

# **SENATE OF PAKISTAN**



## **EIGHTH QUARTERLY REPORT OF THE COMMITTEE**

**ON**

## **DELEGATED LEGISLATION**

**PRESENTED BY**

**SENATOR TAJ HAIDER  
CHAIRMAN COMMITTEE**



## **SENATE SECRETARIAT**

### **QUARTERLY REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION (JANUARY – MARCH, 2018)**

I, Chairman of the Senate Committee on Delegated Legislation, have the honour of presenting the eighth quarterly report of the Committee on Delegated Legislation under Rule 172E (3) of the Rules of Procedure and Conduct of Business in the Senate, 2012, for the period of January to March 2018.

2. The composition of the Committee is as follows: -

1.	Senator Taj Haider	Chairman
2.	Senator Farooq Hamid Naek	Member
3.	Senator Muhammad Daud Khan Achakzai, Advocate	Member
4.	Senator Muhammad Mohsin Khan Leghari	Member
5.	Senator Syed Muzafar Hussain Shah	Member
6.	Senator Farhatullah Babar	Member
7.	Senator Muhammad Ali Khan Saif	Member
8.	Senator Kalsoom Perveen	Member
9.	Senator Muhammad Talha Mehmood	Member
10.	Senator Ayesha Raza Farooq	Member
11.	Senator Muhammad Javed Abbasi	Member
12.	Senator Mohammad Azam Khan Swati	Member

3. The meeting of the Committee was held on 27<sup>th</sup> February 2018.

4. The following members of the Committee attended the above-said meeting:

i.	Senator Taj Haider	Chairman
ii.	Senator Kalsoom Perveen	Member
iii.	Senator Farhatullah Babar	Member
iv.	Senator Muhammad Daud Khan Achakzai, Advocate	Member
v.	Senator Muhammad Javed Abbasi	Member
vi.	Justice (R) Muhammad Raza Khan	Special Invitee

5. The Committee discussed the following agenda items: -

Sr. No.	Agenda Items	Discussions / Decisions
<b>27-02-2018</b>		
I	<b>Agenda Item 1</b> National Savings to present update regarding Public Petition No. PP-	These two items were taken up together as they relate to same department and common questions were involved. The representative of the National



	<p>1709 in the light of Committee's directions in its previous meetings.</p> <p><b>Agenda Item 4</b> Finance Division to brief on Rule 17 of the Behbood Savings Certificates Rules, 2003 and Rule 13 of Defence Saving Certificates Rules, 1966, in the light of judgment of the Lahore High Court in Regular First Appeals Nos. 152 and 159 of 2010.</p>	<p>Savings informed the Committee that the draft Rules had been framed and submitted to the Prime Minister for his approval, who then instructed that as the Rules directly related to the public, therefore, the same should be widely publicized, for seeking comments and feedback from general public. Accordingly, the process for eliciting public feedback would be initiated shortly and the feedback so received would be examined and, if needed, incorporated in the draft Rules and subsequently presented to Federal Cabinet for final approval. After seeking approval from the Cabinet, the same would be published in the Gazette of Pakistan. Representative of National Savings committed that the whole process would be completed within a period of one month. In the light of assurance given by the representative, both items were disposed of.</p>
II	<p><b>Agenda Item 2</b> Further discussion on the Petition pertaining to Regulations No. 3, 9 and 14 of the Privatization Commission Ordinance 2000 which are deemed to be ultra vires of the said basic Ordinance.</p> <p><b>Agenda Item 3</b> To examine Rule 6 (i) of the Privatization Commission (Valuation of Property) Rules, 2017.</p>	<p>The Committee deliberated upon role of Privatization Commission and its Board, as mentioned in the Privatization Commission Ordinance, 2000. The Committee observed that Privatization Commission has been made redundant and powers of the Commission are now vested in the Chairman of the Commission. Dichotomy between Chairman, Commission and Board has been practically abolished. The Commission has now been made subservient to the office of Chairman. Members commented that final decisions should be made by the Commission, not by the Board, as the executive powers vest in the Commission. They also enquired about the composition, responsibilities and scope of the Board and the Commission. Officials from the said Commission responded that Privatization Commission Ordinance, 2000, does not contain any provision relating to composition of the Commission. Members expressed their reservations for this anomaly in the Ordinance. In the light of afore-mentioned discussion, the Committee concluded that this Privatization Commission Ordinance, 2000, does not specify role of Privatization Board, which invalidates privatization process in general and actions of Privatization Commission in particular. The Committee noted that the basic law is seriously flawed, as it does not prescribe qualifications for the membership of the Commission. At present,</p>



		<p>there is no Commission as such. This has also been endorsed in official statement of the Ministry, which termed it as factitious and artificial entity. The official from the Commission, while answering to the queries of the Members, stated that the Commission is over-arching body which has its constituents in the form of Chairman, Board, and the Secretary. According to him, the objections raised in petition pertaining to Regulations No. 3, 9 and 14 are well founded. He suggested that the said Regulations may be amended in such a way that the Chairman should submit summary to the Board rather than the existing scheme i.e the Commission submits summary to the Board. However, the committee recommended that the whole law, with regard to composition of the Commission, should be revisited and then placed before this Committee.</p>
III	<p><b>Agenda Item 5</b> Information and Broadcasting Division to provide update on the issue of Rules 13(3) &amp; 13(4) of the PEMRA Rules, 2009 and Regulations 2.11 &amp; 3.23 of the PEMRA (Eligibility Criteria and Bidding Procedure for Direct to Home (DTH) Distribution Service Licensing) Regulations, 2016.</p>	<p>Chairman Committee briefed the members about the background of the issue. Ministry of Information and Broadcasting informed the committee that the appeal by the PEMRA challenging the order of the Lahore High Court was due for hearing on 14<sup>th</sup> February 2018 in the Supreme Court, but it was adjourned due to death of Petitioner's counsel, Ms. Asma Jahangir. The above-said matter is still pending before the Supreme Court. Members supported the Ministry's stance that there should be no concentration of powers, and monopoly in media shall be discouraged. The Committee observed that even if Supreme Court upheld the High Court's decision, the Parliament has the right to bring legislation on the subject under consideration. However, by keeping in view pendency of appeal in the apex court, the matter was adjourned till final decision on appeal.</p>
IV	<p><b>Agenda Item 6</b> CDA to lay before the Committee Rules and Regulations framed under the CDA Ordinance, 1960, and brief whether Regulation 4 (1) A of the Islamabad Capital Territory (Zoning) Regulations, 1992 has been removed in the light of judgment by the Supreme Court of Pakistan in Sua Moto Case No. 13 of 2009 (PLD 2011,</p>	<p>The Committee took serious notice of absence of Chairman CDA. However, with the permission of the Chair, Member Planning CDA briefed the Committee about Supreme Court's judgment in Sua Moto case No. 13 of 2009 and assured that compliance of the said decision has been made. As per judgment, CDA is not authorized to enter into joint ventures of public-private partnerships under CDA Ordinance, 1960. However, CDA is desirous of engaging in public-private partnerships for generating revenue, so for that matter, in 2011,</p>



	Supreme Court, 619)	they took up this issue with the then government and proposed amendments in CDA Ordinance, 1960. In 2016, the then Prime Minister constituted a committee headed by Mr. Ashtar Ausaf Ali, the Attorney General for Pakistan. The matter is still pending with the said committee. The Committee disposed of this item by extending further time of ninety days to CDA for reporting back to the Committee with proposals for amendment in the legislation.
V	<b>Agenda Item 7</b> Ministry of Interior to brief the Committee on the rules and regulations governing National Police Foundation, with special emphasis on the observation made by the Supreme Court of Pakistan in Suo Moto case No. 11 of 2011 (PLD 2014, Supreme Court, 389)	<p>The Representatives from National Police Foundation briefed the Committee about recent developments in light of observations made by the Supreme Court of Pakistan in Suo Moto case No 11 of 2011. Justice (R) Muhammad Raza Khan, special invitee, briefed the Committee on the verdict of the Supreme Court. According to him, as per Supreme Court's decision, illegal allotments of plots in the National Police Foundation were cancelled and the apex court directed that recovery be made from the illegal allottees. Therefore, the Foundation wrote letters to all concerned for vacating houses, but the allottees or their subsequent purchasers or transferees approached the Supreme Court through review petitions. The Supreme Court partially reviewed its judgment and declared that recovery should be made from allottees, not from the transferees, because land was transferred to transferees in a transparent way and with consideration. The special invitee also pointed out that Supreme Court has established a Commission under the chairmanship of Justice Maulvi Anwar-ul-Haq for recovery of land and money on market value from allottees. Commission has given its report, but details and process of recoveries are still not known. Representatives from National Police Foundation responded that recovery process has already been started.</p> <p>Senator Farhatullah Babar raised a point that it is the mandate of Senate Committee on Delegated Legislation to review rules and regulations governing National Police Foundation, but in its written reply, the Foundation claimed that it is a private entity, and the Senate Committee on Delegated Legislation has no jurisdiction to review its Rules and Regulations. So, in this case,</p>



		<p>Committee may not discuss issues related to National Police Foundation. He asked the Foundation to clarify their legal status. He further asked that if it is a government entity or made by an Act of Parliament, then this Committee has the right to review these legislations. However, Ministry of Interior added that National Police Foundation falls under their domain, making it a subordinate department of this ministry, which refutes National Police Foundation's claim of being a private entity. Justice (R) Muhammad Raza Khan added that it is not a formal government institution. Government controls public as well as private entities, and in the present case, if this Foundation is headed by a government official, that doesn't make it a government institution, but it is a charitable endowment entity. Furthermore, Senator Farhatullah Babar raised concerns about allotment to people other than employees of police and related staff. He was of the view that allotment should be given to employees, their dependents, retired and deceased employees of the afore-mentioned Foundation. He proposed that in case, if allotment is extended to the civilians, then it should be on the basis of quota system. Managing Director National Police Foundation informed the Committee that initially, membership was reserved for police officials only, but later extended to civilians as police officials were few as compared to available plots. The matter stood disposed of with the direction that the copies of constitution and rules be provided to the Committee for its scrutiny.</p>
VI	<p><b>Agenda Item 8</b> Establishment Division to provide update on the National School of Public Policy Rules 2017 framed under the NSPP Amendment Ordinance 2017, in the light of the Committee's observations in the previous meetings and changes by Senator Farhatullah Babar.</p>	<p>The Establishment division informed the committee that in consultation with National School of Public Policy, rules are being formulated in the light of observations by the Finance Division and this Committee. They requested for more time. The Committee, while acceding to the request, disposed of the matter with the direction that the said process should be completed within a period of two months and subsequently be reported to this Committee.</p>
VII	<p><b>Agenda Item 9</b> Establishment Division to brief on situation arising out of absence of necessary procedures as are required to be prescribed by the</p>	<p>The Establishment division informed the Committee that they are making rules in the light of section 5 and 5-A of the Federal Service Tribunal Act, 1973 and would complete it shortly. The official from the said Division stated that</p>



	<p>federal government through rules in the light of section 5 and 5 A of the Federal Service Tribunal Act, 1973.</p>	<p>Rules under Section 5-A of the said Act dealing with the principal accounting officer have already been framed by Finance Division but the Rules under Section 5 granting execution powers to the Tribunal are yet to be framed in consultation with the Tribunal and the Law &amp; Justice Division. The Committee disposed of the matter with the direction that Rules should be formulated within three months' time and be submitted to this Committee.</p>
VIII	<p><b>Agenda Item 10</b> Ministry of Defence to brief on DHA Rules/Regulations and progress made so far on Committee's recommendations regarding rights, privileges and terms and conditions of service of the civilian employees working in the 'Federal Government Educational Institutions (Cantonments/Garrisons) Directorate' of the Ministry of Defence.</p>	<p>The Committee took serious notice of absence of officials from the Defence Division despite the fact they have already sent working paper on this item. Senator Farhatullah Babar registered his reservations in the following words:  <i>"Item 10 pertaining to Defence be noted that the Ministry of Defence did not deem it appropriate to attend the meeting. It is my apprehension that the Ministry of Defence did not want to confront the committee on Item No. 11, that's why they chose to abstain from Item No. 10"</i>.          Afterwards, in terms of Article 25-A of the Constitution of Islamic Republic of Pakistan, 1973, the Chairman Committee, on behalf of the Committee Members, recommended to the Government of Pakistan to allocate sufficient funds for free education of the children of civilian employees of the Federal Government Educational Institutions (Cantonments/Garrisons) Directorate of the Ministry of Defence in the institutions of the said Directorate. The Committee also proposed provision of free health facilities to all.</p>
IX	<p><b>Agenda Item 11</b> Ministry of Defence to brief on Rules/Regulations framed under National Command Authority Act, 2010. <u>(In Camera)</u></p>	<p>At the outset, Chairman Committee, Senator Taj Haider informed the Committee that Secretary Defence had requested through Senate Secretariat that agenda items 10 and 11 may be postponed as he would be busy in a meeting of National Assembly standing Committee on Defence. Secretary Defence had also contacted the office of Senator Taj Haider. He had subsequently been informed that Committee would consider postponement of the two agenda items. He further informed the Committee that earlier Secretary Defence had also sent a fax message to the Secretary Committee with the request of postponement to which Senator Taj Haider had responded by allowing that Additional Secretary or Joint Secretary could attend the meeting if the</p>



	<p>Secretary was busy. Secretary Defence had, however, insisted that the matter being very important, he personally wanted to apprise the Committee. Senator Taj Haider added that before this the Defence Ministry had requested in camera discussion taking the plea that it was classified / sensitive in nature.</p> <p>Chairman Committee then read out excerpts from his letter to the Secretary Defence. In it the Chairman had suggested that rules / regulations which are not classified be placed before the Committee without the discussion being in camera. The classified sections may be provided to the Chairman Committee in person exclusively for the eyes only of the members, it said.</p> <p>Despite this, Senator Taj Haider said, neither the Secretary Defence nor any representative of his came to the meeting today. He said that no representative came even for discussion on another agenda item (x). The item (x) pertained to briefing on DHA rules and the progress made on the recommendations regarding terms and conditions of civilian employees of Federal Government Educational institutions under the Ministry of Defence.</p> <p>Chairman Senator Taj Haider then invited views of the members keeping in view of the fact that the term of the Committee was about to come to an end.</p> <p>The mover Senator Farhatullah Babar said that transparency based on open discussion was a critical function of a parliamentary committee. The NCA Act 2010 was passed through an open parliamentary debate. Subordinate legislation thus should also be discussed openly. He said that Chairman Senate has also given a ruling regulating procedure to be followed for placing sensitive/ classified information before Parliament.</p> <p>Despite agreeing to in camera discussion in terms of the Chairman Committee's letter to Secretary Defence the latter did not attend the meeting, he said. If the Secretary was too busy he could have nominated some senior officer but it too was not done, he said.</p> <p>Senator Farhatullah Babar said that the Secretary Defence was stated to be attending the meeting of National Assembly's Committee today. If the Secretary Defence so wished he could attend both</p>
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		<p>meetings in the same building under the same roof by taking leave briefly from NA Committee and walking into the Senate Committee. But again this eminently doable and sensible course was not adopted.</p> <p>He wondered whether the avoidance was deliberate, as the Senate term was about to expire and the Ministry hoped that the matter will soon be dead and buried.</p> <p>Farhatullah Babar said that previously as member of the Defence Committee also he had asked for these rules. However it was denied for as long as 16 months till finally he resigned from the DEFCOM for some other reasons. The Defence Ministry now seemed to resist this Committee as well, he said.</p> <p>He said questions arose as to why the rules were so secretly guarded from the Parliamentary committee even while the parent law itself was discussed and adopted in the open.</p> <p>These questions will not die down easily he said and asked whether the rules / regulations were framed in violation of the basic law itself in which case it would have dangerous implications for the command and control of strategic assets.</p> <p>He said that his term in Senate would soon expire and there was nothing more he could do now except to place on record his apprehensions.</p> <p>Item No. 11 was deferred on the request of Secretary Defence, as he himself wanted to brief this committee on the subject.</p>
X	<p><b>Agenda Item 12</b></p> <p>Any other item with permission of the Chair</p>	<p><b>Agenda Item 12-A</b></p> <p>Senator Muhammad Daud Khan Achakzai, Advocate, Convener, Sub-Committee of the Committee on Delegated Legislation on Information Technology &amp; Telecommunication (ITT) presented report of the sub-committee to the Senate Committee on Delegated Legislation. The Chairman Committee appreciated the convener and members of the sub-committee for their valuable contributions. The report of sub-committee was adopted and the Chairman decided that it would be presented before the House together with report of the main Committee.</p> <p><b>Agenda Item 12-B</b></p> <p>The Committee also acknowledged achievements and efforts of the Legislative Drafting Cell (LDC)</p>



	<p>of the Senate Secretariat which is working under the guidance of Justice (R) Muhammad Raza Khan, Advisor on Legislative Drafting. The Advisor briefed the Committee about various tasks performed or undertaken by the LDC and sought guidance of the Committee for further work. The Chairman briefed the Members that agenda setting for Committee is done through a comprehensive multi-step process of review of various primary and delegated legislations by LDC staff, which is further reviewed and discussed by Chairman Committee and Advisor and then selected agenda items are circulated among Members for their input/feedback well in advance of the meeting. After deliberating upon activities and performance of the Committee, the Chairman presented the following reports:</p> <ol style="list-style-type: none"> <li>Report on Review of Rules, Regulations and Orders under Acts passed during the years 2015-2017</li> <li>Report on Communication with Ministries by LDC</li> </ol> <p>The Committee unanimously adopted the above reports.</p> <p><b>Agenda Item 12-C</b></p> <p>The Committee also discussed the possibility of inclusion of time frame of six months in future legislation for making of rules, regulations, under various acts or ordinances and thereafter submitting these rules and regulations to the Committee for their scrutiny. Members of the Committee endorsed the said provision, and suggested to make it part of every primary legislation that provides rule-making powers.</p>
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(Annex-B)

(Annex-CC)

6. Three meetings of Sub-Committee of the Committee on Delegated Legislation on Information Technology (IT) were held on 8<sup>th</sup> & 31<sup>st</sup> January and 9<sup>th</sup> February 2018.

7. The following members of the Committee attended the above-said meetings:

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|--|----------|
| i. Senator Muhammad Daud Khan Achakzai, Advocate | Convener |
| ii. Senator Kalsoom Parveen                      | Member   |
| iii. Senator Muhammad Javed Abbasi               | Member   |

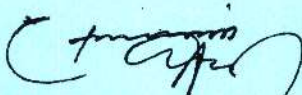
8. After detailed deliberations, the Committee presented a report to the main Committee of all the work done since its formation. The report of the sub-committee, as adopted by the

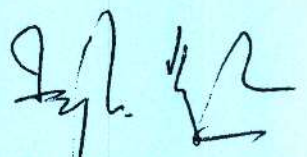


Committee on Delegated Legislation in its meeting held on 27<sup>th</sup> February 2018, is at **Annex-AA**. Recommendations of the sub-committee, as contained in the report, are reproduced below:

- M/S Etisalat has not honored all of its own commitments under the Shareholders Agreement therefore, as also stated by the Attorney General for Pakistan before the sub-committee, Pakistan will be able to aptly defend decision to grant LDI license to SCO for the whole of Pakistan if Etisalat invokes international arbitration on it.
- There appears no harm or legal/legislative obstruction in grant of LDI license to SCO for the whole of Pakistan because Section 40 of the Pakistan Telecommunication (Re-Organization) Act, 1996, grants exclusive rights to SCO to operate in AJ&K and GB, does not restrict it from the rest of Pakistan.
- SCO has undertook that after getting LDI license for whole of Pakistan, they will not be entering into fixed-line operations and hence not competing with Etisalat, as well as not compete for Government offices connections, which is the exclusive domain of NTC.
- Grant of LDI license to SCO for the whole of Pakistan is in the national interest. Secure communication lines are country's need. The revenue generated by SCO will also go to public exchequer.

9. In terms of Rule 172E (3) of the Rules of Procedure and Conduct of Business in the Senate, 2012, the quarterly report of the Committee is presented for perusal of the House.

  
(Haris Rehman)  
Secretary Committee

  
(Senator Taj Haider)  
Chairman

Islamabad  
The 5<sup>th</sup> March, 2018



# SENATE OF PAKISTAN



**Report of the Sub-Committee of the Senate Committee on Delegated Legislation  
For the Committee on Delegated Legislation**

**Presented By**  
**Senator Muhammad Daud Khan Achakzai, Advocate**  
**Convener**



## **SENATE SECRETARIAT**

### **REPORT OF THE SUB-COMMITTEE OF THE SENATE COMMITTEE ON DELEGATED LEGISLATION**

In pursuance of Rules 263 of the Rules of Procedure and the Conduct of Business in the Senate, 2012, the requirements of Rule 183 of the Rules of Procedure and the Conduct of Business in the Senate, 2012, was dispensed with in order to enable the Committee on Delegated Legislation to constitute more than one committee. Moreover, the said sub-committees were also given exception from dissolution at the expiry of two months.

2. An in-house meeting of the Senate Committee on the Delegated Legislation was held on 3<sup>rd</sup> June 2016, to devise a strategy for formulation of sub-committees to review and scrutinize the rules, regulations and orders made or required to be made under the Acts of the Parliament. In this meeting, the Committee constituted three sub-committees:

- i. **Sub-Committee on Cabinet Secretariat**
- ii. **Sub-Committee on Information Technology and Telecommunication**
- iii. **Sub-Committee on Privatization**

3. The composition of the Sub-Committee on IT & Telecommunication was as under:

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|---|-----------------|
| i. <b>Senator Muhammad Daud Khan Achakzai, Advocate</b> | <b>Convener</b> |
| ii. <b>Senator Kalsoom Perveen</b>                      | <b>Member</b>   |
| iii. <b>Senator Muhammad Javed Abbasi</b>               | <b>Member</b>   |

4. Following were the Terms of Reference (TORs) of the Sub-Committee:

***"To scrutinize/examine Delegated Legislation of the Ministry of Information Technology and Telecommunication"***

5. The Sub-Committee held a number of meetings and considered the following agenda items:



- i. *Briefing by the Ministry of Information Technology and Telecommunication regarding Rules, Regulations, Notifications and SROs in pursuance of the existing Acts of the Parliament;*
- ii. *Consideration of Rules, Regulations, Notifications and SROs regarding Pakistan Telecommunication Authority (PTA) in pursuance of the existing Acts of the Parliament;*
- iii. *Consideration of Rules, Regulations, Notifications and SROs regarding Universal Service Fund (USF) in pursuance of the existing Acts of the Parliament;*
- iv. *Consideration of Rules, Regulation, Notifications and SROs regarding Pakistan Telecommunication Employees Trust (PTET) in pursuance of the existing Acts of the Parliament of Pakistan;*
- v. *Consideration of Rules, Regulations, Notifications and SROs regarding Special Communication Organization (SCO) in pursuance of the existing Acts of the Parliament;*

6. In total, the sub-committee has conducted 18 meetings - 3 meetings in 2016, 12 in 2017 and 3 in 2018.

7. The sub-committee received a briefing from the officials of the Ministry of Information and Telecommunication (MoITT) on statutory bodies working under the ministry. The Ministry further briefed the sub-committee regarding its governing Laws/Acts/Rules and the attached departments.

8. The sub-committee also discussed the working and Rules/Regulations of the Pakistan Telecommunication Authority (PTA) and the Universal Service Fund (USF). After extensive deliberations, it was decided that there is no need to amend the delegated legislations related to the above-said bodies.

9. In addition, the sub-committee deliberated upon the establishment, objectives, rules and notifications of the Pakistan Telecommunication Employees Trust (PTET). The officials of PTET informed the sub-committee that the above-mentioned Trust was established, in pursuance of Pakistan Telecommunication Authority (Re-organization) Act, 1996, and managed by a Board of Trustees, comprising six members. They also explained the Rules of the Trust, in general, and Pension Rules, in particular. However, the sub-committee directed the Ministry to provide complete details of the Trust containing the list of pensioners along with their pension amount,



the list of employees who were forcibly retired by PTCL and the list of presently working employees along with their pay scale & salary and any other related issue of employees regarding their retirement. After reviewing the data provided by the Trust and evaluating the grievances of the PTCL employees, the sub-committee observed that the way employees were treated in some cases raised concerns. The Ministry representative informed that they had written letters to PTCL asking them to completely avoid all coercive measures and directed that the Voluntary Separation Scheme (VSS) should be voluntary in all respects.

10. The sub-committee also directed the MoIT to provide details of those employees who had approached courts against PTCL's coercive measures. After receiving response from the Ministry, the sub-committee noticed that out of a total of 1233 petitioners in various courts, 316 had been shown as non-traceable. PTET was, therefore, directed to trace such petitioners through advertisements in newspapers. The Committee then discussed special cases of four PTCL employees/pensioners from Balochistan and stressed on an early resolution of cases of aggrieved employees of PTCL. The MoITT responded that all such aggrieved persons may file appeals before Secretary MoITT who is the appellate authority in these matters.

11. The sub-committee also discussed the issue of the denial of increase in pensions to PTCL pensioners announced by the federal government in the budgets. MoIT informed that as per the privatization scheme, it becomes the responsibility of PTCL's Board of Trustees (BoT) to increase the pension of employees of PTCL. The Board allows increase in pensions as per company's financial health and the increase announced by the federal government in the budget is not binding on PTCL. The Committee concluded that such provisions shall be looked into at the time of signing agreement, and interests of employees and pensioners must be safeguarded.

12. The main point of deliberations of the sub-committee remained the legal aspect of the area of operation of Special Communications Organization (SCO) under Section 40 of the Pakistan Telecom (Re-Organization) Act, 1996. SCO wanted enhancement in its area of operation from AJ&K and GB to the whole of Pakistan. On MoITT's objection that SCO cannot be allowed to work in areas other than AJ&K and GB because the said Section limits their operations to AJ&K and GB only, SCO proposed amendments in Section 40 (A) & (B) of the said Act. The MoITT reviewed the proposal and made following observations:



- *Telecom Act is a primary legislation, so Special Communication Organization's (SCO) proposal for amendment in the said Act does not fall under the purview of the Committee on Delegated Legislation.*
- *To propose amendments in Acts of Parliament through official bills, the procedure laid down in the Rules of Business 1973 must be followed.*
- *SCO's proposed amendments in the Pakistan Telecom (Re-Organization) Act 1996 are in conflict with the telecom regime in Pakistan, which cannot be accepted and will require a massive change in existing telecom policy of Pakistan.*
- *Amendments proposed by the SCO in Section 40 (A & B) were principally disagreed being against the policy of government, international commitments and other commercial agreements in the telecom sector.*

After detailed discussion, it was agreed in principle that there was no need to introduce amendments to the Pakistan Telecom (Re-Organization) Act, 1996. However the aspect whether Section 40 does indeed bar SCO from operating in other areas of Pakistan was agreed to be discussed further.

13. SCO briefed the sub-committee about the mandate, working, background and scope of the SCO. Under section 40 of the Pakistan Telecommunication (Re-organization) Act, 1996, SCO provides telecom services in the Northern Areas of Pakistan and AJK. Section 40 of the Act is reproduced below:

***"Special Communication Organization. -- Notwithstanding anything contained in section 39, the telecommunication services within the Northern Areas and Azad Jammu & Kashmir shall be operated by the Special Communication Organization and the Authority shall issue license to the Organization accordingly"***

MoITT held the view that under Section 40 of PTR, 1996, SCO has been limited to operate in AJ&K and GB only. The Ministry further contended that under Clause 10.2 of the Shareholders Agreement between Government of Pakistan (GoP) and M/s Etisalat, GoP had extended covenant that *"it shall not be concerned directly with the business in Pakistan which is competitive with or likely to be competitive with the business then carried on by the Company, provided that this restriction shall not apply to the NTC or SCO to the extent of the business carried on by those businesses at the date of this Agreement,"* and therefore SCO cannot be allowed to operate in the rest of Pakistan.



14. After receiving both MoITT and SCO, the sub-committee directed that MoITT shall hold internal meeting with all relevant stakeholders and submit the outcome of discussions in the meeting / final opinion to the sub-committee for consideration. Such directions to hold internal meetings were given on multiple occasions from early 2017. Finally, MoITT held a meeting with SCO and other stakeholders including Finance Division, Law Division, PTA and NTC on 24<sup>th</sup> October 2017. After detailed deliberations, it was decided that SCO, NTC and PTA would submit their views on the issue in writing to MoITT, which, in turn, will prepare a comprehensive reference for Law Division to obtain their formal legal opinion to establish correctness or otherwise of the stance taken by SCO and MoITT and hence settle the issue.

15. Since the decision to obtain a legal opinion from Ministry of Law and Justice (MoLJ) was taken by all stakeholders and MoITT had agreed to it, the sub-committee decided to go ahead with the proposal. In its meeting held on 14<sup>th</sup> November 2017, the sub-committee observed that MoITT had received views from SCO, NTC and PTA, the Committee directed MoITT not to delay the matter any further and send the reference to Law Division latest by 17<sup>th</sup> November 2017 and follow up such that opinion of Law Division was received to the Committee by 24<sup>th</sup> of November 2017. MoITT sent a reference (**Annex-A**) to MoLJ on 17<sup>th</sup> November 2017.

16. In the meeting held on 29<sup>th</sup> December 2017, the representative of Ministry of Law and Justice informed that they had sent their opinion on the matter to MoITT on 15<sup>th</sup> December 2017. Elaborating the opinion of MoLJ (**Annex-B**), he said the provisions of Pakistan Telecommunication (Re-Organization) Act, 1996, cannot be interpreted as imposing a bar on SCO to operate in Pakistan. Moreover, Clause 10.2 of the Shareholders Agreement between Federal Government and M/s Etisalat, which MoITT considers as a restrictive clause for SCO's operations across Pakistan, is in conflict with section 3 of the Competition Act, 2010. He also emphasized that Shareholders Agreement itself contains a provision that it shall be governed by the laws of Pakistan.

17. MoITT did not agree with the opinion of MoLJ. It contended that Shareholders Agreement had been entered into by Government of Pakistan therefore it needed to be observed. If altered, it could have serious repercussions for the country in many ways. The issue needed to be seen holistically taking into account all aspects and considerations. Moreover, in 2009 MoLJ



had given opinion in another matter involving Etisalat that the agreement needed to be 'solemnly followed.' Therefore, MoITT was of the view that opinion of MoLJ in the instant case was inconsistent and accordingly they had moved to seek opinion of the Attorney General on 22<sup>nd</sup> December 2017. Once the opinion of Attorney General (AG) was received, the Committee will be informed. In reply to another query by the Convener, MoLJ representative informed that as per Rules of Business, the concerned ministry (MoITT in this case) has the right to seek opinion of the AG in case the ministry differs with the opinion of MoLJ. If AG's opinion on the matter is the same as MoLJ's, the matter stands finalized. If AG's opinion is different from MoLJ's, the matter is placed before Federal Cabinet for a decision.

18. In the meeting held on 8<sup>th</sup> January 2018, the Attorney General for Pakistan briefed the sub-committee on the opinion sent by him (F/C). He stated that the first and foremost thing which he considered before giving any opinion on the matter was its implications for Pakistan as the country is already suffering from negligence and non-professional actions of the past. He added that the agreement with Etisalat was flawed because it is absolutely unheard of that sovereign immunity is forgone, as was the case in agreement with Etisalat. He has serious reservations on placing of restrictions on national institutions especially when Etisalat itself is not honoring its commitments under the Agreement. He also noted with concern that under the Agreement, Etisalat was given exclusive rights in such a way that not only country's own institutions have been restricted but also in the areas of exclusivity of the same national institutions Etisalat has been allowed to intrude. He categorically stated that he was confident of properly and fully defending Pakistan if Etisalat went to court or international arbitration.

19. On the insistence of MoITT, the sub-committee summoned PTA to give its views in the matter. In the sub-committee meeting held on 9<sup>th</sup> February 2018, PTA submitted that according to Section 40 of PTCA, 1996, SCO had been granted License to operate and render services of telecommunication in AJ&K and GB, and for the grant of License to operate in rest of Pakistan, the requirement of being a legal entity had to be met by the SCO. That is, SCO had to be incorporated with SECP for grant of such a license. It was added that PTCA, 1996, assigns roles to different organizations such as PTCL, NTC, SCO, PTA and accordingly SCO had to work within its mandate and fulfill all codal formalities for grant of LDI license, as also maintained in para 23 of the opinion by Attorney General for Pakistan.



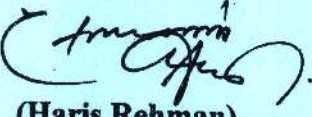
20. The Additional Attorney General elaborated on the opinion rendered by the Attorney General for Pakistan and said that it is a considered opinion of AG that Section 40 demarcates AJ&K and GB as areas where SCO has the exclusive right to operate but the same does not limit SCO to operate outside of its exclusive area. Secondly, in their opinion, intent of legislature at the time of formulating the said Act was to give SCO a unique position that is why it was not made a company through the Act while PTCL was made a company. License was granted to both PTCL and SCO. Therefore, in their opinion, there is no restriction under the said Act on the operations of SCO. The Committee also asked Advisor Legislative Drafting, Senate Secretariat, Justice (R) Muhammad Raza Khan, to give his opinion on the matter. He said that legally if it is provided in the Act that an institution will operate in specified areas it does not mean that it cannot operate in the other areas. He added that PTA's objection on SCO, asking them to become a company registered with SECP for grant of LDI license, also did not appear valid because when a regulation specifies "person or class of persons" it does not mean a human person rather it means a juristic person i.e. a person that can sue and can be sued and SCO already has the juristic personality that is why it has been granted other licenses. In his opinion there appeared no solid reason for not granting LDI license to SCO for operating across Pakistan, especially after the opinions by MoLJ and Attorney General for Pakistan.

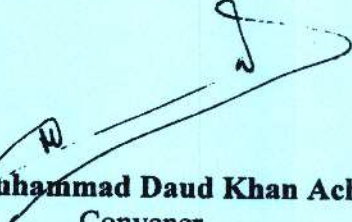
21. In the light of extensive deliberations on the matter of enhancement of SCO's area of operation under Section 40 of PTR, 1996, and after hearing all concerned, as detailed above, the sub-committee makes the following observations/recommendations:

- Minister of State for Information Technology and Telecommunication did not attend any meeting of the sub-committee or inform the sub-committee of her stance on the matter.
- M/S Etisalat has not honored all of its own commitments under the Shareholders Agreement therefore, as also stated by the Attorney General for Pakistan before the sub-committee, Pakistan will be able to aptly defend decision to grant LDI license to SCO for the whole of Pakistan if Etisalat invokes international arbitration on it.
- There appears no harm or legal/legislative obstruction in grant of LDI license to SCO for the whole of Pakistan because Section 40 of the Pakistan Telecommunication (Re-Organization) Act, 1996, grants exclusive rights to SCO to operate in AJ&K and GB, does not restrict it from the rest of Pakistan.



- SCO has undertook that after getting LDI license for whole of Pakistan, they will not be entering into fixed-line operations and hence not competing with Etisalat, as well as not compete for Government offices connections, which is the exclusive domain of NTC.
- Grant of LDI license to SCO for the whole of Pakistan is in the national interest. Secure communication lines are country's need. The revenue generated by SCO will also go to public exchequer.

  
(Haris Rehman)  
Secretary Committee

  
(Senator Muhammad Daud Khan Achakzai)  
Convener

Islamabad  
The 20<sup>th</sup> February, 2018



Government of Pakistan  
Ministry of Information Technology & Telecommunication  
(IT & Telecom Division)

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F.No.4-1/2017-Legal

Islamabad, 17<sup>th</sup> November, 2017

Subject: PROPOSED AMENDMENTS IN PAKISTAN TELECOMMUNICATION (RE-ORGANIZATION) ACT, 1996 REGARDING EXPANSION OF MANDATE OF SPECIAL COMMUNICATION ORGANIZATION (SCO)

This reference is being made to the Law Division for seeking opinion of the Law Division as to whether an extension in the area of operation of Special Communication Organization (SCO) by allowing it to operate in the whole of Pakistan in competition with other telecom operators operating in Pakistan including Pakistan Telecommunication Company Limited (PTCL) could be termed a violation of the Shareholders Agreement (SHA).

2. Brief background of the matter is as follows:

- (a) Subsequently, in 1996 Pakistan Telecommunication Company Limited (PTCL) was established in pursuance of Section 34 of the Pakistan Telecommunication (Re-organization) Act, 1996 (Telecom Act). Under section 39 (2) of the Telecom Act, PTCL was issued a license within six months of the commencing date of the Telecom Act, for providing telecom services in the whole of Pakistan excluding the Northern Areas, Azad Jammu & Kashmir for a period of twenty-five years on payment of licence fee determined by the Authority.
- (b) Under section 40 of the Telecom Act, SCO was issued a license to operate in AJ&K and Northern Areas.
- (c) In 2006, PTCL was privatised and the Government of Pakistan divested its 26% shares to an international telecommunication group namely Etisalat against a price of approx. 2.6 billion US dollars. As a part of the privatization of PTCL deal, the GoP and Etisalat entered into certain agreements including Shareholders Agreement (SHA) in April 2006 (a copy of the SHA is enclosed as Annex-A). Under clause 10 of the SHA, the GoP extended following covenant:-



*"10.2 GoP covenants with the investor that, for so long as it remains a member of the Company and for a period of one year after the date on which it ceases to be member of the Company, it shall not be concerned directly with any business in Pakistan which is competitive with or likely to be competitive with the business then carried on by the Company provided that this restriction shall not apply to National Telecommunication Corporation or Special Communications Organization to the extent of the business carried on by those businesses at the date of this Agreement."*

3. The SHA is still in the field and the GoP being a party to the SHA at this stage does not endorse any instrument or step that is in conflict with the said agreement or that may jeopardise its existence and entail pecuniary loss to the GoP. The above undertakings of the GoP were extended in view of the stated policy of the GoP, i.e., the De-regulation Policy for the Telecommunication Sector, 2003 later affirmed through the Telecom Policy, 2015 (Annex B & C respectively). Section 15.2.1 of the Telecom Policy, 2015 states as under:

*"The Special Communications Organization (SCO) will continue to develop, maintain and operate telecom systems, infrastructure and services within Azad Jammu & Kashmir, Gilgit-Baltistan."*

4. However, SCO has started raising a demand that it should be allowed to operate in Pakistan outside AJ&K and Gilgit Baltistan (Northern Areas) while citing different reasons including their inability to compete with other telecom operators in AJ&K and GB. A detailed paper shared by SCO on the subject is enclosed as Annex-D.

5. This Ministry is of the view that an extension in the mandate of SCO by allowing it to operate in the whole of Pakistan or any area in Pakistan beyond AJ&K and GB may be viewed as a violation of the SHA by the Etisalat and have adverse implications for Pakistan. Although the governing law under the SHA is Pakistani law, the dispute resolution forum is London Court of Arbitration. Thus, any violation of SHA on the pretext that the SHA cannot bind the GoP may not be sustainable before the London Court of Arbitration and GoP may be required to compensate Etisalat for any violations. The GoP has also waived its sovereign immunity under clause 30 of the SHA.



6. This Ministry further views that extended operation of SCO beyond AJK and Gilgit Baltistan is against the above mentioned GoP policies under which huge foreign direct investments have been made by private operators apart from Etisalat.

7. Keeping the above in view, Ministry of Law and Justice is requested to advise this Ministry whether any extension in the SCO's licensed area of operation by allowing it to operate in Pakistan beyond AJ&K and Gilgit Baltistan (Northern Areas) would be a violation of the SHA or otherwise.

8. We shall remain available for any further clarification in the matter. The Senate Sub-Committee is also seized with the matter and desires an early solicitation from the Law Division. Therefore, an early response would be highly appreciated.

Secretary,  
Ministry of Law and Justice,  
Islamabad.

CC:

- 25/11 • Member (Telecom)  
25/11 • SO to Secretary IT

24/11 -  
R&I Branch  
Ministry of IT & Telecommunication  
Government of Pakistan  
Islamabad.  
Ph: 920303  
17/11/17  
S. I. P. M.

25/11/17  
(Asif Mahmood)  
Head Legal Cell

100d 2/11/17



- 26 -

Dy. No. 3349/2017-D&L  
GOVERNMENT OF PAKISTAN  
MINISTRY OF LAW AND JUSTICE  
<<<<<<<

Islamabad the, 15<sup>th</sup> December, 2017

OFFICE MEMORANDUM

Subject: PROPOSED AMENDMENTS IN PAKISTAN TELECOMMUNICATION  
(RE-ORGANIZATION) ACT, 1996 REGARDING EXPANSION OF  
MANDATE OF SPECIAL COMMUNICATION ORGANIZATION (SCO)

✓  
P-23-25  
C/L

The undersigned is directed to refer to IT & Telecom Division O.M. No. 4-1/2017-Legal, dated the 17th November, 2017 on the subject noted above and to state that *vide* Ministry of Information Technology and Telecommunications has sought the legal advice of this Division that whether any extension in the Specialized Communications Organization's (SCO) licence to operate in Pakistan beyond Azad Jammu & Kashmir and Gilgit-Baltistan (Northern Area) would be a violation of the Shareholders Agreement or otherwise?

2. The matter has been examined and it is submitted that the Shareholders Agreement (Agreement) was executed between the Federal Government and M/s Etisalat in respect of the privatization of PTCL on March, 2006.

3. Under section 39 of the Pakistan Telecommunication (Re-organization) Act, 1996 a licence to PTCL was issued by the Pakistan Telecommunication Authority (PTA) in order to provide telecom services within Pakistan excluding Northern Areas and Azad Jammu & Kashmir, for a period of twenty five years. In terms of section 39 (3) exclusive right of PTCL to provide telecom services within Pakistan was for a period of seven years.

4. Under section 40 of the Act *ibid* SCO was issued a licence to operate and provide telecom services within Northern Areas and Azad Jammu. It is important to point out that Section 40 of the Act *ibid* in fact reiterates and reinforces SCO's right to operate in the Northern Areas and Azad Jammu & Kashmir, to the exclusion of all other operators. However, the said provision cannot be interpreted as imposing a bar upon SCO to operate in Pakistan.

5. Ministry of IT is of the view that LDI licence to SCO to operate within Pakistan cannot be granted in light of Agreement. The relevant Clause 10.2 of the Agreement reads as follows;



- 4 -

"GoP covenants with the investor that it shall not be concerned directly with any business in Pakistan which is competitive with or likely to be competitive with the business then carried on by the company provided that this restriction shall not apply to National Telecommunication Corporation or Special Communications Organization to the extent of the business carried on by those businesses at the date of this Agreement." [Emphasis added]

6. The Agreement containing clause 10.2 was executed when SCO was already in existence and in operation. Hence, Parties were fully aware of the same and there exists no specific provision or mention in the Share Purchase Agreement that SCO shall not be granted any license for any category of service or technology leading to provision of telecommunication services. Furthermore, the restrictive covenant in clause 10.2 of the Shareholders Agreement, unless exempted under Section 5 of the Act cannot bar SCO from seeking and being granted a LDI licence for Pakistan.

7. Moreover, Clause 10.2 is in conflict with section 3 of the Competition Act, 2010. It is important to point out that the Agreement itself contains a provision that it shall be governed by the laws of Pakistan. Clause 29 of Agreement reads as follows:

"This Agreement is governed by the laws of the Islamic Republic of Pakistan"

8. Hence, any provision of the Agreement which is not in conformity with the laws of Pakistan or in conflict with any provision of the enactment would be treated as invalid. The Act of 1996 is the binding authority on the issue. Any subsequent contractual obligation which is governed by the laws of Pakistan shall be in accordance with the aforesaid Act. The Act of 1996 given plenary power to PTA to grant licence. As PTA is an autonomous body, it should also examine the issue and refer the case to Ministry of I.T. As per the note of Ministry of Information Technology referred to this Division, no referral has been made to PTA.

9. It has been conveyed by Attorney General's office that the Attorney General is abroad and would return on the 27<sup>th</sup> of December, 2017. However, detailed opinion of this Division is contained in this O.M.

Mr. Asif Mahmood  
Head legal Cell  
M/o Information Tech. & Telecom Division  
Islamabad

*Put up please  
Asst  
23/12/17*

  
(Saadat Iqtidar Alam)  
Section Officer (D&L)  
Ph: 051-9203465

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0730



In Re: Expansion of Mandate of Special Communication Organisation  
SCO

14. Ministry of Information Technology (IT & Telecom Division) vide letter No. F.No.4-1/2017-Legal sought opinion of the Attorney-General on the question 'whether an extension in the area of operation of Special Communications Organisation (hereinafter referred to as 'SCO') by allowing it to operate in the whole of Pakistan in competition with other telecom operators operating in Pakistan including Pakistan Telecommunication Company Limited (hereinafter referred to as 'PTCL') could be termed a violation of the Shareholder Agreement (hereinafter referred to as 'SHA') executed between the Government of Pakistan and M/s Etisalat International Pakistan LLC ('Etisalat').'

15. The reference was made without taking into consideration the mandate of the Rules of Business, 1973 which requires that the Advice of the Law and Justice Division be solicited in the first instance. The Law Division rendered its opinion on 15-12-2017 vide Dy. No. 3349/2017-D&L. In the meanwhile, the Senate Sub-Committee on delegated legislation took up the matter and statedly desired that matter be referred to the Attorney-General for Pakistan.

16. It appears that the matter in issue essentially is that of a difference of opinion between the two departments in the same division. On one hand is the administrative office of the Minister and on the other the Special Communication Organisation.

17. It appears that to date an application for issuance of license is pending with the Pakistan Telecommunication Authority apparently for the reason that administrative branch of the Ministry of Information Technology is of the view that such an application would be a breach of covenants made between Government of Pakistan and Etisalat vide a Shareholder Agreement dated 12-04-2006. Particular reference is made by Ministry of Information Technology to Clause 10.2 which for ease of reference is reproduced hereunder:



-6-

*'GoP covenants with the investor that, for so long as it remains a member of the Company and for a period of one year after the date on which it ceases to be a member of the Company, it shall not be concerned directly with any business in Pakistan which is competitive with or likely to be competitive with the business then carried on by the Company provided that this restriction shall not apply to National Telecommunication Corporation or Special Communications Organisation to the extent of the business carried on by those businesses at the date of this Agreement.'*

18. The representatives of the SCO when confronted with the above have categorically stated that they have no intentions of competing with Etisalat or any other telecom operator and that they intend to secure license strictly within the mandate of their Organisation and existing businesses. Their area of operation would not even coincide with that of Etisalat or any other telecom operator and that they were so desirous for strategic and reasons of national security.

19. Ministry of Information Technology considers it to be bound by the SHA and the stated policy of the Government of Pakistan. They made a special reference to 15.2.1 of Telecommunication Policy 2015 which recognises the area of operation of SCO to be Azad Jammu and Kashmir and Gilgit-Baltistan. It is their belief that the SCO cannot develop, maintain and operate telecommunication systems and infrastructure and services outside Azad Jammu and Kashmir and Gilgit-Baltistan. In my view aforesaid clause gives exclusive rights to SCO and does not restrict its area of operation.

20. The Law Division while opining on the matter in issue is of the considered view that the SHA was in contravention of the laws of Pakistan specially Section 3 of the Competition Act, 2010. The Competition Commission of Pakistan is also of the view that Clause 10.2 of SHA, which is the non-compete covenant, is void in terms of sub-section (3) of Section 4 of the Competition Act, 2010. The opinion rendered by Competition Commission of Pakistan is non binding and does not constitute as a ruling.

21. I have perused the Constitution of the Islamic Republic of Pakistan, 1973, Pakistan Telecommunication (Re-organisation) Act, 1996, The Azad Jammu and




Kashmir Council Adoption of Pakistan Telecommunication (Re-organisation) Act, 2005, The De-Regulation Policy for the Telecommunication Sector 2003, Pakistan Telecommunication Rules, 2000, the Competition Act, 2010, the Shareholders Agreement executed between the President of the Islamic Republic of Pakistan and Etisalat International Pakistan LLC dated 12-04-2006, the Share Sale and Purchase Agreement executed between the President of the Islamic Republic of Pakistan and Etisalat International Pakistan LLC dated 12-03-2006, and, the opinion rendered by the Competition Commission of Pakistan on 03-01-2018. I have also had meetings with the SCO and the legal team of the Ministry of Information Technology in order to comprehend their respective point of view.

22. In my considered opinion as long as SCO remain within the confines of its mandate and establishes a regime which caters for strategic and security concerns of Pakistan, it will not fall foul of the covenant made between Etisalat and the Government of Pakistan. I tend to agree that the restrictive covenants may not stand in the way of grant of license but in order to avoid any litigious challenges it will be better and a safer course for SCO to incorporate a separate legal entity for the purposes of carrying out its operations. Since the representatives of SCO have categorically stated that they have no intentions of competing with Etisalat it would be prudent if such an undertaking is placed on record for processing the request for grant of license.

23. To conclude, in my considered opinion subject to meeting the criteria there is no impediment in the way of processing an application pending with the Pakistan Telecommunication Authority for grant of a license which would further the cause of national security provided it is confined to the business being carried out by the SCO.

Mr. Karamat Hussain Niazi,  
Secretary,  
Ministry of Law & Justice,  
Islamabad.

AGP Office U.O. No 1(3)/2018-AGP dated 5-1-2018

  
(ASHTAR AUSAF ALI)  
Attorney-General for Pakistan



## REPORT FOR THE COMMITTEE ON DELEGATED LEGISLATION

In pursuance of Rules 172 (C, D & E) of the Rules of Procedure and the Conduct of Business in the Senate, 2012, the Senate Committee on Delegated Legislation has been established to review and scrutinize rules, regulations and orders made or required to be made under Acts of the Parliament. A Legislative Drafting Cell (LDC) has been setup in the Senate Secretariat to assist Senate Committees in legislative matters in general and the Committee on Delegated Legislation in particular.

2. As per decision reached between Chairman Committee and Advisor on Legislative Drafting, the Cell has been reviewing legislation for the period 2015-2017 and as of now following 18 rules, regulations and orders have been reviewed.

- i. The Underwriters Rules, 2015
- ii. The Access to Inside Information Regulations, 2016
- iii. The Insurance Rules, 2017
- iv. The NEPRA (Market Operator Registration, Standards and Procedure) Rules, 2015
- v. The Pakistan Oil (Refining, Blending, Transportation, Storage and Marketing) Rules, 2016
- vi. The Bankers to an Issue of Securities Rules, 2015
- vii. The Central Depository (Licensing and Operations) Regulations, 2016
- viii. The Employees' Provident Fund (Investment in Listed Securities) Rules, 2016
- ix. The Licensed Persons (Obligation under Voluntary Winding-Up) Regulations, 2016
- x. The Balloters and Transfer Agent Rules, 2015
- xi. The Brand and Certification Development Support Order, 2016
- xii. The Drawback of Local Taxes and Levies (Non-Textile) Order, 2016
- xiii. The Premium Prize Bond (Registered) Rules, 2017
- xiv. The Inland Revenue Reward Rules, 2016
- xv. The Civil Servants (Service in International Organizations) Rules, 2016
- xvi. The Evacuee Trust Property Board's Vice Chairman (Appointment and Qualifications) Regulations, 2016
- xvii. The National Commission for Human Rights (Complaint) Rules, 2015
- xviii. The Supreme Court Establishment Service Rules, 2015

2. The parent legislations of the above rules, regulations and orders are as follow:

- i. The Securities and Exchange Ordinance, 1969
- ii. The Securities and Exchange Commission of Pakistan Act, 1997
- iii. The Securities Act, 2015
- iv. The Insurance Ordinance, 2000
- v. The Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997



- vi. The Oil and Gas Regulatory Authority Ordinance, 2002
- vii. The Companies Ordinance, 1984
- viii. The Imports and Exports (Control) Act, 1950
- ix. The Public Debt Act, 1944
- x. The Income Tax Ordinance, 2001
- xi. The Civil Servants Act, 1973
- xii. The Evacuee Trust Properties (Management and Disposal) Act, 1975
- xiii. The National Commission for Human Rights Act, 2012
- xiv. The Article 208 of the Constitution of Islamic Republic of Pakistan, 1973

3. Out of the 18 legal instruments reviewed, the Cell found no major contradictions and deviations from the parent legislations in the following 11 rules, regulations and orders.

- i. The Evacuee Trust Property Board's Vice Chairman (Appointment and Qualifications) Regulations, 2016
- ii. The National Commission for Human Rights (Complaint) Rules, 2015
- iii. The Central Depository (Licensing and Operations) Regulations, 2016
- iv. The Bankers to an Issue of Securities Rules, 2015
- v. The Balloters and Transfer Agent Rules, 2015
- vi. The Licensed Persons (Obligation under Voluntary Winding-up) Regulation, 2016
- vii. The Drawback of Local Taxes and Levies (Non-Textile) Order, 2016
- viii. The Supreme Court Establishment Service Rules, 2015
- ix. The Employees' Provident Fund (Investment in Listed Securities) Rules, 2016
- x. The Brand and Certification Development Support Order, 2016
- xi. The Access to Inside Information Regulations, 2016.

4. Few minor points warranting consideration have been found in the following seven rules. Brief on each of these documents is placed at **Annex** as mentioned against each.

- i. The Underwriter Rules, 2015 (Attached as Annex A)
- ii. The Insurance Rules, 2017 (Attached as Annex B)
- iii. The NEPRA (Market Operator Registration, Standards and Procedure) Rules, 2015 (Attached as Annex C)
- iv. The Pakistan Oil (Refining, Blending, Transportation, Storage and Marketing) Rules, 2016 (Attached as Annex D)
- v. The Inland Revenue Reward Rules, 2016 (Attached as Annex E)
- vi. The Civil Servants (Service in International Organizations) Rules, 2016 (Attached as Annex F)
- vii. The Premium Prize Bonds (Registered) Rules, 2013 (Attached as Annex G)

5. In addition to the above 18 rules, regulations and orders reviewed by LDC, the matter of delay in framing of rules for prescribing procedure for execution of decisions of Federal Service



Tribunal has also been pointed out and after approval of the Chairman Committee, the same has been placed in the agenda Committee's meeting.

6. Drafting Cell also observed a lacuna in the Auditor General (Functions, Powers and Terms and Conditions of Service) Ordinance, 2001 and pointed out that term of office of the Auditor General provided in the said Ordinance is in contradiction with the Constitution. As it is not the mandate of the Committee on Delegated Legislation to review and propose amendments in Acts and Ordinances, the Chairman Committee has decided that a private bill will be moved for amendment in the said Ordinance in order to bring it in conformity with the Constitution.



*Annex - CC*

SENATE SECRETARIAT

**REPORT FOR THE COMMITTEE ON DELEGATED LEGISLATION**

In pursuance of Rules 172 (C) and (D) of the Rules of Procedure and Conduct of Business in the Senate, 2012, Chairman Senate Committee on Delegated Legislations assigned the Legislative Drafting Cell (LDC) of the Senate Secretariat to review rules, regulations and orders under Acts passed during 2015-2017. In consultation with Advisor on Legislative Drafting, it was decided that letters would be written to the concerned ministries for provision of the above said rules, regulations and orders under relevant Acts to the LDC.

2. The Deputy Secretary (LDC) wrote letters to the following fifteen Ministries / Divisions:

- i. Climate Change Division
- ii. Commerce Division
- iii. Defense Division
- iv. Federal Education and Professional Training Division
- v. Finance, Revenue and Economic Affairs Division
- vi. Human Rights Division
- vii. Information Technology and Telecommunication Division
- viii. Interior Division
- ix. Law & Justice Division
- x. National Food Security and Research Division
- xi. National Health Service, Regulation and Coordination Division
- xii. Parliamentary Affairs Division
- xiii. Petroleum Division
- xiv. Science and Technology Division
- xv. Water Resources Division

3. The following eight Ministries / Divisions have responded so far:

- i. Climate Change Division
- ii. Defense Division
- iii. Finance Division
- iv. Human Rights Division
- v. Information Technology and Telecommunication Division
- vi. Law and Justice Division
- vii. National Health Service, Regulation and Coordination Division
- viii. Parliamentary Affairs Division

4. The responses and rules, regulations, orders forwarded from the Ministries / Divisions are being reviewed by the Cell and agenda items are proposed based on such reviews from time to time. Reminders have also been sent to the Ministries / Divisions that have still not responded. The Committee will be kept informed of the progress in this regard.