

[AS PASSED BY THE NATIONAL ASSEMBLY]

A

Bill

*to provide for governance and operation of the management and financial efficiency of state-owned enterprises owned and controlled by the Federal Government*

WHEREAS, the Federal Government owns and controls a number of state-owned enterprises established under the various laws of Pakistan;

AND WHEREAS, the governance and operation of these enterprises if not made effectively or appropriately affects the quality of service delivery by the State as well as the fiscal discipline of the State;

AND WHEREAS, it is expedient to specify principles governing the operation of state-owned enterprises to authorise the formation of state owned-enterprises for carrying on certain Federal Government activities and to control the ownership thereof and to establish requirements about the governance and accountability of state-owned enterprises and for matters connected therewith and ancillary thereto;

It is hereby enacted as follows:

CHAPTER 1

GENERAL

1. **Short title and commencement.**- (1) This Act shall be called the State-Owned Enterprises (Governance and Operations) Act, 2021.

(2) It shall come into force at once.

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

(a) "articles" means the articles of association of a company;

(b) "board" means-

(i) in the case of a company, the board of directors of the company; and

(ii) in the case of a statutory state-owned enterprise, the governing body empowered to oversee or manage the affairs of such statutory body or enterprise;

(c) "chief executive officer" means-

(i) in the case of a company, the chief executive officer of the company, by whatever name called; and

(ii) in the case of a statutory state-owned enterprise, the person empowered to undertake the functions of the chief executive officer, by whatever name called under the relevant law.

(d) "controlled by the Government" means-

(i) in the case of a company, if the Federal Government directly or indirectly has the right to appoint a majority of directors or control over management or policy decisions, exercisable by a person individually or through any person acting in concert, directly or indirectly, whether

by virtue of Federal Government shareholding, management right, shareholders agreement, voting agreement or otherwise;

- (ii) in the case of an entity created by an Act of the Majlis-e-Shoora, if the Federal Government has the power to appoint a majority of the persons who are directors of that entity or otherwise has the power to determine the outcome of decisions about the entity's management or financial and operating policies;
- (e) "commercial state-owned enterprise" means-
- (i) a state-owned enterprise established under the Companies Act, 2017 (XIX of 2017) other than companies licensed under section 42 thereof; or
  - (ii) a state-owned enterprise that generates the majority of its revenue from the sale of goods or services or a combination of goods and services on a commercial basis;
- (f) "company" means a company incorporated under the Companies Act, 2017 (XIX of 2017) which is a state-owned enterprise;
- (g) "director" means-
- (i) in the case of a company, a director appointed under the Companies Act, 2017 (XIX of 2017) and
  - (ii) in the case of a statutory state-owned enterprise, a member of the governing body designated under the applicable law;
- (h) "nominee director" means-
- (i) a director who represents the Federal or Provincial Government; and
  - (ii) a director who represents another state-owned enterprise;
- (i) "independent director" means a director who is not an ex-officio director and is not disqualified under section 11;
- (j) "owned by the Federal Government" means-
- (i) in the case of a company, an entity in which the Federal Government directly or indirectly holds fifty percent or more shareholding; and
  - (ii) in the case of a statutory state owned enterprise, an entity which has been established through an Act of the Majlis-e-Shoora;
- (k) "prescribed" means prescribed by rules made under this Act;
- (l) "public service obligation" means the specified service or activity referred to in a public service obligation agreement;
- (m) "public service obligation agreement" means an agreement referred to in Schedule-II between the Federal Government and a commercial state-owned enterprise for the undertaking of a public service obligation by the commercial state-owned enterprise;

- (n) "Schedule" means Schedule made under this Act;
- (o) "state-owned enterprise" means a corporate body falling within the scope of section 2; and
- (p) "statutory state-owned enterprise" means a state-owned enterprise established under an Act of Parliament.

**3. Scope and application.-** (1) Notwithstanding anything contained in any other law for the time being in force, this Act shall have application to all public sector companies as defined in sub-section (54) of section 2 of the Companies Act, 2017 (XIX of 2017) and other corporate bodies which are owned and controlled by the Federal Government including those established under special enactments but shall not apply to-

- (a) regulatory bodies which are empowered to issue licences, grant tariffs or undertake investigations and inquiries with regard to non-compliance of their statutory functions and powers;
- (b) subject to sub-section (2), enterprises providing health and educational services and facilities; and
- (c) subject to the criteria laid down in the state-owned enterprise ownership and management policy, any state-owned enterprise specifically excluded from the complete or partial application of this Act by the Federal Government for reasons to be recorded and by notification in the official Gazette, provided that such exclusion does not undermine the objectives and principles of this Act.

(2) The application of this Act may be extended by the Federal Government either completely or partly to any entity specified in Schedule-I, including without limitation to entities which the Federal Government does not have ownership in but exercises control thereon:

Provided that the Federal Government shall have the power to amend Schedule-I;

## CHAPTER 2

### STATE-OWNED ENTERPRISE MANAGEMENT POLICY AND PRINCIPLES

**4. State-owned enterprise ownership and management policy.-** (1) The Federal Government shall, at least once in every five years, prepare and prescribe a state-owned enterprise ownership and management policy for giving effect to the objectives of this Act, namely:-

- (a) that the shareholding responsibilities of the Federal Government with respect to its state owned enterprises are clarified;
- (b) that the Federal Government acts as an informed and active shareholder; and
- (c) that fiscal risks associated with state owned enterprises are effectively managed:

Provided that the first policy to be developed under this Act shall be notified no later than one year from the coming into effect of this Act:

Provided further that in the development of policies under this section, the Federal Government may seek input and assistance from the relevant stakeholders, including any regulatory body, as may be required.

(2) The policy referred to in sub-section (1), shall provide for, inter alia-

- (a) the criteria and rationale for ownership, retention and establishment of a state-owned enterprise by the Federal Government;
- (b) the role of the Federal Government in the governance of state-owned enterprises;
- (c) the manner and procedure for exercising the rights of the Federal Government as shareholder in state-owned enterprises, including, without limitation, matters enumerated in sub-section 2 of section 29, subject to the principles laid down in this Act;
- (d) clarification of the respective roles and responsibilities of any Division of the Federal Government, under the Rules of Business, 1973, Boards and other stakeholders involved in the implementation of the Ownership Policy;
- (e) the role of and manner of operation of the central monitoring unit;
- (f) the form and procedure for management and use of the electronic state-owned enterprise database, including right of access by the public;
- (g) a framework for ensuring competitive neutrality of the State with respect to state owned enterprises;
- (h) a public sector obligation management framework;
- (i) process of monitoring and managing contingent liabilities of state-owned enterprises;
- (j) guidelines for board nominations committee while exercising its functions under section 10, including with respect to diversity and adequacy of board composition;
- (k) the process for evaluating the performance of ex-officio and independent directors;
- (l) the cooling off period for the appointment of independent directors;
- (m) the manner of regulation of conflict of interest of directors, including procedures for identification and reporting of direct and indirect interests of directors and resolving any conflict of interest thereon;
- (n) the criteria for excluding a state owned enterprise from the ambit of clause (c) of sub-section (1) of section 3; and
- (o) any other matter required to give effect to the provisions and objectives of this Act.

(3) The policy prescribed under this section shall clarify the manner of giving effect to the institutional arrangements whereby roles and responsibilities have been assigned under this Act, in particular and without limitation-

- (a) the manner in which the Board shall undertake its responsibilities with regard to-