARITIME SHIPPING (TRANSFER OF MANAGED ESTABLISHMENTS) ORDINANCE, 1980

Ordinance No. XXII of 1980

[22nd June, 1980]

An Ordinance to provide for the transfer of certain managed establishments relating to maritime shipping.

WHEREAS it expedient to provide for the transfer of certain managed establishments relating to maritime shipping and matters connected therewith or ancillary thereto ;

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

NOW, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (C.M.L.A. Order No. J of 1977), and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance :—

1. Short title, extent and commencement.—(1) This Ordinance may be called the Pakistan Maritime Shipping (Transfer of Managed Establishments) Ordinance, 1980.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Interpretation.Words and expressions used in this Ordinance shall, unless there is anything repugnant in the subject or context, have the same meaning as in the Pakistan Maritime Shipping (Regulation and Control) Act, 1974, hereinafter referred to as the said Act.

3. Ordinance to override other laws.This Ordinance shall have effect notwithstanding anything contained in the said Act or any other law for the time being in force or in any agreement, contract, memorandum or articles.

4. Transfer of shares and proprietary interests.—(1) The Federal Government may, if it considers necessary in the national interest so to do, through a public notice offer to transfer the shares or proprietary interests in respect of a managed establishment acquired by it under section 5 of the said Act, to the persons specified, and on the terms set out, in the Schedule :

Provided that, in the case of a managed establishment of which persons who are not citizens of Pakistan are also shareholders, the Federal Government may transfer the shares of such establishments to its shareholders in accordance with the terms of an agreement reached between the Federal Government and the previous management of such establishment.

(2) If the offer made under sub-section (1) is not accepted by any person within a period of twenty-one days the Federal Government may retain the shares or proprietary interest offered to such person or dispose of them in any manner it may deem fit and such person shall have no right whatsoever in respect of such shares or proprietary interests.

(3) Upon the acceptance of the offer to transfer proprietary interests in the case of a managed establishment which is not a company, the Federal Government shall transfer the proprietary

interests to the company or other person from whom the proprietary interests were acquired under section 5 of the said Act.

(4) Upon the acceptance of the offer to transfer shares in a managed establishment which is a company or an establishment owned by a company, the Federal Government shall transfer the shares acquired by it under section 5 of the said Act in the names of the persons who have accepted the offer and the said transfer shall be recorded in the register of members of the company.

5. Election of Board of Directors. Within sixty days of the issue of the public notice under sub-section (1) of section 4 in respect of a managed establishment which is a company or, in the case of a managed establishment referred to in the proviso to that sub-section, of the transfer of shares, an extraordinary general meeting of the company shall be held for the purpose of electing the Board of Directors of the company in accordance with the Companies (Managing Agency and Election of Directors) Order, 1972.

6. Transfer of Management.—(1) Upon the election of the Board of Directors under section 5 in the case of a managed establishment which is a company, and upon the transfer of a proprietary interests under sub-section (3) of section 4 in the case of a managed establishment which is not a company, the Federal Government shall cancel the orders made by it under sub-section (1) of section 6 and sub-section (3) or sub-section (4) of section 13 of the said act in respect of the managed and established.

(2) Upon the issue of an order under sub-section (1) in respect of a managed establishment, the administration of the affairs of the establishment shall, subject to the rules made under this Ordinance, stand transferred—

(a) to the Board of Directors, in the case of an establishment which is a company ;
(b) to the company, in the case of an establishment owned by a company ; and

(c) to the person or body in whom the management of the establishment vested immediately before the appointment of a Managing Director in respect thereof, in the case of any other establishment.

(3) Where the Federal Government cancels, in pursuance of sub-section (1), an order made by it under sub-section (3) or sub-section (4) of section 13 of the said Act in respect of a managed establishment which is a company, the Federal Government may, by order, make such provision for the adjustment or reduction of the share capital of the corporation to which the order under the said sub-section (3) or sub-section (4) of section 13 relates as it may deem fit.

7. Audit.—(1) The Federal Government may at any time appoint one or more firms of auditors for carrying out a special audit of any establishment with such terms of reference as the Federal Government may determine.

(2) The remuneration to be. Paid to the auditors appointed under sub-section (1) shall be paid by the establishment.

(3) If, after a firm of auditors has been appointed under sub-section (1) in respect of a managed establishment, an order is issued under sub-section (1) of section 6 in respect of that managed establishment and the audit of the said managed establishment is still in progress, the firm

of auditors shall continue the work of audit until it is complete and the report submitted by the firm has been accepted by the Federal Government.

(4) The audited accounts prepared in pursuance of subsection (1) and accepted by the Federal Government shall not be challenged by the establishment or the shareholders or any other person and shall be accepted by them.

8. No claim of compensation. No establishment, and no shareholder of an establishment, shall make any claim of any sort nor a claim for compensation of any nature whatsoever against the Federal Government or a corporation set up by the Federal Government or against any officer of the Federal Government or of such Corporation, after an order under sub-section (1) of section 6 has been issued in respect of that establishment.

9. Employees to continue in service. All persons employed in, by or for the purpose of business of an establishment in respect of which an order under sub-section (1) of section 6 is issued shall continue in such employment on the same terms and conditions as were applicable to them immediately before the issue of such order.

10. Contracts and agreement to continue. All contracts and agreements made by an establishment in respect of which an order is issued under sub-section (1) of section 6 which may be subsisting immediately before the issue of such order shall continue to be of full force and effect against or in favour of the establishment and may be enforced or acted upon accordingly.

11. Removal of difficulties. If any difficulty arises in giving effect to any of the provisions of this Ordinance, the Federal Government may make Such order, not inconsistent with the provisions of this ordinance, as may appear to it to be necessary for the purpose of removing the difficulty.

12. Bar of Jurisdiction—(1) No court shall call in question or permit to be called in question any provision of this Ordinance or of any rule or order made or anything done or any action taken thereunder.

(2) No court shall grant any injunction, or make any order, nor shall any court entertain any proceedings, in relation to anything in good faith done or intended to be done under this Ordinance.

13. Penalties.— (1) Whoever obstructs or resists or hinders any person in the discharge of his duties under this Ordinance shall be punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(2) No court shall take cognizance of an offence punishable under sub-section (1) except upon a complaint in writing made by, or under the authority of, the Federal Government.

14. Power to make rules. The Federal Government may make rules for carrying out the purposes of this Ordinance.

THE SCHEDULE

[See section 4(D)]

1. Definitions —In this Schedule,—

(1) “rule” means rule in the Pakistan Maritime Shipping (Acquisition and Compensation) Rules, 1974 ;

(2) “financial institutions” means a bank, a Financing corporation, an insurance company or an investment institution ; and

(3) “Act” means the Pakistan Maritime Shipping (Regulation and Control) Act, 1974, (XVIII of 1974).

2. Persons to whom offer to be made.—(1) Where the shares were acquired under section 5 of the Act from persons who also lodged them in pursuance of sub-rule (1) of rule 6, the shares shall be offered to such persons.

(2) Where the shares were acquired under section 5 of the Act from persons other than the persons who lodged them in pursuance of the sub-rule (3) of rule 6, the shares shall be offered to the persons who lodged them.

(3) Where the shares were acquired from persons under section 5 of the Act and the shares were lodged, in pursuance of the provisions of sub-rule (3) of rule 6, by a financial institution which, at the time the order of acquisition was made under the said section, was holding the shares in safe custody or as security against loans or advances, the offer shall be made to the financial institution and, for the purpose of acceptance of the offer, shall be deemed to be an offer made to the persons from whom the shares were acquired under the said section :

Provided that the acceptance of the offer by the persons shall be considered valid only if such acceptance is accompanied by a valid authorization in writing from the financial institution, in which case the share certificates shall be handed over to the financial institution together with the valid transfer deeds and the financial institution shall hold a lien on the shares till such time as the lien is relinquished by the financial institution.

(4) Where the proprietary interests of a managed establishment owned by a company were acquired under section 5 of the Act, the offer shall be made to the company which owned the establishment immediately before such acquisition.

(5) The offer of shares or proprietary interests to a person shall also be deemed to be an offer to the successor in interest, authorised representative, executor, administrator or heirs of such person.

3. Terms of Transfer—(1) In case of shares or proprietary interests of a managed establishment which has incurred a net loss from the time a Managing Director was appointed under sub-section(!) of section 6 of the Act, the shares offered to be transferred shall be offered on the following terms, namely :—

(a) where compensation has been paid under section 14 of the Act, upon receipt of an amount in cash or in the form of Government Bonds, or partly in cash and

partly in such Bonds, equivalent in value to the compensation paid, in the manner to be determined by the Federal Government; and

(b) where compensation was due and has not been paid, on acceptance of the offer in the following manner, namely:—

(i) where Certificates of Entitlement to Compensation have been issued but the same have not been converted into Government Bonds, upon the surrender of such Certificates in favour of the Federal Government; and

(ii) | where Certificates of Entitlement to Compensation have not been issued, upon the surrender of the right to such Certificates in favour of the Federal Government:

Provided that interest shall be payable by the Federal Government, in the manner to be determined by it, on the amount of compensation which was due but was not paid, at the same rate and for the same period as would have been payable had Government Bonds been issued :

Provided further that interest shall be payable up to the date on which an order under sub-section (1) of section 4 is issued in respect of the establishment.

(2) In case of shares or proprietary interests of a managed establishment other than those covered by sub-paragraph (1), the shares or proprietary interests offered to be transferred shall be offered on the following terms, namely :—

(a) in the case of shares not quoted on any stock exchange, at the Break Up value;

(b) in the case of shares quoted on any of the stock exchanges, at the Market Value or the Break Up Value, whichever is higher ; and

(c) in the case of proprietary interests, at the Net Worth Value.

Explanation.— (i) “Break Up Value” shall have the same meaning as in the Act;

(ii) “Market Value” shall mean the average value of the shares of a company as quoted on the Karachi Stock Exchange on closing on six days prior to the date of the issuance of the public notice under subsection (1) of section 4 ; and

(iii) | “Net Worth Value” shall have the same meaning as in the Act.

(3) Where, in the case of a managed establishment referred to in sub-paragraph (2),

compensation has not been paid in pursuance of the provisions of section 14 of the Act, compensation, if any, shall be payable in accordance with that section.