

of Pakistan

EXTRAORDINARY
PUBLISHED BY AUTHORITY

ISLAMABAD, SATURDAY, SEPTEMBER 4, 1976

PART I

Acts, Ordinances, President's Orders and Regulations

NATIONAL ASSEMBLY SECRETARIAT

Islamabad, the 4th September, 1976

The following Acts of Parliament received the assent of the President on the 4th September, 1976, and are hereby published for general information :—

ACT No. LVII of 1976

An Act to regulate the operation and development of flour milling

Whereas it is expedient to make provision to regulate the operation and development of flour milling and to provide for matters connected therewith or incidental thereto ;

AND WHEREAS paragraph (b) of clause (1) of Article 253 of the Constitution provides that Parliament may by law declare that any trade, business, industry or service specified in such law shall be carried on or owned, to the exclusion, complete or partial, of other persons, by the Federal Government or a Provincial Government or by a corporation controlled by any such Government ;

It is hereby enacted as follows :—

1. Short title, extent and commencement.—(1) This Act may be called the Flour Milling Control and Development Act, 1976.

(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) “acquired establishment” means an establishment in respect of

which an order has been made under section 5;

(b) “bank rate” means the bank rate determined and made public under the provisions of the State Bank of Pakistan Act, 1956 (XXXII of 1956);

(c) “Corporation” means a body corporate wholly owned and controlled by the Federal Government or by the Government of a

ra

476 THE GAZETTE OF eek, EXTRA., SEP. 4, 1976 [PART ~=

(d)

(e)

(

‘®

(h)

()

k)

a)

(m)

()

af

Province, including any body or authority controlled by the Federal Government or the Government of a Province, to which an acquired establishment is. transferred under section 6;

“creditor” means any person to whom an acquired establishment owes apy amount of money ;

“debtor” means a person who owes any amount of money to an acquired establishment ;

“establishment ” means any company, firm, concern, institution or enterprise the whole or any part of the undertaking of which pertains to the industry, and includes the business related to the industry, and any office, shop, building, factory, land, godown, yard, stocks, stores, vehicles and assets in any form, so related, wherever they may be;

Explanation—The Federal Government shall decide whether the business is related or not to the industry and the decision of the Federal Government shall be final.

“foreign investor” means a person, other than a citizen of Pakistan, who has made investment in Pakistan and to whom—

G) the Federal Government has given an assurance that he will have the right to repatriate from Pakistan the amount of his investment or the income arising therefrom or both such amount and such income ; or

Gi) the Federal Government has not given such assurance but whom it has assured that, in the event of compulsory acquisition of the shares held in an establishment by the shareholders, he will not be treated less favourably than an investor to whom such assurance had been given ;

“industry” means the flour milling industry composed of one or more flour mills equipped with rollers ;

“Manager” means the Manager appointed under section 7 ;

“person” includes an individual, a Hindu undivided family, a partnership firm and an association of persons or a body of individuals, Government of a Province and a local authority ;

3

“previous management:” in relation to an establishment means the person, board of directors or other body or authority in whom or in which the management of the establishment vested immediately before an order has been made under section 5 in respect thereof ;

“roller” means a roller body having a set of rollers of any size ;

“shareholder” means a shareholder in the share capital of an establishment and includes a stockholder; and

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 the industry shall be owned and

carried on

by the Federal Government or a Provincial Government or by a Cor-

poration controlled by a Provincial Government, to the exclusion of all other persons, except a foreign investor :

Provided that the Federal Government may, if it is satisfied that the objective of making unadulterated and wholesome wheat flour available to the consumers at reasonable prices can be achieved even if establishments in any part of Pakistan

which have less than six rollers per establishment are permitted to own and carry on the industry, by notification in the official Gazette, exempt such establishments from the operation of the provisions of this section from such date not preceding the date of commencement of this Act as may be specified in the notification.

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 article of association of a company.

5. Power to acquire ownership and management.—(1) The Federal Government may, by an order published in the official Gazette, acquire the ownership and management of any establishment.

(2) On the making of such order,

(a) the previous management shall stand divested of such management ;

(b) in the case of an establishment which is a company or an establishment owned by a company, the shares of company or the proprietary interest of the company in the establishment shall, in the discretion of the Federal Government, vest in that Government ; and

(c) in the case of an establishment owned by a person, the proprietary interest of such person shall vest in the Federal Government :

Provided that nothing in this sub-section shall apply to the shares, or proprietary interest, held by a foreign investor,

6. Management of establishment.—(1) The Federal Government may in respect of acquired establishments, by notification in the official Gazette, transfer the ownership and management of one or more such establishments to a Provincial Government on such terms and conditions as may be determined by the Federal Government.

(2) A Provincial Government to which the ownership and management is transferred under sub-section (1) shall be empowered to set up, by notification in the official Gazette, a Corporation and to transfer the ownership and management of the affairs of such establishments to such Corporation or direct that such establishments shall be owned and managed by an existing Corporation under its control :

Provided that, if the Federal Government rescinds a notification made under sub-section (1), the ownership and management of the acquired establishment concerned shall revert in the Federal Government on the date on which the notification is rescinded.

(3) A Corporation set up under sub-section (2) shall be a body corporate having perpetual succession and a common seal, with power to hold and dispose of property, and shall by the name assigned to it by the notification issued under

that sub-section sue and be sued.

(4) The Provincial Government may, with the approval of the Federal Government, make such provisions for the management of the affairs of a Corporation set up under sub-section (2), including provisions relating to finances, audit of accounts and administrative arrangements, as it may deem fit.

7. Appointment of Managers.—(1) Where the Federal Government | has made an order under section 5 in respect of an establishment, it may appoint a Manager in respect of such establishment :

Provided that where the ownership and management of an establishment has been transferred to a Corporation under section 6, the Manager shall be appointed by such Corporation.

(2) Upon the appointment of Manager in respect of an acquired establishment, the administration and management of the affairs of such establishment shall vest in the Manager, subject to such directions as the appointing authority may give from time to time in this behalf.

(3) The Manager shall hold office during the pleasure of the appointing authority on such terms and conditions as may be specified by such authority.

8. Regulations.—The Corporation to which the ownership and management of an establishment has been transferred under section 6 may, with the prior approval in writing of the Provincial Government, make such regulations as appear to it to be necessary for carrying out the purposes of this Act.

9. 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 a Provincial Government or a Corporation or any other person.

(2) The Federal Government may from time to time issue such directions to, and call for such information or reports from, the Corporation. through Provincial Government as the Federal Government may deem expedient,

10. Compensation.—Where the Federal Government acquires the shares or proprietary interests of an establishment under section 5 these shall be paid compensation the amount of which shall be determined and paid by the Federal Government on the basis of the principles set out in the Schedule.

11. Reorganisation.—Where the shares of a company are owned wholly by the Corporation, the assets and liabilities of such company may, with the prior approval in writing of the Federal Government, be acquired by the Corporation, whereafter the company shall stand wound up,

12. Prohibition to obstruct.—No person shall, unless so authorised by the Federal Government or the Provincial Government or the Corporation, give any instruction to the Manager nor shall any person in any manner obstruct him in the discharge of his duties or the performance of his functions,

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

(2) Where the debtor fails to pay the amount due from him within the period specified in the notice under sub-section (1), the Corporation shall have the same power of affecting recovery as the Industrial Development Bank of Pakistan has under sections 39, 40 and 41 of the Industrial Development Bank

of Pakistan Ordinance, 1961 (XXI of 1961).

14. Creditor—(1) A creditor of an acquired establishment may apply to the Corporation for payment of the amount due to him from such establishment.

(2) The Corporation may, on receipt of an application under sub-section (1), and after such enquiry as it may deem fit, either reject such application

or, if satisfied, direct the acquired establishment to pay the amount due to the creditor in such instalments and within such period as may be specified in the direction.

;

15. Power to revoke contract, etc.—If any contract or agreement entered into, or any obligation undertaken, by any previous management of an acquired establishment is declared by the Federal Government or a Provincial Government, in case such establishment has been transferred to it under section 6, to be against the interest of the establishment, such contract, agreement or obligation shall stand revoked and the establishment shall not be liable for any loss or damage suffered by the previous management by reason of such revocation :

Provided that a declaration under this section shall be made after such enquiry as the Government concerned may deem fit and after 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:

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

16. Continuance in service of the employees.—(1) Where the ownership and management of an acquired establishment is transferred to a Corporation under section 6, every wholetime employee of such establishment shall, on and from the date of such transfer, become an employee of the Corporation, and shall continue to hold his office on the same terms and conditions as were applicable to him immediately before such transfer, until his employment in the Corporation is terminated or his terms and conditions of service are altered by the Corporation :

Provided that if a question arises whether a person was a wholetime employee of an establishment or not, the decision of the Corporation shall be final.

(2) Where any employee of the acquired establishment has under the provisions of sub-section (1) become the employee of a Corporation, the Corporation may alter the terms and conditions of service of such employee as it thinks fit, and, if the alteration is not acceptable to the 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 sub-section (2) 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.

@) The Corporation may in its discretion transfer an employee from an acquired establishment to any other such establishment under its control or to its head office or regional offices.

(4) The transfer of the services of an employee of an establishment 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.

17. General effect of vesting of establishment.—(1) Where the management of an acquired establishment has been transferred to a Corporation under section 6, all contracts, agreements and other instruments of whatever nature

(2%)

480 THE GAZETTE OF PAKISTAN, EXTRA., SEP. 4, 1976 [PART I

subsisting or having effect immediately before the date of the transfer, to which such establishment was a party or which were in respect of such establishment. shall, subject to the provisions of section 15, be of as full force and effect against or in favour of the Corporation, and may be enforced or acted upon as fully and effectively as if, instead of the establishment, the Corporation had been a party thereto, or as if they had been entered into or issued in respect of the Corporation.

(2) If on the date of the transfer of an acquired establishment to a Corporation any suit, appeal or legal proceeding of whatever nature is pending by or against such establishment, it shall not abate, discontinue 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.

18. Duty to deliver possession of property.—(1) Where the ownership and management of an acquired establishment has been transferred to a Corporation under section 6, every person who has in his possession, custody or control any property of such establishment, shall forthwith deliver the property to the Corporation.

(2) Without prejudice to the 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.

Explanation.—In this section, “property” means property of any kind, including books, documents and papers and also includes any right or interest in such property.

19. Provident, superannuation and other like funds.—(1) Where an establishment which has been transferred to a Corporation under section 6 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, hereinafter referred to as an existing trust, the moneys standing to the credit of any such fund on the day of such transfer, together with any other assets pertaining to such fund, shall, subject to the provisions of sub-section (2), vest in the Corporation on that day.

(2) Where all the employees of any such establishment do not become the employees of a Corporation under section 16, 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 rearding such apportionment, the decision of the Federal Government shall

e L.

(3) The Corporation shall, as soon as may be after an establishment is transferred to it under section 6, constitute in respect of the moneys and other assets which are vested in it under this section, one or more trusts having objects

as similar to the objects of the existing trusts as in the circumstances may be practicable.

(4) Where all the moneys and other assets belonging to an existing trust are vested in the Corporation under this section, the person responsible for such trust shall, as from the date of such transfer, be discharged from the trust, except in respect of things done or omitted to be done before the transfer of the establishment.

20. Bar to jurisdiction.—(1) No court shall call in question or permit to be called in question any provision of this Act, 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 done or intended to be done under this Act.

21. Indemnity.—No suit, prosecution or other legal proceedings shall lie against the Federal Government, a Provincial Government, Corporation, Manager or any other person for anything in good faith done or intended to be done under this Act or any rule or order made thereunder.

22. Penalties.—Whoever—

(1) obstructs or resists or hinders any person in the discharge of his duties under this Act; or

(2) destroys, tampers with, alters or defaces any property or document belonging to, or pertaining to, an acquired establishment; or

(3) refuses or fails to deliver possession of any property or document belonging to, or pertaining to, an acquired establishment; or

(4) contravenes any of the provisions of section 3, section 12 or section 18 ;
shall be punishable with rigorous imprisonment for a term which may extend to three years, or with fine or with both:

Provided that no court shall take cognisance of an offence under this Act unless a complaint in this behalf is made by the Corporation.

23. Change of name of an acquired establishment.—The Federal Government may, by notification in the official Gazette, specify a new name by which an acquired establishment shall be known from such date as may be specified in the notification.

24. Composite enterprises and organisations.—Where an acquired establishment is engaged in a business not directly related to the industry, the Federal Government may take such action for the bifurcation of such business from business directly related to the industry as it may deem fit; and the decision of the Federal Government as to such bifurcation shall be final.

25. Assistance to a Corporation.—The Federal Government, or a Provincial Government, shall provide such assistance as may be needed by the Corporation for carrying out the purposes of this Act.

26. Power to make rules.—(i) The Federal Government may make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for, or empower a Provincial Government or a

Corporation to make orders providing for all or any of the following matters, namely :—

(a) ensuring the safety of the properties relating to an acquired establishment ;

(b) ensuring the due performance of duties by the persons connected with the acquired establishment :

(c) prohibiting anything likely to interfere with the proper functioning of an acquired establishment ;

(d) the administration, management and disposal, by way of transfer or otherwise, of any property relating to or held or managed by or on behalf of an acquired establishment ;

(e) prohibiting the departure from any area of any person connected with the administration, control or functioning of an acquired establishment, save with the leave of the Manager, or any other person ; authorised in this behalf by the Federal Government or a Provincial Government or a Corporation ;

(f) the taking over or control of any business, trade, industry, firm or company which in the opinion of the Federal Government is a subsidiary of an acquired establishment ;

(g) the requisitioning of any property, movable or immovable, belonging to an acquired establishment ;

(b) 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 an acquired establishment ;

(i) preventing the entry of any person into any place, yard, factory, mill, shop, or office used for the purpose of an acquired establishment, or any of its subsidiaries ;

Gj) the taking of any steps for collecting, controlling and disposing of the assets, movable or immovable, of any acquired establishment ;

(kk) determining the terms and conditions for the transfer of acquired establishments under sub-section (1) of section 6 and for their re-vesting in the Federal Government under sub-section (2) of that section ; a

(1) preparation and audit of accounts of the Corporation and of the acquired establishments and matters ancillary thereto; and

(m) control of the Federal Government over the accounts of the Corporation and of the acquired establishments,

27. Removal of difficulties—If any difficulty arises in giving effect to any provision 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 purpose of removing the difficulty :

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

28. Repeal—The Flour Milling Control and Development Ordinance, 1976 (CXXIV of 1976), is hereby repealed.

{see section 10)

Principles and the manner for payment of compensation in respect of the

shares or proprietary interests of an establishment acquired by the Federal Government.

1. The value of the compensation for the shares of establishments acquired by the Federal Government shall be assessed—

(a) in the case of the shares not quoted on any of the stock exchanges, at the Break-up Value, and

_(b) in the case of the shares quoted on any of the stock exchanges, at the Break-up Value or the Market Value, whichever is more, provided

So

ag

Port) THE GAZE TTE OF PAKISTAN, EXTRA., SEP. 4, 1976 483

that the Market Value will be taken into account only if the shares have been traded on the stock exchange for at least three years, and not less than 30% of the shares have been traded during the three years preceding the date of the acquisition of the shares,

2. Where the proprietary interests in such an establishment are acquired by the Federal Government, the value of the compensation for the interests so acquired shall be assessed at the Net Worth of the proprietary interests of such establishments.

3. 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 fifteen years, and carrying, with effect from the date of acquisition, a rate of interest one per cent above the bank rate as notified by the State Bank of Pakistan from time to time. In the case of persons holding shares of a total value less than Rs. 5,000, the Bonds will be redeemable within a period of two years. The Bonds shall be negotiable and shall be eligible as security for advances.

4. Definitions.—In this Schedule--

(a) "Break-up Value" shall mean the value of the shares of a company

'- as determined by the Auditors appointed by the Federal Government on the basis of the Balance Sheet of the company, drawn up as on the date of acquisition, to be prepared and verified by such auditors in accordance with clause (c) of sub-rule (2) of rule 8 of the Wealth-tax Rules ;

(b) "Market Value" shall mean the average value of the shares of a company as quoted on the stock exchange nearest to the Head Office of the company on closing on all working days within three years of the date of order of acquisition of such shares under this Act;

(c) "Net Worth Value" shall mean the value of the proprietary interests of a company or other person in an establishment which are acquired under this Act, as determined by the auditors appointed by the Federal Government, on the basis of the Balance Sheet of such establishment, drawn up as on the date of acquisition, to be prepared and verified by such auditors. The Net Worth Value shall be determined by valuing the Fixed Tangible Assets appearing in the Balance Sheet at their written down values, and valuing the Current Assets, e.g. stores, inventory, work in progress, advances and pre-payments, cash and bank balances, at their cost or market value, whichever is lower. From the sum total of the Fixed and the Current Assets so valued as aforesaid, all the outstanding liabilities appearing in the Balance Sheet shall be deducted, thereby arriving at the Net Worth Value of the proprietary interests in such

establishment.

ACT No. LVI of 1976

An Act to regulate the operation and development of rice milling

WHEREAS it is expedient to make provision to regulate the operation and development of rice milling and to provide for matters connected therewith or incidental thereto ;

AND WHEREAS paragraph (b) of clause (1) of Article 253 of the Constitution provides that Parliament may by Law declare that any trade, business, industry or service specified in such law shall be carried on or owned, to the exclusion,