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ORDINANCE NO. VIII OF 2013

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ORDINANCE

further to amend the Anti-terrorism Act, 1997

WHEREAS it is expedient further to amend the Anti-Terrorism Act, 1997 (XXVII of 1997), for the purposes hereinafter appearing;

WHEREAS the Ordinance aims at addressing shortcomings relating to the terrorism financing provisions in the Anti-terrorism Act, 1997. In particular, the

Ordinance strengthens the provisions creating the offence of terrorism financing; covering all aspects of the offence in the light of international standards and provides for more effective measures for law enforcement agencies to investigate the offences;

WHEREAS the provisions on freezing, seizing and forfeiture of property involved in the terrorism financing offence have been strengthened to ensure that the funding of the terrorism financing offence is detected and seized after due process of law;

AND WHEREAS the National Assembly and the Senate are not in session and the President is satisfied that circumstances exist which render immediate legislation necessary;

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 is pleased to make and promulgate the following Ordinance:—

1. **Short title and commencement.**—(1) This Ordinance may be called the Anti-terrorism (Amendment) Ordinance, 2013.

(2) It shall come into force at once.

2. **Amendment of section 2, Act XXVII of 1997.**—In the Anti-terrorism Act, 1997 hereinafter referred to as the said Act, in section 2,—

(a) after clause (h), the following new clause shall be inserted, namely:—

“(ha) “freeze” means to prohibit the transfer, conversion, disposition or movement of any money or other property;”;

(b) after clause (q), the following new clause shall be inserted, namely:—

“(qa) “proscribed organization” means any organization which is listed in the First Schedule under section 11B;” and

(c) after clause (v), the following new clause shall be inserted, namely:—

(va) “seize” means to take custody or control of money or other property in order to prohibit its transfer, conversion, disposition or movement;”.

3. **Substitution of section 11B, Act XXVII of 1997.**—In the said Act, for section 11B, the following shall be substituted, namely:—

“11B. Proscription of organisations.—The Federal Government may, by order published in the official Gazette, list an organisation as a proscribed organisation in the First Schedule on an *ex parte* basis, if there are reasonable grounds to believe that it is,—

- (a) concerned in terrorism; or
- (b) owned or controlled, directly or indirectly, by any individual or organisation proscribed under this Act; or
- (c) acting on behalf of, or at the direction of, any individual or organisation proscribed under this Act.

Explanation.—The opinion concerning reasonable grounds to believe may be formed on the basis of information received from any credible source, whether domestic or foreign.”.

4. **Amendment of section 11C, Act XXVII of 1997.**—In the said Act, in section 11C, for sub-section (1), the following shall be substituted, namely:—

“(1) Where any proscribed organization is aggrieved by the order of the Federal Government made under section 11B, it may, within thirty days of such order, file a review application, in writing, before the Federal Government, stating the grounds on which it is made, and the Federal Government shall, after hearing the applicant, decide the matter on reasonable grounds within ninety days.”.

5. **Amendment of section 11D, Act XXVII of 1997.**—In the said Act, in section 11D, in sub-section (1), for the word “reason” the words “reasonable grounds” shall be substituted.

6. **Amendment of section 11E, Act XXVII of 1997.**—In the said Act, in section 11E, in sub-section (1), clause (b) shall be omitted.

7. **Amendment of section 11EE, Act XXVII of 1997.**—In the said Act, in section 11 EE,

- (i) for sub-sections (1) the following shall be substituted, namely:—

“(1) The Federal Government may, by order published in the official Gazette, list a person as a proscribed person in the Fourth

Schedule on an *ex parte* basis, if there are reasonable grounds to believe that, such person is,—

- (d) concerned in terrorism;
- (e) an activist, office bearer or an associate of an organization kept under observation under section 11D or proscribed under section 11B;
- (f) in any way concerned or suspected to be concerned with such organization or affiliated with any group or organization suspected to be involved in terrorism or sectarianism or acting on behalf of, or at the direction of, any person or organisation proscribed under this Act:

Explanation.—The opinion concerning reasonable grounds to believe may be formed on the basis of information received from any credible source, whether domestic or foreign.”;

- (ii) for sub-section (3), the following shall be substituted, namely:—

“(3) Where any person is aggrieved by the order of the Federal Government made under sub-section (1), he may, within thirty days of such order, file a review application, in writing, before the Federal Government stating the grounds on which it is made, and the Government shall, after hearing the applicant, decide the matter on reasonable grounds within ninety days.”; and

- (iii) after sub-section (3) substituted as aforesaid, the following new sub-section shall be inserted, namely:—

“(3A) A person whose review application has been refused under sub-section (3) may file an appeal to the High Court within thirty days of the refusal of the review application.

(3B) The Federal Government shall form a Proscription Review Committee to determine all review applications under sub-section (3).”.

8. **Amendment of Section 11J, Act XXVII of 1997.**—In the said Act, section 11J shall be re-numbered as sub-section (1) of that section and after sub-section (1) renumbered as aforesaid, the following new sub-section shall be added, namely:—

“(2) Any person in Pakistan, or a Pakistani national outside Pakistan, shall commit an offence under this Act, if he knowingly or recklessly makes money or other property or services available, directly or indirectly, wholly or jointly, for the benefit of a proscribed organization or proscribed person.”.

9. **Substitution of section 110, Act XXVII of 1997.**—In the said Act, for section 110, the following shall be substituted, namely:—

“110. Seizure, freeze and detention.—(1) On proscription made under section 11B or, as the case may be, section 11EE,—

- (a) the money or other property owned or controlled, wholly or partly, directly or indirectly, by a proscribed organisation or proscribed person shall be frozen or seized, as the case may be;
- (b) the money or other property derived or generated from any property referred in clause (a) shall be frozen or seized, as the case may be;
- (c) no person shall use, transfer, convert, dispose of or remove such money or other property with effect from proscription; and
- (d) within forty-eight hours of any freeze or seizure, the person carrying out the freeze or seizure shall submit a report containing details of the property and the persons affected by the freeze or seizure to such office of the Federal Government as may be notified in the official Gazette.

(2) Any person who violates any provision of sub-section (1) shall be liable to penalty of fine upto ten million rupees.

(3) If a legal person violates any provision of sub-section (1), such person shall be liable to penalty of fine upto ten million rupees and every director, officer or employee of such person found guilty of the violation shall be punished in terms thereof.

(4) On an application made by any affected person, the Federal Government shall inquire into the ownership and control of any money or other property that has been frozen or seized and, if it is satisfied that the money or other property has inadvertently been frozen or seized, the same shall be ordered to be released immediately.

(5) No prosecution, suit or other proceedings shall lie against the Government, or any other person complying or purporting to comply with sub-section (1) for anything done in good faith to effect freeze or seizure.”

10. **Insertion of section 110O, Act XXVII of 1997.**—In the said Act, after section 11O, the following new section shall be inserted, namely:—

“110O. Access to services, money or other property.—(1) The Federal Government may permit a person to make available to a proscribed organisation or proscribed person such services, money or other property as may be prescribed and such person shall not be liable for any offence under this Act on account of provision of the prescribed services, money or other property.

(2) On an application made by a proscribed organisation or proscribed person, the Federal Government may authorise such organisation or person to access such money or other property, or avail such services, as may be prescribed.”

11. **Substitution of section 11P, Act XXVII of 1997.**—In the said Act, for section 11P, the following shall be substituted, namely:—

“11P. Application by investigating officer to Court.—(1) An investigating officer may apply to a court for an order under this section for attachment of a terrorist property.

(2) An order under this section,—

(a) shall provide for attachment of the terrorist property for a period specified in the order or pending completion of the investigation; and

(b) shall require notice to be given to the person from whom such property was attached and to any other person who is affected by and specified in the order.

(3) Any cash attached under this section shall be held in a profit and loss account and the profit and loss so earned shall be added to it on its release or forfeiture.”

12. **Substitution of section 11R, Act XXVII of 1997.**—In the said Act, for section 11R, the following shall be substituted, namely:—

“11R. Evidentiary standard for forfeiture.—(1) The Court may pass an order for forfeiture under section 11Q upon conviction and only if satisfied on the balance of probabilities that the money or other property is a terrorist property and before so doing must give an opportunity to be heard to any person,—

- (a) who is not a party to the proceedings; and
- (b) who claims to be the owner of or otherwise interested in any of the money or other property which can be forfeited under this section.

(2) An order may be made under section 11Q, whether or not proceedings are brought against all the persons for an offence with which the money or other property is connected.”

13. **Amendment of section 11S, Act XXVII of 1997.—**In the said Act, in section 11S, the words and figure “or section 11R” shall be omitted.

14. **Substitution of section 11, Act XXVII of 1997.—** In the said Act, for section 11U, the following shall be substituted, namely:—

“11U. De-proscription.—(1) The Federal Government may, by notification in the official Gazette, at any time, remove any organisation or person from the First Schedule or Fourth Schedule, as the case may be, on the basis that no reasonable ground for proscription exists.

(2) After three years of the disposal of appeal, if any, or where no appeal was filed, from the date of the order of proscription, or from the date of any refusal of an application of de-proscription,—

- (a) the Federal Government shall conduct review of the proscriptions to determine whether any proscription may be cancelled on the basis provided under sub-section (1); and
- (b) until a proscription is cancelled, any money or other property frozen or seized on account of the proscription shall remain frozen or seized, as the case may be.

(3) On cancellation of the proscription under this Act, any money or other property that has been frozen or seized shall be released in a timely manner.”

15. **Amendment of section 34, Act XXVII of 1997.**—In the said Act, in section 34, for the words “First, Second, Third and Fifth Schedules” the word “Schedule” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Ordinance reflects the Government’s resolve to constantly review and strengthen counter terrorism financing regime and to bring it at par with international standards.

The Ordinance addresses shortcomings that relate to provision on terrorist financing in the Anti-Terrorism Act, 1997 and were highlighted by the Financial Action Task Force. FATF is an international body comprising many countries and international organizations that set and monitor international standards on anti-money laundering (AML) and counter-financing of terrorism (CFT). FATF publicly identifies countries with non-compliant AML/CFT standards.

The Ordinance aims at addressing shortcomings on terrorism financing in the Anti-terrorism Act, 1997. In particular, the Ordinance strengthens provisions relating to the offence of terrorism financing that cover all aspects of the offence at par with international standards. It provides for effective measures for law enforcement agencies to investigate such offences.

(CH. NISAR ALI KHAN)
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Member-in-Charge