



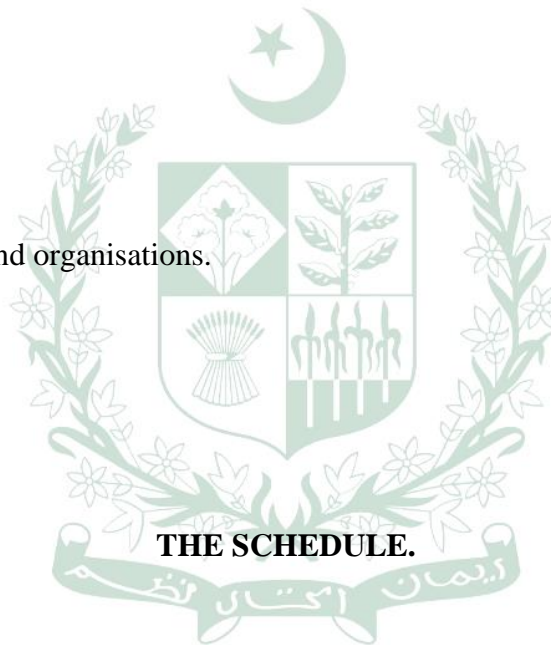
THE HYDROGENATED VEGETABLE OIL INDUSTRY (CONTROL AND DEVELOPMENT) ACT, 1973



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THE PAKISTAN CODE

THE HYDROGENATED VEGETABLE OIL INDUSTRY (CONTROL AND DEVELOPMENT) ACT, 1973.

¹ACT NO. LXV OF 1973

[15th September 1973]

An Act to regulate the operation and future development of the hydrogenated vegetable oil industry.

WHEREAS it is expedient to make provision to regulate the operation and future development of the hydrogenated vegetable oil industry, so as to maintain at reasonable prices, supplies essential to the life of the community while safeguarding the interests of the small investors in the industry and to provide for matters connected therewith or incidental thereto;

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

It is hereby enacted as follows :—

1. Short title, extent and commencement.—(1) This Act may be called the Hydrogenated Vegetable Oil Industry (Control and Development) Act, 1973.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once and shall be deemed to have taken effect on the second day of September, 1973.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

- (a) “bank rate” means the bank rate determined and made public under the provisions of the State Bank of Pakistan Act, 1956 (XXXIII of 1956);
- (c) “Board” means a Board of Management set up under section 7;
- (d) “corporation” means a corporation wholly owned by Government to which an establishment is transferred under section 13;
- (d) “creditor” means any person to whom a managed establishment owes any amount of money;
- (e) “debtor” means a person who owes any amount of money to a managed establishment;

¹For Statement of Objects and Reasons, see Gaz. of P., 1973., Ext., Pt. III, p. 1514.

- (f) “establishment” means any company, firm, concern, institution or enterprise the whole or any Part of the undertaking of which pertains to the industry and includes any related office shop, factory, godown, yard, stocks and stores wherever that may be;
- (g) “industry” means the hydrogenated vegetable oil industry;
- (h) “Managing Director” in relation to an establishment means the Managing Director appointed under section 6 in respect of such establishment;
- (i) “managed establishment” means an establishment in respect of which a Managing Director has been appointed;
- (j) “previous management” in relation to an establishment means the person, board of directors or other body or authority in whom or in which the management of the establishment vested immediately before the appointment of a Managing Director in respect thereof;
- (k) “shareholder” means a shareholder in the share capital of an establishment, and includes a stockholder;
- (l) “person” includes an individual, a Hindu undivided family, a partnership firm and an association of person or a body of individuals, Government of a Province and a local authority;
- (m) words and expressions used but not defined in this Act shall have the same meaning as in the Companies Act, 1913 (VII of 1913).

3. [Declaration.]—Omitted by the Hydrogenated Vegetable Oil Industry (Control and Development) (Amdt.) Ordinance, 1979 (IV of 1979), s. 2.

4. Act to override other laws.—The provisions of this Act shall have effect notwithstanding anything contained in the Companies Act, 1913, or the Companies (Managing Agency and Election of Directors) Order, 1972 (P.O. No. 2 of 1972), or any other law for the time being in force or in any agreement, contract, memorandum or articles of association of a company.

5. Power to take over management or acquire shares of business of an establishment.—(1) The Federal Government may, by an order,—

- (a) take over the management of any establishment and, as from the date of such order, the previous management shall stand divested of such management;
- (b) in the case of an establishment which is a company or an establishment owned by a company—
 - (i) acquire the whole or a portion of the shares from all or any of the shareholders of such company and, as from the date of such order, the shares so acquired shall vest in the Federal Government, or

- (ii) acquire the whole or a portion of the proprietary interests of such company in such establishment and, as from the date of such order, the interests so acquired shall vest in the Federal Government; and
- (c) in the case of an establishment owned by a person acquire the whole or a portion of the proprietary interests of such person, and as from the date of the order the interests so acquired shall vest in the Federal Government:

Provided that no order shall be made under this section for the acquisition of the shares held in an establishment by an institution owned or controlled by Federal Government including the National Investment Trust and the Investment Corporation of Pakistan or the shares held by a foreign investor:

Provided further in the case of an establishment which is a company or an establishment owned by a company, the Federal Government may, by notification in the official Gazette, exempt from acquisition shareholdings of shareholders up to such maximum amount, not exceeding in the aggregate forty-nine per cent of the paid-up share capital of the company, as may be specified in the notification.

¹[**Explanation.**—In this sub-section and section 31 “foreign investor means a person, other than a citizen of Pakistan, who has made investment in Pakistan and to whom—

- (a) the Federal Government has given an assurance that he will have the right to repatriate from Pakistan the amount of his investment or the income arising therefrom or both such amount and such income; or
- (b) the Federal Government has not given such assurance, but whom it has assured that, in the event of compulsory acquisition of the shares held in an establishment by the shareholders, he will not be treated less favourably than an investor to whom such assurance had been given.].

(2) Where the Federal Government makes an order under sub-section (1) in respect of the shares of any company, no dealings or business relating to such shares shall be transacted on any stock exchange and no transfer of such shares shall be registered in the share register of the company for a period of ninety days from the date of such order or such shorter period as may be notified by Government.

²[**5A. Transfer of shares and proprietary interests, etc.**—(1) If the Federal Government considers it necessary in the public interest to transfer the shares or proprietary interests in respect of a managed establishment acquired by it under section 5, the Federal Government may, through a public advertisement, invite bids for the transfer of the shares or proprietary interests.

(2) On receipt of bids in pursuance of an invitation under sub-section (1), the Federal Government shall offer the transfer of the shares or proprietary interests to the previous management of such establishment, on the highest bid so received and on such terms and conditions as it may deem fit:

¹Added by the Hydrogenated Vegetable Oil Industry, (Control and Development) (Amdt.) Ordinance, 1979 (4 of 1979), s. 3.

²Ins. by the Hydrogenated Vegetable Oil Industry (Control and Development) (Second Amdt) Act, 1992 (11 of 1992), s. 2, which was previously ins. by Act 20 of 1991, s. 3.

Provided that it shall not be necessary to make such an offer to the previous management in case the highest bid has been made by the management group of the employees of such establishment.

Explanation.—In this sub-section and in sub-section (4), “management group of the employees” means such management group of the employees as has, in the opinion of the Federal Government, been formally constituted as such.

(3) If the said previous, management does not accept the offer made under sub-section (2) within a specified time, the Federal Government may transfer the shares or proprietary interests to such persons, and on such terms and conditions, as it may deem fit.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), the Federal Government may, in its discretion, if it considers it necessary in the public interest so to do, transfer the shares or proprietary interests in respect of any such establishment to the management group of the employees of such establishment at a price, and on terms and conditions, settled between the Federal Government and such management group.

(5) In case of transfer of shares or proprietary interests in respect of a managed establishment under sub-section (2), (3) or (4), the provisions of this Act shall cease to apply to such establishment.]

6. Appointment of Managing Directors.—(1) Where the Federal Government has made an order under section 5 in respect of an establishment, it may appoint a Managing Director in respect of such establishment.

(2) Upon the appointment of Managing Director in respect of an establishment, the administration and management of the affairs of the establishment shall vest in the Managing Director and any company or person or authority exercising or having the right to exercise, immediately before such appointment, any power or functions in relation to the establishment shall cease to exercise or to have the right to exercise such power or function.

(3) The Managing Director shall—

- (a) hold office during the pleasure of the Federal Government ;
- (b) in the discharge of his functions, be subject to such orders and directions as the Federal Government or the Board may from time to time give in writing; and
- (c) receive such remuneration and be subject to such other terms and conditions of appointment and service as the Federal Government may determine.

(4) The Managing Director appointed in respect of an establishment shall exercise and perform

- (a) if such establishment is owned or controlled by a company, all the powers and functions of the Board of Directors; and
- (b) if such establishment is owned or controlled by a person, all the powers and functions of that person.

¹[6A. Constitution of Board of Directors, etc. —(1) Where the Federal Government has acquired under section 5 the whole or a majority portion of the shares of a managed establishment which is a company and is of the opinion that, in the interest of the shareholders of the managed establishment, it is necessary to do so, the Federal Government may, by order in writing, direct that a board of directors consisting of a Managing Director and such number of other directors as may be specified in the order be constituted in such managed establishment.

(2) Where the Federal Government has made an order under sub-section (1) in respect of a managed establishment, the board of directors of such establishment shall be constituted within a period of sixty days from the date of the order.

(3) Where the Federal Government has made an order under sub-section (1) in respect of a managed establishment,—

- (a) the Federal Government may nominate such number of directors, including the Managing Director, on the board of directors of the managed establishment as bears to the total number of directors, as nearly as may be, the same proportion as the aggregate face value of the shares owned by the Federal Government and by an institution owned or controlled by the Federal Government, including the Corporation referred to in sub-section (3) of section 13, hereafter in this section referred to as the Corporation, bears to the total issued share capital of the managed, establishment ; and
- (b) the other directors shall from time to time be elected by the members of the managed establishment, other than the Federal Government an institution referred to in paragraph and the Corporation, in general meeting in accordance with the Companies (Managing Agency and Election of Directors) Order, 1972 (P.O. No. 2 of 1972).

(4) The Managing Director nominated under sub-section (3) shall be the chief executive of the managed establishment.

(5) The board of directors of a managed establishment constituted under this section shall enter upon office on such date as the Federal Government may, by order in writing, appoint in this behalf and, upon their entering upon office as aforesaid,—

- (a) the Managing Director appointed under sub-section (1) of section 6 in respect of the establishment shall cease to hold office;
- (b) the management of the establishment shall cease to vest in the Corporation, and the management and administration of affairs of the establishment shall, subject to this section, stand transferred to the board of directors; and
- (c) the Managing Director nominated under sub-section (3) shall have such powers and functions as the board of directors may, from time to time, confer upon or entrust to him.]

¹Ins. by the Hydrogenated Vegetable Oil Industry (Control and Development) (Amdt.) Ordinance, 1979 (17 of 1979), s. 2.

7. Board of Management.—(1) The Federal Government may, by notification in the official Gazette, set up a Board of Management to control, manage and direct the affairs of establishments in respect of which Managing Directors have been appointed and where it sets up more than one Board, shall specify in the notification the establishment or class of establishments in respect of which each Board shall, exercise its powers and perform its functions under this Act.

(2) A Board shall consist of a Chairman and such number of members, not exceeding nine, as the Federal Government may appoint.

(3) A Board shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, and shall by the name assigned to it by the notification issued under sub-section (1) sue and be sued.

(4) The Chairman and members of a Board shall hold office during the pleasure of the Federal Government on such terms and conditions as it may determine.

8. Functions of Boards. —(1) The function of the Board shall be to ensure that the establishments in respect of which it is to exercise and perform its powers and functions under this Act are managed efficiently and in accordance with sound business principles and, in respect of any such establishment, the Board may, from time to time.—

- (a) exercise such of the powers of the Managing Director and issue such directions to him as it may consider necessary;
- (b) require the Managing Director to furnish it with such information relating to the affairs of the establishment in respect of which he is the Managing Director as the Board may require in connection with the performance of its functions; and
- (c) remove from office its auditor and appoint another person to hold that office for such period and on such remuneration payable by the establishment as the Board may determine.

(2) The exercise by the Board under sub-section (1) of the powers of a Managing Director shall have effect as if it were the exercise of those powers by the Managing Director himself.

(3) It shall be the duty of a Managing Director to comply with all directions issued to him by the Board under sub-section (1) and to furnish the Board with the information required by it.

9. Funds of the Board.—(1) There shall be constituted for each Board a fund to which shall be credited all sums received by the Board under sub- section (2) and out of which shall be defrayed all expenditure incurred by the Board, including expenditure on the emoluments of the Chairman, members and officers, servants, experts and consultants of the Board.

(2) The Managing Director in respect of every managed establishment shall make to the Board concerned each year such payment to enable it to defray its expenses as the Board may, with the prior approval of the Federal Government in writing, demand of him:

Provided that the aggregate amount of payment so demanded of the Managing Directors in any year shall not exceed by more than ten per cent the amount of the estimated expenditure of the Board in that year.

10. Officers, etc., of the Board.—(1) A Board may from time to time appoint such officers, servants, experts and consultants as it may deem fit.

(2) A Board may appoint one or more committees of the Board with such composition and functions as it may determine.

11. Adoption of balance sheet.—In case of a managed establishment owned or controlled by a company, the general meeting of the company before which a balance sheet is laid shall not, if the Federal Government by order in writing so directs, have the authority to refuse to adopt the balance sheet, but nothing in this section shall be construed to prevent any shareholder from expressing his views on the financial affairs of the establishment and a record of the proceedings of such meetings shall be forwarded to the Federal Government not later than fifteen days of the meeting.

12. Regulations.—(1) A Board may, with the prior approval in writing of the Federal Government, make such regulations as appear to it to be necessary for carrying out the purpose of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for the manner of payment and collection of the payments required to be made by the Managing Director under sub-section (2) of section 9.

13. Delegation of powers etc. —(1) The Federal Government may, by notification in the official Gazette, direct that all or any of its powers under this Act shall, in such circumstances and subject to such conditions, if any, as may be specified in the notification, be exercisable also by a Board.

(2) A Board may, with the previous, approval in writing of the Federal Government, direct that all or any of its powers under this Act shall, in such circumstances and subject to such conditions, if any, as may be specified by the Board, be exercisable also by a member of the Board or a committee of the Board.

(3) Where the Federal Government has taken over the management of an establishment under section 5, it may transfer the management of the establishment to a corporation wholly owned or controlled by Government or a corporation set up for the purpose, on such terms and conditions as the Federal Government may specify.

(4) Where the Federal Government has acquired the shares or proprietary interests of an establishment under section 5, it may transfer the shares or proprietary interests to a corporation wholly owned or controlled by Government or a corporation set up for the purpose, on such terms and, conditions as the Federal Government may specify.

(5) The Federal Government may, from time to time, issue such directions to, and call for such information or report from, a Board as it may deem necessary.

14. Acquisition of shares.—Where, under section 5, the Federal Government orders acquisition of a portion, of the shares of the shareholders of any company or of the proprietary interests of a company or other person in an establishment, it shall acquire the shares or interest ¹* * * on payment of such compensation as may be determined by the Federal Government on the basis of the principles set out in the Schedule.

15. Reorganisation of establishment. —(1) Where, in respect of any managed establishment owned by a company, the Federal Government holds or has acquired the whole or a majority portion of the shares in the company carrying the controlling voting rights, or where the Federal Government has acquired the whole or a controlling portion of the proprietary interests in an establishment, the Board may draw up a plan for the reorganisation of such an establishment with a view to increasing its efficiency and rationalising its operation, hereafter in this section referred to as the reorganisation plan.

(2) The reorganisation plan may include provision for amalgamation of managed establishments and, in the case of establishment owned by companies, may provide for a scheme for the reconstruction of any such company or companies, or amalgamation of any such two or more companies and such a scheme may provide for all or any of the matters contained in section 153 or section 153B of the Companies Act 1913 (VII of 1913), or for alteration of share capital or loan structure and alteration of existing, or adoption of fresh, articles of association of such companies.

(3) The reorganisation plan shall be submitted to the Federal Government for approval and shall be simultaneously published in the official Gazette accompanied by a certified statement showing the value of the holdings of the shares or proprietary interests of the Federal Government in the establishment covered by the plan, on the date of the submission of the plan, and, from the date of such submission, dealings in shares of companies covered by the plan in any of the stock exchanges shall remain suspended until the Federal Government has approved the reorganisation plan.

(4) The reorganisation plan shall be implemented and take effect in such manner and at such time and with such modification as may be approved by the Federal Government.

Explanation.—For the purposes of this section and section 26 the Federal Government shall be deemed to have a majority portion of the shares in a company carrying controlling voting rights or the controlling proprietary interest in an establishment if the aggregate face value of the shares or proprietary interests in such establishment owned by the Federal Government and by an institution owned or controlled by the Federal Government exceeds fifty per cent of the total voting rights in the issued and paid up share capital of the company or fifty per cent of the proprietary interests of that establishment.

16. Continuation in service. In the case of a managed establishment, all persons employed in, by or for the purposes of the business of the establishment, by whomsoever appointed or engaged, shall continue in their respective employments on the same remuneration and other conditions of service as were applicable to them immediately before the appointment of the Managing Director in respect of that establishment, unless the Managing Director directs otherwise in a particular case or their terms and conditions of service are altered in accordance with the law or any rules applicable to such establishment.

¹The words “within a period of ninety days” omitted by the Hydrogenated Vegetable Oil Industry (Control and Development) (Amdt.) Act, 1975 (10 of 1975), s. 3.

17. Prohibition to obstruct. No person shall, except under the authority of the Federal Government give any instruction to a Managing Director, nor shall any person in any manner obstruct him in the discharge of his functions.

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

(2) Where a debtor fails to pay the amount due within the time specified in the notice, the Managing Director of the managed establishment to which such amount is due shall have the same powers of effecting recovery of such amount as the Industrial Development Bank of Pakistan has under sections 39, 40 and 41 of the Industrial Development Bank of Pakistan Ordinance, 1961 (XXXI of 1961), in respect of sums due to the said Bank.

19. Creditor.—(1) A creditor of a managed establishment may apply to the Federal Government for payment to him of the amount due to him from the establishment.

(2) The Federal Government may, on receipt of an application under sub-section (1) and after such enquiry as it may deem fit, direct the managed establishment—

- (a) to repay the amount due to the creditor in such instalments and within such period as may be specified in the direction; or
- (b) if such managed establishment be a company, to convert the amount due to the creditor into share capital of the establishment.

(3) If a managed establishment fails to comply with a direction issued to it under sub-section (2) the Federal Government may order that the amount specified in the direction be recovered from it as an arrear of land revenue and paid to the creditor.

20. Power to revoke contract, etc.—If any contract or agreement entered into, or any obligation undertaken by any previous management of a managed establishment is declared by the Federal Government, after such inquiry as it may deem fit and giving an opportunity to the person or persons with whom such contract or agreement was entered into or to whom such obligation was undertaken to show cause why such declaration shall not be made, to be against the interests of the establishment, such contract, agreement or obligation shall stand revoked and the establishment shall not be liable for any loss or damage suffered by the previous management by reason of such revocation:

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

21. Right of shareholders.—Any person having a share or a proprietary interest in a managed establishment shall be entitled to complain to the Board or the Federal Government in respect of any action taken by the Managing Director in relation to the affairs of the establishment.

22. Continuance in service of employees on transfer to a corporation.—(1) Where the management of a managed establishment is transferred to a corporation under section 13, every whole

time employee of the establishment who was employed by the establishment immediately before the date of such transfer shall, on and from the date of such transfer, become an employee of the corporation and shall hold his office therein on the same terms and conditions, including remuneration, tenure of office, rights and privileges as to pension and gratuity and other matters, as were applicable to him immediately before the date of transfer, until his employment in the corporation is terminated or his terms and conditions of service are altered by the corporation.

(2) Where any employees of a managed establishment have, under the provisions of sub-section (1), become the employees of a corporation, the corporation may, for the purpose of rationalising the pay scales of such employees or for any other good and adequate reason, alter the terms and conditions of service of the employees as to their remuneration, in such manner as it thinks fit and, if the alteration is not acceptable to any employee, the corporation may terminate his employment by giving him compensation equivalent to his remuneration for three months or, if his contract of service provides for a shorter notice for termination of employment, for the period so provided. .

Explanation.—The compensation payable to an employee under this sub-section shall be in addition to, and not in derogation of, any of his rights as to pension, gratuity, provident fund money or other benefit to which he may be entitled under his contract of service.

(3) If any question arises as to whether any person was a whole time employee of an establishment immediately before its management was transferred to a corporation under section 13, the question shall be referred to the Federal Government whose decision shall be final.

(4) The transfer of the services of any employee of an establishment to a corporation shall not, except as provided in this section, entitle any such employee to any compensation and no such claim shall be entertained by any court, tribunal or other authority.

23. General effect of vesting of establishment.—(1) Where the management of a managed establishment has been transferred to a corporation under section 13, all contracts, agreements and other instruments of whatever nature subsisting or having effect immediately before the date of transfer, to which such establishment was a party or which were in favour of such establishment shall, subject to the provisions of section 20, be of as full force and effect against or in favour of the corporation, and may be enforced or acted upon as fully and effectively, as if, instead of the establishment, the corporation had been a party thereto or as if they had been entered into or issued in favour of the corporation.

(2) If, on the date of transfer of the management of a managed establishment to a corporation, any suit, appeal or other legal proceeding of whatever nature is pending by or against such establishment, it shall not abate, be discontinued or be in any way prejudicially affected by reason of such transfer or anything done under this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the corporation.

24. Duty to deliver possession of property and documents relating thereto.—(1) Where the management of a managed establishment has been transferred to a corporation under section 13 then

- (a) every person in whose possession, custody or control there is any property of such establishment shall forthwith deliver the property to the corporation; and

- (b) any person who, on the date of transfer of the establishment to the corporation, has in his possession, custody or control any books, documents or other papers relating to such establishment shall be liable to account for the said books, documents and papers to the corporation, and shall deliver them to such person as the corporation may direct.

(2) Without prejudice to the provisions of sub-section (1), it shall be lawful for the corporation to take all necessary steps for acquiring possession of all properties which have been transferred to and vested in it under this Ordinance.

25. Provident, superannuation and other like funds.—(1) Where an establishment the management of which has been transferred to a corporation under section 13 has established a provident or superannuation fund or any other like fund for the benefit of its employees and has constituted a trust in respect thereof, hereafter in this section referred to as an existing trust the money's standing to the credit of any such fund on the appointed date, together with any other assets belonging to such fund, shall, subject to the provisions of sub-section (2), stand transferred to and vests in the corporation on the date the management of the establishment is transferred to it, free from any such trust.

(2) Where all the employees of any such establishment do not become employees of a corporation under section 22, the moneys and other assets belonging to any such fund as is referred to in sub-section (1) shall be apportioned between the persons responsible for the fund and the corporation in such manner as may be prescribed by rules and, in the case of any dispute regarding such apportionment, the decision of the Federal Government shall be final.

(3) A corporation shall, as soon as may be after the management of an establishment is transferred to it under section 13, constitute in respect of the moneys and other assets which are transferred to and vested in it under this section, one or more trusts having objects as similar to the objects of the existing trust as in the circumstances may be practicable.

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

26. Minimum return.—(1) Where the Federal Government takes over the management of an establishment but does not hold majority portion of shares in a company carrying voting rights, or controlling proprietary interests therein, it shall, on behalf of such establishment, guarantee to the shareholders or proprietors of such establishment a minimum annual rate of return equivalent to two per. cent, above the bank rate.

(2) The minimum rate of return referred to in sub-section (1) shall be worked out, in the case of an establishment owned by a company, on the paid up capital of such company, and, in the case of an establishment owned by a person other than a company, on the Net Worth Value of investment as defined in the Schedule on the basis of the figure appearing in the latest annual balance sheet of such establishment.

27. Bar of Jurisdiction.—(1) No court shall call in question or permit to be called in question any provision of this Act or of any rule or order made or anything done or any action taken there under.

(2) No court shall grant any injunction or make any order, nor shall any court entertain any proceedings, in relation to anything done or intended to be done under this Act.

28. Indemnity.—No suit, prosecution or other legal proceeding shall lie against the Government, a Board, a Managing Director or any other person for anything in good faith done under this Act or any rule or order made there under.

29. Penalties.—Whoever contravenes any of the provisions of section 17 or section 24 shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

30. Composite enterprises and organisations.—(1) Where a managed establishment owned by a company is engaged in a business not directly related to the manufacture of hydrogenated vegetable oil, the Managing Director shall prepare, as soon as possible, a plan for separation of the business relating to manufacture of hydrogenated oil from other business. The plan shall include provision for separation of physical assets, and apportionment of assets and liabilities, including the apportionment of paid up capital on a pro rata basis between the respective business. The Managing Director in preparing the plan shall follow the provisions of the Companies Act, 1913 (VII of 1913), to the extent it is not inconsistent with provision of this Act.

(2) The Managing Director shall submit the plan for approval to the Federal Government which shall publish the plan in the official Gazette to ascertain the views of the shareholders of the company within a specified period.

(3) The Federal Government shall, after considering the views of the shareholders, decide whether the business not directly related to the manufacture of hydrogenated vegetable oil and the assets and liabilities of such business should be retained in the managed establishment or whether such business and assets and liabilities should be returned to the previous management; and the decision of the Federal Government shall be final.

(4) Where the Federal Government decides to return to the previous management the business not directly related to the manufacture of hydrogenated vegetable oil and the previous management fails, for any reason whatsoever, to accept the said business within a specified period of time, the Federal Government may, in its discretion, either retain the business within the managed establishment or dispose of the business, along with the assets and liabilities apportioned as relating thereto, in such manner as the Federal Government may deem fit.

31. Saving.—Nothing contained in this Act shall affect any agreement entered into between the Federal Government and a foreign investor or creditor or any agreement between a foreign investor or creditor and any citizen of Pakistan which has been expressly approved by the Federal Government.

32. Power to make rules.—(1) The Federal Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for, or may empower a Board to make orders providing for, all or any of the following matters, namely :—

- (i) the determination of the question whether any property pertains to the business of such establishment relating to the industry or whether any assets, rights, debts, liabilities or obligations, were acquired or incurred, or any contract, agreement or other instrument was made, in respect of or for the purposes of such business or whether any documents relate to those purposes;
- (ii) the allocation of the paid up capital, or assets representing paid up capital, as the case may be, between such business and any other business;
- (iii) the substitution of any agreement entered into partly for the purposes of such business and partly for other purposes by a separate agreement relating solely to such business and for any apportionment of rights, obligations and indemnities consequent thereon;
- (iv) the severance of a lease comprising property of which part only is used for purposes of such business and for apportionment of right and liabilities consequent on such severance;
- (v) the apportionment and the making of financial adjustments with respect to any debts, liabilities or obligations incurred by the establishment partly for the purposes of such business and partly for other purposes and for any necessary variation of mortgages and encumbrances relating to such debts, liabilities or obligations ; and
- (vi) for the apportionment of the moneys and other assets belonging to any .provident or superannuation funds, or any other like fund to which the provisions of section 25 do not apply, between persons employed in connection with such business and other persons.

33. Removal of difficulties.—If any difficulty arises in giving effect to any provision of this Act, the Federal Government may make such order, not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purposes of removing the difficulty:

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

34. [**Repeal**] Omitted by the Federal Laws (Revision and Declaration) Ordinance, .1981 (XXVII of 1981), s. 3 and Sch, II.

THE SCHEDULE

(See section 14)

Principles and the manner for payment of compensation in respect of the shares or proprietary interests of an establishment acquired by the Federal Government.

1. Where the whole or a portion of the shares of such an establishment is acquired by the Federal Government, the value of the compensation for the shares so acquired shall be assessed—

- (a) in the case of shares not quoted on any of the stock exchanges, at the Break Up Value; and
- (b) in the case of shares quoted on any of the stock exchanges, at the Break-up Value or the Market Value, whichever is less.

2. Where the whole or a portion of the proprietary interests in such an establishment is acquired by the Federal Government, the value of the compensation for the interests so acquired shall be assessed—

- (a) in the case of an establishment which has been in commercial production for less than 5 years, at the Net Worth Value of the proprietary interests of such establishment; and
- (b) in the case of an establishment which has been in commercial production for more than 5 years, at the Net Worth Value or the Times Value of the proprietary interests, whichever is less, of such establishment.

¹[3. The compensation payable in accordance with the principles indicated above shall be paid by the Federal Government in cash or in the form of Government Bonds redeemable at any time at the option of the Federal Government within a period of fifteen years and carrying, with effect from the date of acquisition, a rate of interest one per cent above the bank rate as notified by the State Bank of Pakistan from time to time. The Bonds shall be negotiable and shall also be eligible as security for advances.]

4. **Definitions.**—In this Schedule—

- (a) “Break-up Value” shall mean the value of the shares of a company as determined by the auditors of such-company on the basis of its latest audited annual Balance Sheet, in accordance with clause (c) of ²[sub-rule (2) of] rule 8 of the Wealth-Tax Rules;
- (b) “Market Value” shall mean the average value of the shares of a company as quoted on the stock exchange nearest to the Head Office of the company on closing on the six working days prior to the date of order of acquisition of such shares under the Act, or, if, on the date of such order, dealings or business relating to such shares is prohibited under the Act, the six days prior to the date on which the dealings or Business is so prohibited;

¹Subs. by the Hydrogenated Vegetable Oil Industry (Control and Development) (Amdt.) Act, 1975 (10 of 1975), s. 4, for the original paragraph 3.

²Ins. ibid.

- (c) “Net Worth Value” shall mean the value of the proprietary interests of a company or other person in an establishment, which are acquired under the Act, as determined by the auditors appointed by the Federal Government on the basis of the latest annual audited balance sheet or, where no audited Balance Sheet is available, on the basis of the latest annual Balance Sheet of such establishment to be verified by the auditors appointed by the Federal Government for the purpose. The Net Worth Value shall be determined by valuing the fixed Tangible Assets appearing in the Balance Sheet at their written down values, and valuing the Current Assets e.g., stocks, inventory work in progress advances and prepayments, cash and bank balances, at their cost or market value, whichever is lower. From the sum total of the fixed and the current assets so valued as aforesaid, all the outstanding liabilities appearing in the Balance Sheet shall be deducted, thereby arriving at the Net Worth Value of the proprietary interests in such establishment;
- (d) “Times Value” shall mean the value of the proprietary interest of a company or other person in an establishment, where such establishment has been in commercial production for a period of not less than 5 years and shall be determined by multiplying the average net profits of the last 3 completed years on account of such an establishment by the figure 7; and
- (e) “Net Profits” shall mean the net profits as defined in sub-section (3) of section 87C of the Companies Act, 1913 (VII of 1913).



THE PAKISTAN CODE