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PART I

Acts, Ordinances, President's Orders and Regulations

Government of Pakistan
MINISTRY OF LAW AND JUSTICE

Islamabad, the 26th December, 2023

No. F. 2(1)/2023-Pub.—The following Ordinance Promulgated on 22nd December, 2023 by the President is hereby published for general information:—

ORDINANCE NO. VIII OF 2023

AN

ORDINANCE

further to amend the Pakistan Telecommunication (Re-organization) Act, 1996 and the Prevention of Electronic Crimes Act, 2016

WHEREAS it is expedient to establish a Telecommunication Appellate Tribunal and further to amend the Pakistan Telecommunication (Re-organization) Act, 1996 (XVII of 1996) and the Prevention of Electronic Crimes Act, 2016 (XL of 2016) in the manner and for the purposes hereinafter appearing;

(847)

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AND WHEREAS, the National Assembly since dissolved is not in session and the Senate is also not in session and the President of the Islamic Republic of Pakistan is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:—

1. **Short title and commencement.**—(1) This Ordinance shall be called the Establishment of Telecommunication Appellate Tribunal Ordinance, 2023.

(2) It shall come into force at once.

2. **Amendment of section 2, Act XVII of 1996.**—In the Pakistan Telecommunication (Re-organization) Act, 1996 (XVII of 1996), hereinafter referred to as the said Act, in section 2, after clause (v), the following new clause shall be inserted, namely:—

“(va) **“Tribunal”** means the Telecommunication Appellate Tribunal established under section 7A.”

3. **Amendment of section 7, Act XVII of 1996.**—In the said Act, in section 7, for the marginal heading and sub-section (1), the following shall be substituted, namely:—

“7. **Appeals.**—(1) A person aggrieved by any decision or order of the Authority, on the ground that it is contrary to the provisions of this Act, may, within thirty days of the receipt of such decision or order, prefer an appeal to the Tribunal and the Tribunal shall decide such appeal within ninety days.”

4. **Amendment of section 7, Act XVII of 1996.**—In the said Act, in section 7, after sub-section (2), the following new sub-section (3) shall be added, namely:—

“(3) No suit or other legal proceedings shall be brought in any civil court or court exercising power of the civil court against any order, decision, notice issued by the Authority under this Act or in respect of any matter which falls within the jurisdiction of the Tribunal and to determine and to adjudicate. Any civil court or court exercising power of civil court shall not grant injunction in respect of any action taken or intended to be taken by the Tribunal in pursuance of its jurisdiction.”

5. **Insertion of sections 7A and 7B, Act XVII of 1996.**—In the said Act, after section 7, amended as aforesaid, the following new sections shall be inserted, namely:—

“7A. Establishment of the Tribunal.—(1) The Federal Government shall, by notification in the official Gazette, establish Tribunal for the purpose of exercising jurisdiction under this Act and the Prevention of Electronic Crimes Act, 2016 (XL of 2016), [and] the Tribunal shall consist of following three members:—

- (a) No person shall be appointed as a chairperson of the Appellate Tribunal unless he
 - (i) has been a Judge of a High Court; or
 - (ii) is or has been an advocate having for a period of not less than fifteen years’ active practice of conducting cases before a High Court.
- (b) one member with masters level professional degree in electrical, electronics, telecommunications, information and communication technology or information security or other related subjects with at least ten years of relevant experience including at least five years experience at senior management level in the public or private sector; and
- (c) one member with master’s level professional degree in finance, commerce, economics, chartered accountancy or other related subject with at least ten years of relevant experience including at least five years experience at senior management level in the public or private sector.

(2) The Federal Government may increase or decrease the number of members of the Tribunal and prescribe their qualifications and mode of appointment of the new members.

(3) The Tribunal shall be assisted by such officers and other staff members as may be appointed by the division to which business of the Tribunal stands allocated and their terms and conditions of service shall be regulated in accordance with the Civil Servant Act, 1973 (LXXI of 1973) and rules made there under.

(4) The Tribunal shall, for the purposes of hearing and deciding appeal under this Act and the Prevention of Electronic Crime Act, 2016 (XL of 2016), have the same powers as are vested in a civil court trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents and material objects;
- (c) receiving evidence on affidavits; and
- (d) issuing commissions for examination of witnesses and documents.

(5) The Chairperson and members of the Tribunal shall be appointed by the Federal Government in the prescribed manner.

(6) The Chairperson and members shall hold office for a period of four years and shall be eligible for re-appointment for a similar term or terms and shall cease to hold office on attaining the age of sixty-eight years or on the expiry of the term, unless renewed, whichever is earlier.

(7) A person shall not be appointed as Chairperson or a member, or remain as Chairperson or such member, of the Tribunal unless he—

- (a) is a citizen of Pakistan;
- (b) is not of the age exceeding sixty-four years on the date of his appointment;
- (c) has not been declared by a competent court of law as un-discharged insolvent or his petition for the same is not pending adjudication;
- (d) has not been declared by a competent court of law of unsound mind or insane;
- (e) has not been convicted by a competent court of law for an offence involving moral turpitude, fraud, dishonesty or corruption;
- (f) is not incapable of discharging his duties by reasons of physical or mental unfitness and has not been so declared by a duly constituted medical board; and
- (g) is not, or while appointed as member does not become, an officer or a director of a company.

(8) The Chairperson and members shall disclose the conflict of interest, direct or indirect, at or within the time provided for such disclosure under this Act and the Prevention of Electronic Crime Act, 2016 (XL of 2016).

(9) Where a retired Judge of a High Court is appointed as chairperson, he shall be entitled to the salary, perks and privileges as were last drawn by him as such Judge.

(10) Where an advocate is appointed as chairperson, he shall be entitled to the salary, perks and privileges as are admissible to a person appointed in MP-I scale of the Federal Government.

(11) The members shall be entitled to the salary, perks and privileges as are admissible to a person appointed in MP-I scale of the Federal Government.

(12) The chairperson or a member may by writing under his hand addressed to the Federal Government with a notice of not less than thirty days resign from his office and shall continue to perform his duties till acceptance of his resignation.

(13) The Federal Government for the purpose of practice and procedure of the Tribunal may, from time to time, by notification in the official Gazette, prescribe rules.

(14) Until such rules are prescribed under sub-section (9), the Tribunal may adopt the procedure laid down by the Islamabad High Court for filing an adjudication upon first appeal.

(15) Subject to the provisions of this Ordinance, the jurisdiction of the Tribunal may be exercised by the bench, or the benches thereof. The Chairperson may constitute or re-constitute a bench or benches accordingly.

(16) The decision of the Tribunal shall be taken with concurrence or by the majority of its members, as the case may be:

Provided that in case of difference in opinion as to the decision to be given on any point the matter shall be referred to the Chairperson for the constitution of full bench.

(17) All appeals in respect of any matter under jurisdiction of the Tribunal but pending before any High Court immediately before commencement of the Establishment of Telecommunication Appellate Tribunal Ordinance, 2023 (of 2023) shall stand transferred to the Tribunal on said commencement. Where any

appeal stands transferred from any High Court to the Tribunal, the High Court shall within a period of one month of the said commencement, transfer record of such appeal to the Tribunal.

(18) The Chairperson and members of the Tribunal shall be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XV of 1860).

7B. Appeal to Supreme Court.— Any person aggrieved by an order of the Tribunal may within sixty days thereof prefer an appeal to the Supreme Court.”.

6. Amendment of section 22, Act XVII of 1996.—In the said Act, in section 22, in sub-section (2), for the expression “High Court or a Tribunal established by the Federal Government for the purpose and the High Court or, as the case may be, the Tribunal shall exercise exclusive jurisdiction to adjudicate and settle all matters connected therewith and in exercise of such jurisdiction the High Court or the Tribunal as the case may be”, the expression “Tribunal which shall exercise jurisdiction to adjudicate and settle all matters connected therewith and in exercise of such jurisdiction, the Tribunal” shall be substituted.

7. Amendment of section 2, Act XL of 2016.—In the Prevention of Electronic Crimes Act, 2016 (XL of 2016), hereinafter referred to as the said Act, in section 2, after clause (xxx), the following new clause shall be inserted, namely:—

“(xxxa) “Tribunal” means the Telecommunication Appellate Tribunal established under section 7A of this Act.”.

8. Amendment of section 37, Act XL of 2016.—In the said Act, in section 37, in sub-section (5), for the words “High Court” the expression “Tribunal” shall be substituted.

DR. ARIF ALVI,
President.

RAJA NAEEM AKBAR,
Secretary.

STATEMENT OF OBJECTS & REASONS

Pakistan Telecommunication Authority was established under Pakistan Telecommunication (Re-organization) Act, 1996. In 2006, while amending section 7(1) of the Telecom Act, the provision of a tribunal established by the Federal Government was inserted. In addition, pursuant to section 37 of the Prevention of Electronic Crimes Act, 2016, appeals are filed before the High Courts. Since, both the above referred statutes are purely technical and intricate in nature and their decisions are based upon the technical issues, thus there is a requirement to establish a Telecommunication Appellate Tribunal having technical experts to decide all appeals, filed by the aggrieved persons, in a holistic and speedy manner. The Tribunal shall entertain appeals arising out of the decisions passed by the Pakistan Telecommunication Authority in exercise of its powers under the Pakistan Telecommunication (Re-organization) Act, 1996 and Prevention of Electronic Crimes Act, 2016. The establishment of this Tribunal shall help to lessen the burden of the High Courts with regard to adjudication of technical matters.



(Dr. UMAR SAIF)

Federal Minister for IT & Telecom