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ORDINANCE NO.XXIII OF 2019

AN

ORDINANCE

*to provide for the establishment of the Whistleblower
Protection and Vigilance Commission*

WHEREAS it is expedient to provide for the establishment of the Whistleblower Protection and Vigilance Commission in order to facilitate a mechanism for whistleblower information relating to corruption and to protect whistleblower from Disadvantageous Measures, and to give them rewards for such whistleblower information and for matters connected therewith and ancillary thereto;

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

NOW, THEREFORE, in exercise of 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, extent and commencement.**—(1) This Ordinance may be called the Whistleblower Protection and Vigilance Commission Ordinance, 2019.

(2) It shall extend to the whole of Pakistan.

(3) It shall come into force at once.

2. **Definitions.**—In this Ordinance, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them,-

(a) “Authority” includes National Accountability Bureau, Federal Investigation Agency, Securities and Exchange Commission of Pakistan, Federal and Provincial anti-corruption departments, Financial Monitoring Unit and other Federal or Provincial agencies and authorities empowered to prosecute a person in respect of corruption and corrupt practices;

(b) “Chairman” means the Chairman of the Commission;

(c) “Commission” means the Whistleblower Protection and Vigilance Commission established under section 3 of this Ordinance;

(d) “Disadvantageous Measures” includes the following actions,—

(i) removal from office, release from office, dismissal or any other unfavourable penal or personal action equivalent to the loss of status at work;

(ii) disciplinary action, suspension from office, reduction in pay, demotion, restriction on promotion and any other unfair personal action;

(iii) work reassignment, transfer, denial of duties, rearrangement of duties or any other personal actions that are against the Whistleblower’s will;

- (iv) discrimination in the performance evaluation, etc. and subsequent discrimination in the payment of wages, bonuses, etc;
 - (v) cancellation of education, training or other self-development opportunities;
 - (vi) the restriction or removal of budget, work force or other available resources;
 - (vii) the suspension, of access to security information or classified information; or the cancelation of authorization to handle security information or classified information; or any other discrimination or measure detrimental to the working conditions of the Whistleblower;
 - (viii) putting the Whistleblower's name on a black or grey lists as well as the release of such a black or grey lists, bullying, the use of violence and abusive language, or any other action that causes physical harm;
 - (ix) unfair audit or inspection of the Whistleblower's work;
 - (x) cancellation of a license or permit, or any other action that causes disadvantage to the Whistleblower;
 - (xi) termination of contract for goods or services, or any other measure that causes financial loss to the Whistleblower;
 - (xii) intimidation;
 - (xiii) threat of any of the above; and
 - (xiv) any other unlawful adverse action;
- (e) "Government" means the Federal Government;
- (f) "prescribed" means prescribed by rules or regulations;
- (g) "Whistleblower Information" includes a complaint against a holder of public office to the Commission relating to the commission of offences:—
- (i) of corruption and corrupt practices under the National Accountability Bureau Ordinance, 1999 (No. XVIII of 1999);

- (ii) of a scheduled offence under Federal Investigation Agency Act, 1974 (Act No. VIII of 1975);
 - (iii) under the Anti-Money Laundering Act 2010 (Act No. VII of 2010);
 - (iv) under the Securities Act, 2015 (Act No. III of 2015) in relation to public listed companies;
 - (v) cognizable under the Federal and Provincial anti-Corruption laws;
- (h) "regulations" mean regulations made under this Ordinance;
 - (i) "rules" mean rules made under this Ordinance;
 - (j) "Whistleblower" means a person or entity or an agency, who files a Whistleblower Information under this Ordinance.

3. Establishment of Whistleblowers Protection and Vigilance Commission.—(1) As soon as may be after the commencement of this Ordinance,—

- (a) the Government shall establish a Commission, to be known as the Whistleblower Protection and Vigilance Commission; or
- (b) the Government may, by notification, appoint any body, corporate or office or any department of such body corporate or any Government department or functionary or any organization to act as the Commission, as may be specified in the notification.

(2) In the event of exercise of power under clause (b) of sub-section (1), the notified body corporate, office, department, functionary or organization shall be deemed to be the Commission Under this Ordinance.

(3) The Commission may establish offices at such other places in Pakistan as it considers necessary.

(4) The Commission shall be administratively and functionally independent, and the Federal Government shall use its best efforts to promote, enhance and maintain the independence of the Commission.

4. Composition of Commission.—(1) The Commission shall consist of at least three members including a Chairman:

Provided that the Government may increase the number of Members, from time to time, as it may consider appropriate.

(2) The Members shall be appointed by the Federal Government for a period of three years and from amongst the Members of the Commission, the Federal Government shall appoint the Chairman:

Provided that the Chairman and Members shall be eligible for re-appointment for such term or terms but shall cease to hold office on attaining the age of sixty-five years or on the expiry of the term, whichever is earlier.

(3) All the members of the Commission shall serve on a full-time basis.

(4) No person shall be recommended for appointment as a Member unless that person is known for his integrity, expertise, eminence and experience for not less than ten years in any relevant field including industry, commerce, economics, finance, law, accountancy, public administration, or service of Pakistan:

Provided that the Government may prescribe qualifications, experience and mode of appointment of such Members including the Chairman, in such manner as it may prescribe.

(5) No person shall be appointed or continue as a Member if he,—

- (a) has been convicted of an offence involving moral turpitude;
- (b) has been or is adjudged insolvent;
- (c) is incapable of discharging his duties by reason of physical, psychological or mental unfitness and has been so declared by a registered medical practitioner appointed by the Federal Government;
- (d) absents himself from three consecutive meetings of the Commission, without obtaining leave of the Commission;
- (e) fails to disclose any conflict of interest at or within the time provided for such disclosure under this Ordinance or contravenes any of the provisions of this Ordinance pertaining to unauthorized disclosure of information.

(6) No act or proceeding of the Commission shall be invalid by reason of absence of a Member or existence of vacancy among its Members or any defect in the constitution thereof.

(7) No Member or officer of the Commission shall assume his office until he has made a declaration affirming secrecy and fidelity.

(8) The remuneration payable to the Members, officers, employees, staff, officials, experts, advisers and consultants by whatever nomenclature and the administrative expenses of the Commission shall be expenditures charged upon the Federal Consolidated Fund.

(9) The accounts of the Commission shall be audited every year by the Auditor General of Pakistan.

5. **The Chairman.**—(1) The Chairman shall be the chief executive of the Commission and shall, together with the other Members, be responsible for the administration of the affairs of the Commission.

(2) The Chairman may, subject to such conditions as he may deem fit, from time to time, delegate all or any of his powers and functions to any of the Members.

6. **Meetings of Commission.**—(1) Subject to this section, the Chairman may convene such meetings of the Commission at such times and places as he considers necessary for the efficient performance of the functions of the Commission.

(2) The Chairman shall preside at every meeting of the Commission, and in the absence of the Chairman, the Members may elect a Member to preside at the meeting.

(3) All questions arising at any meeting of the Commission shall be determined by a majority of votes of the Members present and voting.

(4) In the event of an equality of votes, the Chairman shall have a casting vote.

(5) Subject to the provisions of this Ordinance, the Chairman may give directions regarding the procedure to be followed at or in connection with the working of the Commission.

7. **Appointments by Commission.**—(1) The Commission may appoint such officers, employees, officials, experts, advisers, and consultants by whatever nomenclature, as it considers necessary, to carry out such functions as may be prescribed by the Commission with such powers and on such terms and conditions as it may determine from time to time.

(2) The Commission may delegate any of its powers and functions to any officer of the Commission, as it may deem appropriate.

(3) The Commission may, by notification in the official Gazette, make regulations in respect of the terms and conditions of service of its employees.

8. Requirements of a Whistleblower Information.—(1) Any person or entity or an agency may make a Whistleblower Information before the Commission.

(2) Any person or agency making the Whistleblower Information shall make a personal declaration stating that he reasonably believes that the information disclosed by him and allegations contained therein are true to the best of his knowledge and belief.

(3) Every Whistleblower Information shall be made in writing or by electronic mail or electronic mail message in accordance with the rules as may be prescribed and be accompanied by supporting documents, or other material, if any.

(4) No action shall be taken on a Whistleblower information by the Commission if the disclosure does not indicate the identity of the Whistleblower or the identity of the Whistleblower is found to be incorrect or false.

9. Exemption from Disclosure.—Whistleblower Information shall not be made if the information,—

- (i) is likely to prejudicially affect,—
 - (a) the sovereignty and integrity of Pakistan;
 - (b) the security, strategic or economic interests of Pakistan;
 - (c) relations with foreign states;
 - (d) is prohibited under the Official Secrets Act, 1923;
- (ii) may lead to incitement of an offence;
- (iii) contains Cabinet or Cabinet Committees' papers, including records of deliberations of the Ministers, Secretaries and other offices in the Cabinet except as permitted by the Cabinet Secretary;
- (iv) has been expressly forbidden to be disclosed or published under any law or by a court or tribunal, or if the disclosure of information may result in contempt of court, cause a breach of privilege of Parliament or Provincial Assembly;

- (v) relates to trade secrets or intellectual property, except if such information is permitted to be disclosed under the law;
- (vi) is available to the person making the disclosure in his fiduciary capacity, except if such information is permitted to be disclosed under the law;
- (vii) is received in confidence from a foreign government;
- (viii) impedes the process of inquiry, investigation or apprehension or prosecution of offenders;
- (ix) endangers the life or physical safety of a person, or identifies information given in confidence for law enforcement;
- (x) contains disclosure of personal information or if the information has no relationship with public interest or if the information causes unwarranted invasion of privacy, except if it is permitted to be disclosed under the law.

10. **Powers and functions of the Commission.**— (1) The Commission shall have the powers to receive and assess Whistleblower Information complaints.

(2) For the purpose of assessment, the Commission shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any authority, agency, court or office;
- (e) issuing commissions for the examination of witnesses or documents; and
- (f) such other matters as may be prescribed.

(3) The Commission shall be deemed to be a court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1898 (Act V of 1898), and every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and section 196 of the Pakistan Penal code, 1860 (Act XLV of 1860).

(4) The Commission or an officer of the Commission duly authorized shall have the power to seek full and complete assistance and call for all or any documents and information relevant to or in connection with any matter or assessment pending before the Commission from any department of the Federal Government, Provincial Government, local authority, bank, financial institution, person or any authority and institution or department in the public sector or the private sector, as the Commission may deem fit and proper to demand or require, provided that in any case in which a question of secrecy is involved or is raised by such department of the Federal Government, Provincial Government, Local Authority, bank, financial institution, person, or any authority and institution or department in the public sector or the private sector, at any time, the decision of the Commission shall be final.

(5) Where any record has been provided to the Commission for the purpose of assessment, the same shall be returned in original to the concerned institution, as soon as possible, but not later than thirty days and attested copies thereof may be retained by the Commission.

(6) No claim for any privilege and confidentiality shall be accepted in a proceeding under this Ordinance unless otherwise decided by the Commission.

11. Assessment and complaint in relation to Whistleblower Information.—(1) The officer duly authorized by the Commission may make an assessment of the Whistleblower Information within a period of sixty days from receipt thereof.

(2) Upon assessment, if the Commission is of the view that the Whistleblower Information warrants further probe, inquiry or investigation by an Authority which could result in criminal prosecution in respect of any offence under the National Accountability Bureau Ordinance, 1999, the Federal investigation agency Act, 1974, the Anti-Money Laundering Act 2010, the Securities Act, 2015 in relation to listed companies, it shall refer the Whistleblower Information or any other relevant material including any finding or analysis by the Commission or otherwise, to the Authority.

(3) The reference by the Commission under sub-section (2) shall constitute a complaint to the Authority, which shall be the complainant before the Authority.

12. Protection to the Whistleblower.—(1) The Commission shall ensure that no Whistleblower is victimized by Disadvantageous Measures or otherwise merely on the ground that such Whistleblower had made a Whistleblower Information or rendered assistance in assessment under this Ordinance.

(2) If a Whistleblower is being subjected to Disadvantageous Measures or likely to be subjected to Disadvantageous Measures on the ground that he has made Whistleblower Information, he may file an application before the Commission seeking redressal in the matter. The Commission may pass such orders to the concerned authority as deemed appropriate.

(3) Every order given under sub-section (2) by the commission shall be binding upon the concerned authority against whom the allegation of victimization has been proved.

13. Rewards and punishments.—(1) In the event of recovery, as result of Whistleblower Information, made by the Whistleblower under this Ordinance, he shall be rewarded twenty percent of the recovered amount and a certificate of appreciation.

(2) In case any recovery is made in view of Whistleblower Information made by more than one Whistleblower, the twentypercent reward mentioned in sub-section (1) shall be equitably apportioned between the Whistleblowers, as deemed fit, by the Commission, keeping in view the contribution of each Whistleblower:

Explanation: For the purpose of this section, "Whistleblower" means a natural person and not an entity or agency.

(3) Any person who lodges a frivolous or false Whistleblower Information shall be punished with imprisonment for a term which shall not extend to more than two years or with fine which may extend upto two hundred thousand rupees or with both:

Provided that the amount of the fine shall be paid to the person against whom the false Whistleblower Information has been made.

14. Identity of Whistleblower.—The identity of the Whistleblower shall not be disclosed before the Authority or any agency or forum or to anyone even after the finalization of the matter, except upon written consent by the Whistleblower, and if the Commission after inquiry is of the view that any person has revealed the identity of the Whistleblower, it may impose a fine which may extend to rupees five hundred thousand, which shall be paid to the Whistleblower.

15. Annual report.—(1) The Commission shall prepare a Consolidated Annual Report of the performance of its activities in such a form as may be prescribed and submit it to the Government preferably in the last month of the year, without disclosing the identity of the Whistleblower,

(2) The Annual Report shall be laid before the Parliament for consideration.