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SINDH ORDINANCE NO. III OF 2004
THE CONSUMER PROTECTION ORDINANCE, 2004.

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SINDH ORDINANCE NO. III OF 2004
THE CONSUMER PROTECTION ORDINANCE, 2004.

[12th August, 2004.]

An Ordinance to Provide for the promotion and protection of the interests of consumers and matters incidental thereto.

Preamble.

WHEREAS it is expedient to make provisions for the establishment of the Consumers Protection Council and Consumer Courts in Sindh;

AND WHEREAS the Provincial Assembly is not in session and the Governor of Sindh is satisfied that circumstances exist which render it necessary to take immediate actions;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 128 of the Constitution of the Islamic Republic of Pakistan, the Governor of Sindh is pleased to make and promulgate the following Ordinance:-

PRELIMINARY

Short title application and commencement.

1. 1) This Ordinance may be called the Consumer Protection Ordinance, 2004.

2) It shall extend to the whole Province of Sindh.

3) It shall come into force at once.

4) save as otherwise expressly notified by Government, this Ordinance shall not apply-

(a) to securities as defined in the Securities Exchange Ordinance, 1969;

(b) in relation to immovable property or interests in immovable property;

(c) to services provided by professionals who are regulated by any prevailing law;

(d) to healthcare services provided or to be provided by healthcare professionals or healthcare facilities; and

(e) to contracts of sale or supply of telecommunication services, electricity, or gas on a commercial basis.

Definition.

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

a) "advertisement" includes advertisement-
   (i) all commercial communications of any kind;
   (ii) by the display of notices;
   (iii) by means of banners, catalogues price lists, circulars, labels, cards or other documents or materials;
   (iv) by the exhibition of films or of pictures or photographs; or
   (v) by means of radio, television, telecommunication or by any

means including electronic or print media;

(b) "business" means any undertaking that is carried on whether for gain, reward or otherwise in the course of trade or commerce which goods or services are acquired or supplied at a price or otherwise;

(c) "complainant" means-

i) a consumer; or

ii) a voluntary consumer's association subject to such restrictions as may be prescribed;

d) "consumer" means a naturel person, other than a body corporate, who for personal, domestic, family, household, daily life purposes acquires, buys, uses or utilizes consumer goods or services, other than in the course of commerce, trade or business or occupation;

e) "consumer courts" means a court established under this Ordinance;

f) "council" means a Consumer Protection Council established under this Ordinance;

g) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which in relation to the goods is required to be maintained by or under any law for the time being in force;

h) "deficiency" means a deficiency or shortcoming in the standard of performance, quality and quantity and nature of a service which has been undertaken by a person providing the service to a consumer in pursuance of a contract or otherwise or is required to be maintained by or under any law for the time being in force;

i) "Government" means the Government of Sindh;

j) "goods" means goods as defined in the Sale of Goods Act, 1930 primarily acquired by a consumer, purchased, used, utilized or consumed for personal, domestic, family or household purposes and includes vehicles, animals, trees, crops, fruits and plants;

k) "member" means a member of the Council;

l) "Manufacturer" includes a person in the business of assembling, mixing, cutting, diluting, bottling, packaging, repackaging, preparing or processing goods or pats thereof, whether or not such person sells, distributes, consigns or otherwise disposes of goods and, in particular includes-

i) a person who represents himself to the public as the

manufacturer of goods;

ii) any person who affixes his brand or mark, or causes or permits his brand or mark to be affixed, to goods; and

iii) in the case of goods manufactured outside Pakistan, the person who imports or distributes the goods manufactured outside Pakistan or a person who allows his trademark to be used on such goods;

m) "prescribed" means prescribed by rules;

n) "price" includes consideration in any form whether direct or indirect relating to the acquisition or supply of goods or services;

o) "rules" means rules made under this Ordinance;

p) "services" include services of any description which are made available to consumers by way of trade or commerce and includes the provision of facilities in connection with consumer transport, manufacturing, processing, boarding or lodging entertainment, education, amusement, catering, security, or purveying news or other information, and similar other services but does not include the rendering of any service free or charge or under a contract of employment;

q) "supply", in relation to -

i. goods, means to supply or having goods in possession for the purpose of supply or resupply by way of sale, exchange, lease, hire or hire-purchase; and

ii. services, means to provide, grant or confer and, includes any offer to supply;

r) "trade" or commerce means the conduct of a business providing goods, movable property, or services primarily for personal, domestic family or household purposes;

s) "trade description" means any description, statement or indication which, directly or indirectly and by whatever means given, relates to any of the following matters:-

i. quantity, length, width, height, area, volume, capacity or weight of any goods;

ii. method of manufacture, production, processing or reconditioning of any goods;

iii. composition of any goods;

iv. fitness for purpose (including expiry date),

strength, performance, behaviour or accuracy of any goods;

v. degree of fineness of gold and silver goods;

vi. physical characteristics of any goods not included in clauses (i) to (v);

vii. testing of any goods by any person and the results thereof;

viii. approval of any goods by any person or their conformity with a type approved by any person;

ix. place or date of manufacture, production, processing or reconditioning of any goods;

x. person by whom any goods are manufactures, produced, processed or reconditioned; and

xi. other history, including pervious ownership or use, of any goods;

provided further that for the purposes of this Ordinance, a trade description published in any newspaper, book or periodical or in any film or sound or television broadcast shall not be deemed to be a trade description applied in the course of a trade or business unless it is or forms part of an advertisement;

t) "unfair trade practice" means only the following trade practices which a person or business adopts, in trade or commerce for the purpose of sale or supply or possible sale or supply of any goods or services or for their promotion-

i. advertise for supply at a specified price goods or services which that person-

(a) does not intend to offer for supply;

(b) Intends to supply being materially different from the goods or services advertised; or

(c) Does not have reasonable grounds for believing can be supplies by the person;

ii. inducing a consumer to enter into a transaction by representing that the consumer will receive a rebate, discount, or other benefit, if the benefit is contingent on an event to occur subsequent to the consumer entering into that transaction;

iii. using physical force or undue harassment or coercion in connection with the supply or possible supply of goods or services to a consumer or the payment for goods or services by a consumer;

iv. without the consent of the owner or proprietor of any trade mark apply to any goods or services a trade mark or sign so nearly similar or resembling a trade mark as to be likely to mislead or deceive or to falsify any genuine trade mark, whether by alteration, effacement or otherwise;

v. inducing a consumer to enter into a transaction in which the consumer limits disclaims, waives or purports to waive a right, benefit, or immunity, unless the waiver is clearly and prominently disclosed; and

vi. inducing or arranging for the consumer to sign an acknowledgment, certificate, or other writing affirming acceptance, delivery, compliance with a requirement of law. Or other performance, if the persons, business, manufacturer or supplier, knows or has reason to know it to be untrue;

u) " False or Misleading Representation"—-includes and statement made by a person or business, in trade or commerce in connection with the supply or possible supply of goods or services or with the promotion for the supply or use of goods or services, whether by omission or commission, orally or in writing or by chalking on walls or through sign-boards or neon signs or by distributing pamphlets or by publication in any manner, including electronic media whereby such person or business:

i. make, applies or implies a trade description that is false or misrepresentative;

ii. offers gifts, prizes or other free items with the intention of not providing them, or of not providing them as offered;

iii. demands or accepts payment or other consideration for goods or services from a consumer or prospective consumer where, if at the time of the acceptance, such person or business;

iv. does not intend to supply the goods or services;

v. intends to supply goods or services materially different from the goods or services in respect of which the payment or, other consideration is accepted;

vi. there exit reasonable grounds, of which the person or business is aware or ought reasonably to have be aware, for believing that the person or business will not be able to supply the goods or services within the period specified by the person or business or, if no period is specified, within a reasonable time;

vii. falsely represents or misrepresents that goods or services, as the case may be, are of a particular kind, standard, quality, grade quantity, composition, style, or model, or have had a particular history or particular previous use or that they are supplied by any particular person or by any person of a particular trade, qualification or skill;

viii. falsely represents or misrepresents that goods are new, or that they are reconditioned, or the they were manufactured, produced, processed, or reconditioned at a particular time;

ix. falsely represents or misrepresents that goods or services have any sponsorship approval, affiliation, endorsement, performance characteristics, accessories, uses or benefits;

x. falsely represents or misrepresents the price of any goods or services; or

xi. falsely represents or misrepresents the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy;

xii. falsely represents or misrepresents the place of origin of goods;

xiii. falsely represents or misrepresents that the goods or services are being supplied in response to a request made by on behalf of the party, when they are not;

xiv. falsely represents or misrepresents that because of some defect in a consumer's home the health, safety, or lives of the consumer or his or her family are in danger if the product or servicers are not purchased when in fact the defect does not exist or the product or services would not

remove the danger;

xv. falsely represents or misrepresents causing a probability of confusion or of misunderstanding with respect to the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction;

xvi. falsely represents or misrepresents causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction;

xvii. falsely represents or misrepresents that a consumer will receive goods or services "free" or "without charge" or similar words without clearly and conspicuously disclosing the conditions, terms, or prerequisites required to be fulfilled by the consumer in order to avail such goods or services;

xviii. falsely represents or misrepresents the availability or facilities for the repair of goods or of spare parts for goods;

xix. falsely represents or misrepresents that a product or package is degradable, biodegradable, or photo degradable; and

v) "voluntary consumer association" means an association notified by the Council.

3. The provisions of this Ordinance shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

4. If any company, firm, person, business, traders or manufacturer, suppliers or attempts to supply any defective goods or deficient services or practices or attempts to practice any unfair trade practice or makes or attempts to make any false or misleading representation or violates any provision of this Ordinance such company firm person business trade or manufacturer shall be liable to pay compensation to the complainant as the Consumer Court may direct.

5. Whenever any person or business, in trade or commerce enters into a transaction with any consumer the provisions of sections 11 to 17 of the Sale of Goods-Act, 1930 shall apply mutatis mutandis to every such transaction for the supply of consumer goods or services. **General implied terms and warranties.**

6. **Product Safety**

Every person, business, trade, manufacturer, supplier, as the case may be, in the course of trade or commerce shall.

a) Comply with the market standards in respect of any particular goods or service, if any;

b) Ensure that the composition, contents, methods of manufacture or processing, design construction, finishing, packaging, storage, handing of the goods are safe or are not likely to be a source or danger or injury to any person; and

c) Ensure that the instructions for such safe use, handing, packaging, storage and consumption are clearly displayed as to bring them clearly to the notice of any reasonable consumer or any reasonable prospective consumer.

7. **Implied guarantee as to repairs and spare parts.**

(1) Where goods are supplied to a consumer, there shall be implied a guarantee that the manufacturer and the supplier will take reasonable action to ensure that facilities for the repair of the goods and the supply of spare parts (of the same standard and quality as the original parts) for the goods are reasonably available for a reasonable period after the goods are so supplied.

(2) Subsection (1) shall not apply where reasonable action has been taken to notify the consumer, at or before the time the goods are supplied, that the manufacturer or the supplier or both does not undertake that repair facilities and spare parts (of the same or similar standard and quality as the original parts) will be available for those; goods.

(3) Where reasonable action has been taken to notify the consumer, at or before the time the goods are supplied, that the manufacturer or supplier or both does not undertake that repair facilities and spare parts will be available for those goods after the expiration of a specified period, subsection (1) shall not apply in relation to the goods after the expiration of that period.

8. **Information about goods.**

(1) Every manufacturer of consumer goods shall publish or mark on every packet or container the maximum retail price, the nature standard or type and the detail of ingredients used in the manufacture of goods, the weight, size or volume, date of manufacture and expiry where appropriate as the case may be having regard to the commercial practice in relation to those goods the name and address of the manufacturer or in the case of a packer or importer the trade thereof:

Provided that if any such goods are not sold in packaged form or in a container it shall be sufficient compliance for the purpose of this sub-section if the required information is exhibited conspicuously in the shop where the sale is being made:

Provided further that if price or other catalogue or vendor instructions for the consumer is issued in relation to any goods it shall be sufficient compliance for the purpose of this sub-section if the required information is published or marked on such catalogue or vendor instructions.

(2) Any person who, in trade or commerce, supplies any goods which have not been marked with information required to be published or marked under sub section (1) shall incure the liabilities of the violation of sub section (1) unless he proves that the manufacturer of the consumer goods or some other person identified by him is responsible for the offence and the onus of proof shall lie on such trader.

9. No person shall supply or offer to supply any consumer goods in the course of trade or commerce unless a price catalogue is available for consumer, every trader shall exhibit conspicuously in his shop or display center a notice specifying the retail or wholesale price, as the case may be, of every goods available for sale in such shop or display centre. **Prices to be exhibited.**

10. Every person who in the course of trade or commerce sells any consumer goods shall on demand by a purchaser issue to the purchaser thereof a receipt: **Receipt to the issued.**

PART II

11. (1) Within thirty days of the promulgation of this Ordinance, the Government shall, by notification in the Sindh Government Official Gazette, establish a Council which may be called the "Provincial Consumer Protection Council" which shall be based at Karachi. **The Council.**

(2) the Council shall consist of- **The composition of the Council.**

(a) Chairman to be appointed by the Government;

(b) Three Members of the Provincial Assembly nominated by the Assembly;

(c) a retired judge of the Sindh High Court based in Karachi;

(d) Secretary Agriculture, Livestock and Fisheries, who shall be the Secretary of the Council;

(e) Secretary Labour, Industries and Commerce;

(f) representative of the Sindh Police not below the rank of Deputy Inspector General;

(g) representative of the City District Government, Karachi;

(h) representative of the Karachi Chamber of Commerce;

(i) a reputable practicing Advocate enrolled to appear before the High Court of Sindh at Karachi;

(j) representative of the Small Retailers Association;

(k) representative of the Small traders Association;

(l) representative of the Overseas Chamber of Commerce and Industry;

(m) a prominent business personality;

(n) representative of a Women's Group; and

(o) three representative of a Consumer Association.

(3) A non-official member who does not wish to retain his membership may submit his resignation to the Chairman of the Council.

(4) If any non-official member fails to attend three consecutive meetings such member shall be deemed to have resigned from the Council.

(5) The non-official members shall be persons of impeccable integrity, ability and standing and have adequate knowledge or experience and shall be no conflict or interest in their being appointed as a member.

(6) A non-official members shall hold office for a period of three years at the pleasure of the Government.

(7) The Council may, if it deems appropriate, establish District Councils to work subordinate to and in coordination with the council in accordance with rules as may be proscribed.

12. (1) The object and functions of the Council shall be to- **Objects and functions of the Council.**

a. make recommendations to Government for furthering the objects and purposes of this Ordinance;

b. create awareness for the protection of consumers against the marketing of goods which are hazardous to life and property;

c. notify the Voluntary Consumer Associations in accordance with the rules;

d. notify Laboratories for providing data and test results to the Consumer Courts;

e. provide the Consumer and the public at large with information and access to information regarding goods and services available in the Province;

f. make recommendations for improvement and reforms in the working of the Consumer Courts;

g. publish annual reports regarding the status of Consumer Protection and recommendations for improvement of Consumer's rights to Government;

h. create awareness within the public regarding access to Consumer Goods and Services and protection from any unfair, illegal or dangerous practices prevalent in the market;

i. to assist in the exchange of information views and recommendations between Manufactures, Suppliers, Consumers and Government;

j. make recommendations to Government to take steps to implement policies, for reforms of legal framework for increased protection of and safeguarding the interests of Consumers; and

k. create the Consumer's Welfare Fund to be used to further the objectives of the Council in accordance with the rules.

(2) The Council shall be responsible to make recommendations to Government for formulation of policies, promotion and protection of the rights of consumers, fair and honest trade practices promotion by the manufacturers, producers and suppliers of goods and services in relation to interest of consumers and their effective implementation.

13. (1) The council shall meet as, and when necessary and at such time and place ads its Chairman may fix but at least once during three months. **Meeting of the Council.**

(2) In the absence of the Chairman, the members present in the meeting shall elect from amongst themselves one member to act as Chairman.

(3) The quorum of the meeting of the Council shall be nine members.

(4) The decision in a meeting shall be taken by majority of votes.

(5) In the event of equality of votes the Chairman or the members presiding over the meeting shall have a casting vote.

(6) The council shall submit to Government a quarterly report in relation to progress on the fulfilment of its objectives.

14. (1) Government may by notification in the official gazette, direct that all or any of the powers and functions conferred on the Council under this Ordinance shall subject to such nomination or conditions as it may from time to time impose be exercised and performed by such members or by such officer or officers of Government as may be specified in such notification.

(2) Government may appoint such officers and staff as it may thing necessary to assist the Council in the performance of its duties and functions and may regulate their duties.

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PART –III
CONSUMER COURT

15. **Establishment of consumer Courts.**

(1) Government shall by notification in the office gazette establish as may consumer Court as it considers necessary and where more than one such courts are established the notification shall specify the territorial limits within which each such court shall exercise jurisdiction.

(2) Government may, if it considers necessary in the interest of justice or for convenience of the parties or of the witnesses transfer any case from one consumer court to another.

(3) A consumer court shall consist of a Judge being a person who is or has been a District Judge or Additional District Judge who shall exclusively hear and decide matters arising out of this Ordinance and shall be appointed in consultation with the Chief justice of the Sindh High Court for a period of three years and may be reappointed for further terms unless removed earlier by Government in consultation with the Chief justice.

(4) The terms and conditions of services of the Judges except in cases where they are sitting District Judges or additional District judges shall be such as Government may determine.

16. **Powers of Consumer Courts.**

(1) If after hearing both parties the Consumer Court finds that there have been violations of the provisions of this Ordinance it shall give the judgement in respect of the following matters:-

a) in case of goods-

(i) the Court may order the replacement of the goods with the goods that would have been supplied to the Consumer if there had been no violation of the provisions of this Ordinance; or

(ii) the Court may award damages, up to the pecuniary limit as may be prescribed, in favourer of the Consumer for the losses suffered by the Consumer, including compensatory losses, as a result of the violation of the provisions of this Ordinance;

b) In case of services-

(i) the Court may order the supply of services that would have been supplied to the Consumer if there had been no violation of the provisions of this Ordinance; or

(ii) The court may award damages, up to the pecuniary limit as may be prescribe in favour of the Consumer for the losses suffered by the Consumer, including compensatory losses, as a result of the violation of the provisions of this Ordinance.

(2) subject to this Ordinance and rules, the consumer court shall for the purpose of any case under this ordinance, have powers under the Code of Civil Procedure

1908, in respect of the following matters only:-

(a) the summoning and enforcing the attendance of any defendant or witness and examining him on oath;

(b) compelling the discovery and production of any document or other material object produceable as evidence;

(c) the receipt of evidence on affidavits;

(d) requisitioning the report of the concerned analysis or test from the laboratory or form any other relevant sources;

(e) issuing of any commission for the examination of any witness;

(f) where it is unable to execute and recover the amounts decreed it may proceed to recover the amount of the decree as if it were an arrear of land revenue; and

(g) any other matter which may be prescribed.

(3) At any time, before final order is passed by the Court, the Complainant may withdraw the case with the permission of the Court.

17. Where a complaint instituted is found to be frivolous or vexatious, the Court may dismiss the complaint and after due notice impose a fine on the complainant not exceeding five thousand rupees for having wilfully instituted a false complaint Appropriate compensation may also be rewarded to the respondent from the amount of fine so realized. **Dismissal of frivolous of vexatious complaints**

18. No Court fee shall be payable for filing a complaint or appeal.

19. All proceedings before a Court shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860).

20. Any person aggrieved by an order made by the Court may prefer an appeal against such order to the High Court within a period of 30 days from the date of order, **Appeal.**

Provided that no appeal shall be entertained, unless the decretal amounts in deposited in the Court.

21. Where any act or omission under this Ordinance is committed by an agent or servant of any manufacturer or person in the course of trade or commerce such act or omission, as the case may be, shall deemed to have been committed by such manufacturer or person unless he proves that such act or commission, as case may be, was committed without his knowledge. **Principal liable for acts of agent and servants.**

PART IV
MISCELLANEOUS

22. No suit, prosecution or order legal proceedings shall lie against the Council or any member thereof or any functionary under this Ordinance acting under the direction of the Council or Government for anything which is in good faith done or intended to be done under this ordinance. **Indemnity.**

23. Government may, by notification in the official gazette, make rules for carrying out the purposes of this Ordinance. **Power to make rules.**

24. If any difficulty arises in giving effect to any of the provisions of this Ordinance, Government may, make such orders not inconsistent with the provisions of this Ordinance, as may appear to it to be necessary or expedient for removing the difficulty. **Power remove difficulties.**