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Provision of Energy Services in Pakistan and Rights of Consumers

A Review of Applicable Laws and Procedures

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Preface

Chapter 1: Consumers and Consumer Protection

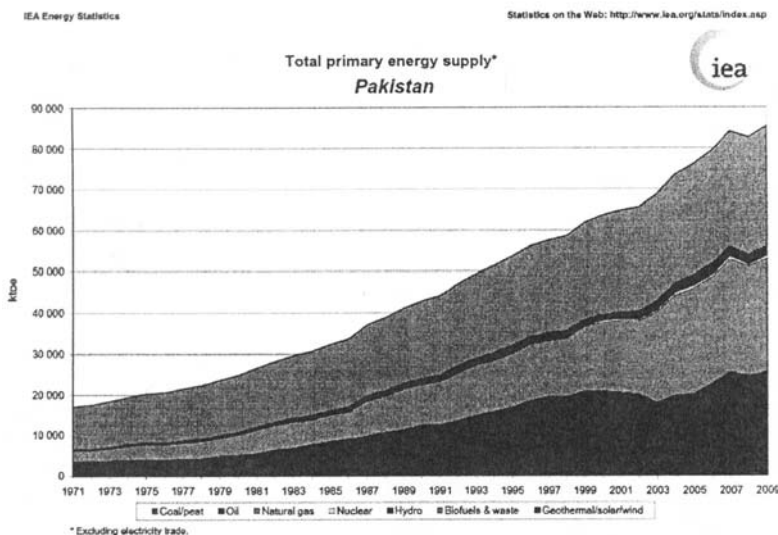
From a common consumer's perspective, modern day power scene in Pakistan is dark and depressing because there exist consumer protection laws and regulations but these have yet to be translated into an efficient consumer redress mechanism to the satisfactions of the million of consumers. The power provision does not simply involve supplies, rather the price, quality and sustainable provision of energy.

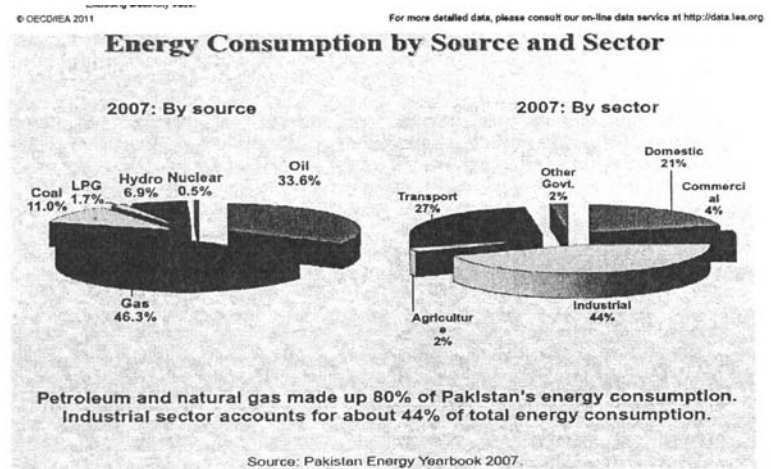
In Pakistan, major sources of energy are gas, oil, coal, hydropower, nuclear energy and LPG. These are being consumed in the major sectors of domestic, industrial, commercial, transport, agriculture and other government sections. Nevertheless, according to available energy related statis-

tics, more than 30% of the population in Pakistan still has no access to electricity. Similarly, about 75% of the population does not have access to pipeline gas. Due to linking prices of oil products with international market, the affordability of public to utilize these sources of energy is gradually going downward. Quality, sustainability, and pricing of these energy sources - electricity, petroleum products, gas - have become issues of serious concern for consumers. Existing policy and legal framework governing energy sector and consumer protection have proved to be ineffective in securing right of consumer in the sector (Asad 2006; Afia 2012).

The situation necessitates a

“More than 30% of the population in Pakistan still has no access to electricity. Similarly, about 75% of the population does not have access to pipeline gas”





“Consumers are the largest economic group, affecting and affected by almost every public and private economic decision”

review of exiting policy and legal framework governing energy sector and protection of consumers' rights. "[Consumers] are the largest economic group, affecting and affected by almost every public and private economic decision. Yet they are the only important group, whose views are often not heard."¹ The decisions relating to energy sector indeed have direct impact on the lives of its consumers and equally upon those who are yet to be served (Robert, 2007). The participation of consumers in determining policies and tariffs of oil and gas and electricity was unknown until establishment of regulatory bodies like the Oil and Gas Regulatory Authority (OGRA) and National Electric Power Regulatory Authority (NEPRA). Both of the authorities were created as public

bodies distinct from the government for economic regulation in the energy sector. These regulations inter-alia aimed at bringing transparency and consumer participation in decision-making process.² Major functions of the authorities include determination of price/tariff for electricity/gas/oil supply, performance standards and consumer protection. Policy making role however remained with the government.

Beside the energy market regulations, there are specific consumer protection laws (CP Laws) available in Islamabad Capital Territory (ICT), Punjab and Khyber Pakhtunkhwa (KPK), Balochistan and Sindh. Under these laws, consumer rights are supposed to be protected through consumer councils and consumer courts. However, due to discon-

¹ President Kennedy on March 15, 1962 stated in his address to the US Congress

² 1997 SCMR 641, m 711

nect between the consumer protection laws and the two energy sector regulators, consumers are unable to gain desired appreciation of their rights (Hafiz Aziz et al, 2005). It is noteworthy that the consumer protection laws are geared towards grant of compensation and relief after accrual of a cause of action against a manufacturer or a service provider. In contrast, energy regulators apart from administering a grievance based complaint redress mechanism are required to provide an

International Consumer Movement and Consumer Rights in Pakistan

Consumers being an important pillar of present day economic systems have gained worldwide recognition in the form of various laws promulgated for their protection. Customer satisfaction being the hallmark of developed markets inhibits all forms of misrepresentation, defective sale of products and full disclosure about the nature and scope of services.

No.	Consumer Rights	Description
CR 1.	Right to satisfy basic needs	Access to basic and essential goods and services
CR 2.	Right to Safety	Protection against products, production methods and services hazardous to health or life.
CR 3.	Right to information	Provision of information/ facts in order to make an informed choice and protection against dishonest or misleading advertisement and labeling
CR 4.	Right to choose	Ability to choose from a range of products and services offered at competitive prices with an assurance of satisfactory quality
CR 5.	Right to be heard	Consumer representation in government policy formulation and execution and products development and services
CR 6.	Right to redress	Fair settlement of just claims, compensation for damages sustained due to misrepresentation, defective goods and services
CR 7.	Right to consumer education	To be informed about basic consumer rights and ability to make informed choices about goods and services
CR 8.	Right to healthy environment	Provision of peaceful environment to live and work non-threatening to the well-being of present and future generation

opportunity for consumer participation in all their key decisions, particularly tariffs and terms and conditions of service delivery (Rana Bhagwan Das Commission (RBDC) Report 2009).

The rights of consumers are an integral part of human rights agenda, specifically elaborated in the guidelines for consumer protection formulated by United Nations General Assembly in

“CP laws as promulgated all over Pakistan do not adequately recognize all consumer rights adopted by the United Nations. The lack of will to implement CP laws or inability to consider challenges other than poverty and economic growth has yielded an ineffective system”

1985 (Asad, 2006). These guidelines provide a framework to safeguard consumers against deception, fraud and exploitation. Thus we have eight basic consumers rights, recognized by the United Nations. These are:

The developed world, initially raised awareness about the benefits of CP laws among respective stakeholders in the process i.e., the consumers, civil society, government and businesses. In case of Pakistan the legislation and its implementation preceded an organized effort to raise awareness about consumer rights (Kiyani 2008).

Unfortunately, these CP laws as promulgated all over Pakistan do not adequately recognize all consumer rights adopted by the United Nations. The lack of will to implement CP laws or inability to consider challenges other than poverty and economic growth has yielded an ineffective system (Asad 2006). The situation yields undue advantage to sellers and businesses, being more organized and well-informed placing them under a dominant position (RBDC Report 2009). On the other hand, consumers at first place are unaware of their rights and further lack resources and relevant information, which could help in resisting the onslaught of sub-standard products and services against the civil society.

Consumer Protection in Energy Sector

The energy supplies tantamount to provision of essential amenities in a society. In order to counter vulnerability of consumers in this respect, Consumer International (CI)³ exclusively developed and launched a Global Energy Charter in 2008. With the aim to promote universal access to sustainable energy services for all consumers, it sets out the responsibilities, rights and principles that suppliers, governments, regulators and consumers must embrace to achieve this goal. Consumers have also been reminded of their responsibilities to consume prudently and contribute to the optimum utilization of these energy resources. The rights of energy consumers cover the following aspects of energy supplies (with a corresponding reference to consumer rights CR, where applicable):

- „ Access - development of network services and ensuring continuity - CR I
- „ Sustainability - promotion of sustainable alternatives and energy efficiency -
- „ Choice and flexibility - development of off-grid systems; choice of payment methods - CR 4
- „ Fairness - equitable distribu-

³ Consumer International (CI) is a global campaigning voice for consumers. With over 220 member organizations in 115 countries, it is building a powerful international consumer movement to help protect and empower consumers everywhere. For details, please see www.consumerinternational.org

tion of supply, fair price formulae

- „ Customer care and support - protection through consumer contracts
- „ Mediation and redress - complaint and dispute resolution systems CR - 6
- „ Special assistance - targeted help for poor consumers - CR - 1
- „ Governance and consumer influence - representation and regulation CR - 5

Consumer Protection and Energy Sector in Pakistan

Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (NEPRA Act), establishing NEPRA under its section 3 was designated as being exclusively responsible for the provision of electric power services. Consumers have been provided opportunity of hearing under the NEPRA Act while determining tariff for sale of power, grant of licences etc. Consumers can also file their complaints in respect of matters covering billing, metering and theft of electricity all approved by NEPRA in the form of its distribution companies' Consumer Service Manual. NEPRA has obligated its distribution licensees to observe certain minimum standards of service as prescribed in the form of NEPRA Performance Standards (Distribution) Rules, 2005. Consumers can also complaint against violation of these distribution standards

before NEPRA.

Similarly, Oil and Gas Regulatory Authority Ordinance, 2001 (OGRA) administers a complaint redress mechanism for entertaining complaints against its two gas distribution companies and various oil and LPG retail marketing companies. Consumers can also participate in their tariff fixation hearings. OGRA however, is not regulating the whole of oil and gas sector and the upstream E&P has been kept out of its mandate, similarly oil prices have also been deregulated. A number of structural issues have marred the effectiveness of these bodies and consumer voice is often disregarded and ignored (Ahmed, 2012).

“ Consumers can also file their complaints in respect of matters covering billing, metering and theft of electricity all approved by NEPRA in the form of its distribution companies' Consumer Service Manual

Chapter 2: Review of Consumer Protection Laws

As mentioned earlier, there are provincial level legislations - ICT, KPK, Sindh, Balochistan and Punjab - on consumer protection available in Pakistan. In following paragraphs, an effort has been made to review three- ICT, KPK and Punjab- laws on consumer protection in Pakistan and analyze whether they are in accordance with the principles, devised by the CI for consumer protection legislation.

Features	KPK- CP Law	Punjab - CP Law	ICT - CP Law
Definitions	Supply of Electrical, Mechanical and other forms of Energy Section 2(n) of the KPK CP Law, included in the definition of services.	Energy Supplies not provided separately and covered under "product" as goods under the Sale of Goods Act.	Silent as regards definition of goods services including energy defined as in the case of KPK CP Law. But consumer courts have entertained energy related cases.
Prohibited Activities	No Display of retail price, weights, size, standards and their contact details over their products, non-issuance of receipt and prohibition of false advertisement (section 7)	Exclusion of liability under contracts prohibited safeguard against contractual waivers in case of defective products and services (Section 12 and 17). "Liability arising from defective products" and "Liability arising out of defective and faulty services" (Part II and Part III, respectively).	Silent Unfair trade practices and false advertisement prohibited
In aid of other laws	The KPK CP Law acts in addition to and not in derogation of any other law for the time being in force (section 3).	Available	Silent

Features	KPK- CP Law	Punjab - CP Law	ICT - CP Law
Administration	Consumer Protection Council (CPC) at district level is the designated body under the KPK CP Law to perform function for the determination, promotion and protection of consumer rights with the aid of police and Municipal Committee (section 8).	A Provincial Consumer Protection Council and various District CPCs	12-members body in Islamabad shall receive complaints and investigate for filing complaints with the Consumer Court (CC). CPC would be further assisted by Islamabad Consumer Association and an Area Consumer Association
Consumer Courts (CC)	Court of District and Session Judge (section 11-A, 2005 amendment in the KPK CP Law)	CC (11 districts) and a quasi-judicial system with District Coordination Officer. Alternate dispute resolution system in the form of compromise before the start of trial is available (Section also 29).	Court of Sessions
Jurisdiction and Limitation (Time)	District court in whose jurisdiction the opposite party resides or works for gain complaint filed by the consumer, the CPC, a registered consumer protection organization and a Government officer so designated. Ordinary limitation of 10 days from the date of sale, delivery of good and services extendable upon court's satisfaction up to a maximum period of 1 year In case of warranty or guarantee, limitation can be extended up to 60 days after expiry thereof.	15 days notice before filing a case in CC is not a pre-condition if filed by the consumer council.	Silent with respect to time.

Features	KPK- CP Law	Punjab - CP Law	ICT - CP Law
Complaint handling	Time for filing response to complaint is one month with a 15 days extension, Provision for lab verification, complaint disposal within 2 months.	6 months time for complaint disposal	Time for filing response to a complaint by the opposite party or respondent is only 7 days
Redress	Award of compensation, ordering rectification/ replacement of defective goods, or returning price of the good	Award of compensation, ordering rectification/ replacement of defective goods, or returning price of the good	
Appeal	Against decision of High Court within 30 days	Against DCO's order before Secretary.	High Court
Fines and Penalties	Rs. 25-50,000/- with or without two years imprisonment. False complaint has a fine of Rs. 10,000/-	Rs. 50,000 - 100,000/- with or without two years imprisonment,	Two years punishment and forty thousand fine for violation of rights of consumers. False advertisement carries a punishment of two years and a fine of rupees thirty thousand.

Analyzing the Consumer Protection Laws (CPLs)

„ Careful reading of the laws shows that these consumer protection enactments are dissimilar from each other such as the ICT CP Law and KPK CP Law condemn "unfair trade practices", whereas the Punjab CP Law allows claims on the basis of "deficiencies" and "defects". The Punjab CP Law allows claims to be brought in respect of medical and legal services with no corresponding provisions under ICT CP Law. However KPK CP Law

and Punjab CP Law place explicit and specific obligations on manufacturers left unaddressed under ICPA (Umber, 2012). Differences between consumer protection laws are mainly due to the fact that consumer protection falls under the provincial legislative list and different provinces have responded to the challenge of consumer protection differently.

„ The CPLs seem to recognize rights of consumers except the right to be heard (in respect of consumer rights protection needs) and

informed. Similarly, the inclusion of non-official members in the CPC i.e. representatives of consumer organization and women voluntary organization, does not suffice unless their adequate qualifications/criteria are also provided (Asad 2006).

„ The KPK CP Law provides a distinction between CC and the authority i.e. Magistrate. However, the district magistrate - both in ICT CP Law and KPK CP Law - can only investigate but no express powers to decide the complaint have been provided. KPK has notified consumer councils and courts in 10 districts but to date they are functional in six districts the rules for the conduct of office of CPC were notified in 2007. Unlike Punjab CP Law, KPK CP Law fails to provide for a nexus between provincial CPC and a district CPC. Similarly, rules need to include provisions for transparent handling of affairs.

„ Certain improvements have been made in the case of Punjab CP Law as adjudicating authority is available with the district administration, i.e., DCO; it is possible that consumers may get their complaint resolved without resorting to litigation before the Court of Sessions. Punjab Consumer Protection Rules, 2009 clearly explain

the manner to conduct offices of PCPC and DCPC and the coordination between the two, along with a plan for progressive review of their functions etc. Respective directorate has put up a website carrying information for consumer education; archiving all decisions of different district consumer courts.

„ Effectiveness of PCPO is evident from a case from Faisalabad DCC where compensation amounting to Rs. 70,000/- was awarded for defective and faulty services received from seller of a plot in a society whose nearby boundary wall could not be reconstructed despite repeated requests from the complainant and ultimately lead to stealing of latter's motorbike.

„ The challenge to deal with complaints pertaining to provision of energy services remains unaddressed, as specific provisions need to be incorporated for developing a mechanism for consumer redress in this major services sector. Though provision of compensation by CC is an attractive feature for energy consumers (absent with the energy regulators), however, it needs to be linked with the enforcement of standards, terms and conditions of licence of energy suppliers,

“ “ *The KPK CP Law provides a distinction between CC and the authority i.e. Magistrate. However, the district magistrate - both in ICT CP Law and KPK CP Law - can only investigate but no express powers to decide the complaint have been provided*” “

affecting the consumers.

Recommendations to improve the CPLs and state of consumer protection

From the above quick analysis, it appears that the state of consumer protection and consumer laws in Pakistan is not very promising. There is a need to undertake a number of steps to improve the situation. Followings a few of the recommendations in this regard:

- „ CPLs should be reviewed with a view to remove operational difficulties and effective handling of energy complaints also falling in the domain of other bodies like energy regulators.
- „ CPLs can only be administered and enforced effectively, if provincial and district CPCS are strengthened by:
 - o providing a strict criteria of appointment for their members;
 - o prescribing rules for their effective functioning and monitoring; and
 - o measures like laying of reports before PCPC by DCPC and by the former before respective provincial assemblies.
- „ Capacity building of consumer courts, consumer organization for effective enforcement of CP laws.
- „ Appointment of consumer advocates in each district and

awareness & education about consumer rights through curriculum; and

„ A journal of consumer court cases can also stimulate awareness about handling of consumer cases of by courts apart from its compilation and availability for all concerned.

„ An appellate bench in respective high courts for speedy adjudication of the appeals filed against the decisions of CCs.

“CPLs can only be administered and enforced effectively, if provincial and district CPCS are strengthened”

Chapter 3: Energy Sector

Where does a consumer stand?

An extensive review of the consumer protection laws in previous chapter highlights that though grievances of consumers as recipients of energy services can be redressed under the provincial consumer effective but remedy is remain unanswered for want of empirical evidence. Bulk of complaints was being entertained by the Federal Ombudsman because of the fact that they were mainly against public bodies, providing electricity and gas). Besides, NEPRA, OGRA has elaborated consumer complaint handling processes. The energy regulators have an explicit role to protect consumer interest while regulating their actors. Section 7 (6) of the NEPRA Act mandates NEPRA that in performing its functions it shall protect the interests of consumers and companies providing electric power services. The OGRA Ordinance, 2002 also subscribes to the aim of protecting public interest while respecting individual rights in the mid-stream and down-stream petroleum industry.

The energy regulators are required to handle consumer complaints in respect of matters under their regulation. However, the consumer redress mechanism

is not as straight and simple as processing of a complaint by a CC or a CPC, since both electricity and Oil & Gas involve complex regulated or unregulated activities. Complexity of the sector and conflicting interests of stakeholders like GOP, Service Providers or licensees and the consumers demands adoption of a balancing function by the regulator, which despite the statutory pronouncement of being exclusively responsible (independent) in their domain, are always subjected to non-transparent policy guidelines issued by i.e. GOP from time to time.

NEPRA, Electricity and Consumers

The Electricity Act, 1910 governed the domain of supply and usage of electricity. Electricity Act states the law relating to supply and use of electrical energy and empowers Provincial Governments to implement and enforce its provisions. As the demand of electricity increased, new public bodies were created for the generation and supply of energy, significant among these are the Karachi Electric Supply Company, as established vide Electricity Control Order (KESC), 1978 and Water and

“The consumer redress mechanism is not as straight and simple as processing of a complaint by a CC or a CPC, since both electricity and Oil & Gas involve complex regulated or unregulated activities.”

“The unbundling of WAPDA into eight distribution companies and subsequent licensing thereof by the Authority provided each with a franchise area or a concession territory and a service territory”

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Power Development Authority (WAPDA) created vide Water and Power Development Authority Act, 1958.

Both these public utilities being able to successfully operate their business in the country were making substantial profits and simultaneously investing heavily for the extension of their service lines to their prospective consumers. These wholly owned government bodies were, however, no longer able to lay their hands on cheap capital for fulfilling their expansion programs, apart from other inefficiencies and management issues linked to the overall macro-economic condition of the country. Hence over-staffing of utilities, lack of maintenance of their generation plants, controlled electricity prices and theft of electricity created a situation of bankruptcy in these utilities. (Afia, 2012)

At last, in 1997, NEPRA Act established the new set up of electricity business in the country and envisaged regulation of service providers by the National Electric Power Regulatory Authority ('the Authority'). The unbundling of WAPDA into eight distribution companies and subsequent licensing thereof by the Authority provided each with a franchise area or a concession territory and a service territory. The distribution licensees are now required to provide compulsory electric power services to consumers lying within their service territories.

Composition and Functions

NEPRA has powers to grant licenses to the generators, distributors and transmitter of electric power, monitor their performances, and impose penalties in case of non-compliance of the relevant NEPRA Act and rules and regulations. It consists of four members representing all the four provinces of Pakistan and a Chairman nominated by the Federal Government.

The distribution licensees still in the government holding have been mandated to evolve as independent corporate entities, managing their affairs prudently, based on the principles of best utility practices. Under the NEPRA Act, the regulator was, therefore required to ensure that distribution services and sales of electric power within the territory of a distribution licensee are being made on a non-discriminatory basis to all the consumers who meet the Eligibility Criteria for the purpose. NEPRA formulated the Consumer Eligibility Criteria in 2002 and after extensive consultations with stakeholders over the proposed document, notified the NEPRA Consumer Eligibility Criteria, 2003.

NEPRA Consumer Eligibility Criteria Regulations, 2003 (ECR) ECR declares that any person, within the service territory of a DISCO as specified in its license shall have the right to be supplied with electric power in pursuance of section 3 of the Eligibility Criteria.

Requirement to get connection

- „ The requirements for the exercise of right to connection are:
- „ Application on the prescribed form;
- „ Deposit of charges for the proposed dedicated distribution system or the consumer distribution system.
- „ Clearance of Safety aspects of applicant's wiring installation etc. and
- „ Payment of security deposit and clean credit record of the applicant in terms of past payments due to the disco or any past conviction of stealing of electricity.

NEPRA Performance Standards (Distribution) Rules, 2005 (P5Th

PSD lays down standards for distribution companies; however, these standards are detached from the conditions prevalent in the DISCOs on ground. Adequate investments are not allowed by NEPRA to bring consistent improvement in the service standards (Asif, 2011). Lack of monitoring from NEPRA can be another reason for lapses in service standards by DISCOs. It is reported that NEPRA has recently established an enforcement division for the purpose. DISCOs when interviewed were also critical of the role of NEPRA in its failure to provide the required guide port for improvement in performance standards and consumer complaint redress mechanism (Victor, 2007).

NEPRA Complaint Handling Rules

NEPRA being a quasi-judicial body can entertain complaints against damages caused by sub-standard services by a DISCO but no power to award compensation is available under its law. Under Section 39 of the Act, NEPRA is empowered to entertain complaints from the provincial governments or any interested person against a licensee for contravention of any provision of its Act, or any order, rule, regulation, license or instruction made or issued there under. The complaint handling rules have not been notified by NEPRA as yet and procedure for the conduct of tariff determination proceedings is adopted. The draft complaint handling rules circulated to date do not satisfy the need of an efficient complaint handling system.

A consumer affairs division is also functioning in NEPRA's head office. A complainant gets response from the consumer affairs division acknowledging the receipt of the complainant and seeking comments of the service provider. However, the process, later on is not time bound.

Provincial Offices of Inspection (POIs)

NEPRA Act also establishes POIs as a reorganized structure of the office of electric inspectors under the Electricity Act, 1910. POIs are charged with the task of enforcing compliance with distribution companies' instructions respecting metering, billing, electricity consumption charges and

“The scrutiny of its powers and functions under section 6 highlights that only LNG, CNG and Natural Gas components of the Gas sector are included in the regulated activity, apart from licensing of oil marketing companies with respect to the standards of their services only”

decision of theft of electricity, or Consumer Service Manuals, approved by NEPRA for each of its DISCOs. However, no effort has been made (so far to develop orientation of POIs and the DISCOs for bringing the desired level of consumer protection and care in their affairs.

Consumers and Tariff Determination Process

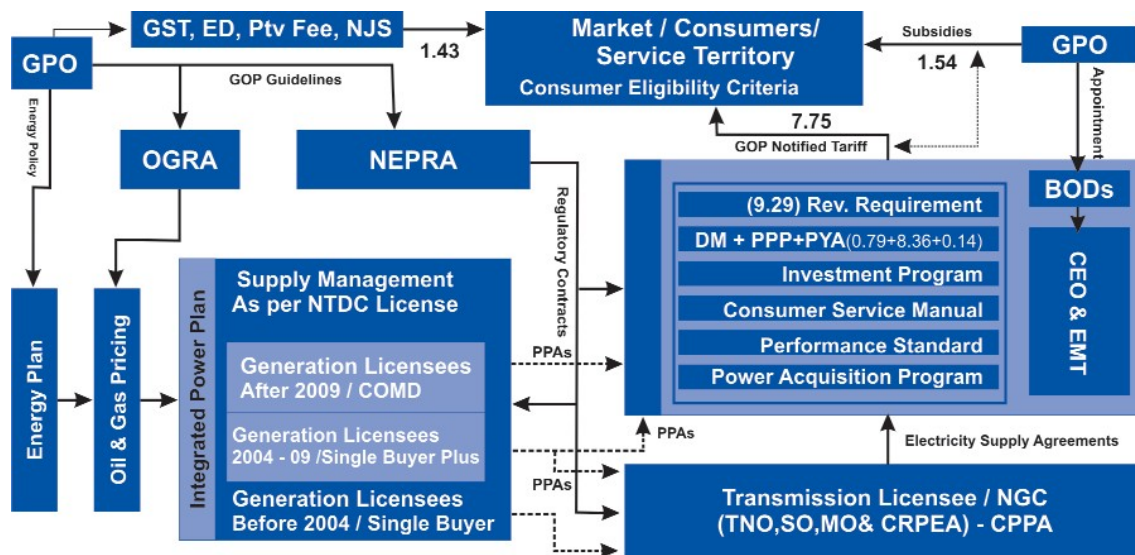
'NEPRA Act mandates regulation of generation, transmission and distribution through licenses along with approval of tariff for each of these activities under its various rules and regulations. A DISCO files a tariff petition stating all its costs with documentary evidence in support of a particular rate for sale of power to National Grid under the Tariff Rules, 1998. NEPRA advertises the admission of a tariff petition inviting comments of all interested persons and from public at large. However, the procedure to seek participation is cumbersome for consumer groups and need to be made simplified and without any participation fee. Adoption of an administrative procedure law could help remove anomalies in consumer redress by NEPRA) (Hafiz et. al. 2005).

OGRA, Hydrocarbons and Consumers

OGRA was established to regulate midstream and downstream petroleum industry for the purpose of promoting competition, private investment and ownership while protecting public

interest and those of individual persons. Mission statement of OGRA is recorded as, "[to] safeguard public interest through efficient and effective regulation in the midstream and downstream petroleum sector." However, the law and procedures at OGRA are reminiscent of Government involvement as noted in section (2)(r). OGRA's role has significance for the electricity sector as well, as power produced through gas and other Hydrocarbons such as RFO and HSD are determined and monitored by OGRA. Figure III below explains this relationship between different players of the energy sector, including consumers.

The Authority comprises a Chairman and three members i.e. Member (Gas), Member (Oil) and Member (Finance). The OGRA Ordinance, 2002 provides for the regulation of petroleum industry but oil sector is still not being regulated in the manner as the gas sector by OGRA. The scrutiny of its powers and functions under section 6 highlights that only LNG, CNG and Natural Gas components of the Gas sector are included in the regulated activity, apart from licensing of oil marketing companies with respect to the standards of their services only. Determination of prices of oil fall under section 6(2)(r) read with section 21 of the OGRA Ordinance. The section mandates OGRA to "administer or establish prices for those categories of petroleum for which the Federal Government establishes prices



Source: LESCO Dec. 2010

and may delegate the functions to the Authority from time to time..."

Tariff Setting

Tariff determination is subject to policy guidelines of the Federal Government under section 7 of the OGRA Ordinance. Under Section 9 of its Ordinance, OGRA can determine tariff without giving notice and without holding a public hearing, but public hearings are held regularly.

Complaint Resolution Procedure Regulations, 2003

A complainant, defined as an interested person under these regulations, can file a complaint against a licensee or dealer for violation of OGRA laws or terms and conditions of their license. Similarly, complaints against service standards in respect of (i) billing and overcharging; (ii) con-

nection and disconnection of service (iii) metering; (iv) undue delay in providing service; (v) safety practices; or (vi) quantity and quality of natural gas, LPG or CNG being supplied; or (c) discriminatory practices of the licensee or dealer can also be filed.

All complaints shall be filed within 90 days of the date; complainant fails to get redress from the licensee. No complaint is accepted unless complainant has exhausted redress avenue available with the licensee. Under Complaint processing regulations, OGRA is required to take a maximum of 10 days for assessment of the application. A licensee complaint against is provided a maximum of 15 days time to file its reply. Thereafter, OGRA decides the complaint and where required a meeting is arranged between the

“Consumers are facing load shedding in both of power and oil & gas sector hence OGRA and NEPRA have not done enough to protect right of access to electricity and gas supplies to the consumers”

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complainant and the licensee. Tests with respect to quality of refined oil products and quantity of oil are also undertaken, where required at the expense of the Authority to be reimbursed later, by the licensee if complaint is found correct. All complaints must be decided within a period of 90 days, in case of delay beyond this time limit, the designated officer shall record reason thereof. Appeal against a decision disposing of complaints shall be filed with the Authority within 30 days of the decision.

Analyzing the Energy Sector Regulations

.. Access - development of network services and ensuring continuity

Consumers are facing load shedding in both of power and oil & gas sector hence OGRA and NEPRA have not done enough to protect right of access to electricity and gas supplies to the consumers. Demand supply gap of electricity hovering between 5,000 -8,000 MW and three days shutdown of CNG all year round speaks volume of their ability to handle the sector in best interest of the consumers.

.. Sustainability - promotion of sustainable alternatives and energy efficiency

Complete silence on the part of OGRA and NEPRA as against their responsibility to

ensure sustainable alternatives and energy efficiency. CNG was initially introduced as a social service to public but its indiscriminate use even in luxury cars, made Pakistan world's no. 1 country to burn precious natural gas in vehicles. As a result, today, domestic consumers don't even have gas to turn on their stoves. Industry, particularly the textile sector, the main foreign exchange earner for the country, is unable to operate optimally in the absence of gas.

NEPRA initially, failed to promote alternative energy resources. No direction was made with respect to large no. of energy savers lying with the Federal Government. 22 No express moves were made to promote energy efficiency.

.. Choice and flexibility - development of off-grid systems; choice of payment methods

NEPRA is yet to finalize distributed generation rules promoting off-grid generation. Similarly, currently no choice of payment methods have been envisioned by NEPRA though efforts have been made by the Alternative Energy Development Board (AEDB) of the Government of Pakistan to get approval of Net metering, energy banking etc.

OGRA appears to have shut its eyes to the woes of people, non-pipe lined consumers are provided Oil and gas services through tankers and Cylinders. The upcoming LPG policy proposes to establish infrastructure for retail outlets for LPG as available in case of petrol, putting a no. of persons out of job from CNG sector and consumers CNG kit redundant. Independence of OGRA is also an issue in its inability to foster consumer protection. Despite OGRA's reported objection to switch to quarterly POL price review, the GoP announced quarterly Oil price review, which has now even been reduced to one week (The Nation, 2012).

„ ***Fairness - equitable distribution of supply, fair price formulae***

Despite setting up a criterion for load shedding under NEPRA's PSD, different areas in Pakistan are subjected to discriminate hours of load shedding. 80% of consumer-end prices comprise of generation tariff, which consumers have no effective means to contest. Similarly, despite the legal embar against retrospective application of tariff, Fuel Adjustment Surcharges are being recovered from previous months. The circular debt, inhibiting the existing

capacity to be utilized but also a deterrent for new power investments, has a big portion of subsidy announced but not paid by the GoP to distribution companies. (Chris et al, 2011) NEPRA has been unable to resist to this practice of the GoP.

Fair pricing demand participation at the time of tariff determination, an account of notification of oil, prices provided above, does not allow OGRA to have a role on the subject. Hence, consumers are subject to unfair pricing. Federal Government has high stakes in the sector as it is an important revenue (sales tax etc.) generation sector.

„ ***Customer care and support - protection through consumer contracts***

NEPRA has institutionalized customer service manual supported with adequate contractual arrangements. However, no such standards of service have been approved by OGRA for its distribution companies, i.e.. SSGCL and SNGCL.

„ ***Mediation and redress - complaint and dispute resolution systems***

Both NEPRA and OGRA administer their complaint handling rules; an area where consumers can claim

“The state of energy sector is a threat to the rights of energy consumers, for which government needs to undertake reforms as an engine for badly needed social and economic development (PIP, 2011).”

grievance redress from the two energy regulators; however the redress is often delayed and beyond the capacity of the regulator to handle bulk of complaints.

„ **Special assistance - targeted help for poor consumers**

Lifeline consumers' subsidy should only be provided to such consumers only. NEPRA has been unable to devise a mechanism whereby only targeted subsidy could be provided to needy consumers (Chris et. al., 2011).

OGRA's advice is ineffective in the interest of consumers, as the final decision rest with the GoP.

„ **Governance and consumer influence - representation and regulation**

NEPRA rules and regulations and its other functions are undertaken with due public consultation. However, policies made by the Ministry be that of power or oil & gas need to develop mechanism of seeking effective consumer consultation (Hafiz et al. 2005).

NEPRA, despite capacity constraints and conflicting policy guidelines issued by the Federal Government has acknowledged voice of consumers, but the same needs to bring about some respite in the grievances of electric-

ity consumers. Tariff determination at OGRA needs to be made more open and transparent such that it moves towards sale of gas and oil products in line with best industry standards and principles of economic regulation. OGRA also has an effective complaint handling procedure, but both NEPRA and OGRA are unable to grant damages/compensation to their complainants and provincial protection courts/council is can be harnessed towards this end.

Role of government towards protection of consumer rights

Consumer rights are not expressly covered under the Constitution of the Islamic Republic of Pakistan, however, in a recent judgment, the Hon'ble Supreme Court has ruled that Governments while making policies in respect of national resources need to take account of public interest and rights of consumer has been declared as equivalent to right to property as provided under Article 25 of the Constitution. Hence protection of consumers rights tantamount to observance of fundamental rights.

In case of energy regulatory bodies, Federal Government needs to allow autonomy envisaged under their law. Issuance of Policy Guidelines, though conditional upon their agreement with the express provisions of the NEPRA Act, need to be a rare

event, and only where necessary. OGRA Ordinance also mandates observance of policy guidelines, which is a bad law. In the interest of energy sector and their consumers, Federal Government must ordain requisite reform towards economic regulation and bring about an enabling energy framework which may ultimately integrate the two energy regulators under one body, equipped with adequate human resource and accountable for their performance (Justice (retd.) Bhagwandas, 2009). The state of energy sector is a threat to the rights of energy consumers, for which government needs to undertake reforms as an engine for badly needed social and economic development (PIP, 2011).

Chapter 4: Towards Consumer Satisfaction...

Recommendation for strengthening energy consumer rights and grievances redress mechanisms Consumer protection is akin to satisfied consumers. Energy consumers are not satisfied because they are denied access to sustainable energy supplies. Currently it is a matter of no energy, which is costlier than energy at high prices (Chris et al. 2011). A case for evolving a framework for the energy policy enabling efficiency, conservation and commercially viable and politically acceptable generation is the call

of consumers (All, 2010). It is believed that this can have answer to all the major grievances of energy consumers. On the other hand the consumers also need to get equipped for engagement with the policy makers on current energy supply constraints (Hafiz et al. 2005).

As NEPRA provides an opportunity of hearing at the time of tariff determination, consumer groups should participate in these proceedings to apprise the regulator of their concerns with respect to rising cost of power and steps to be taken for making adequate

“As NEPRA provides an opportunity of hearing at the time of tariff determination, consumer groups should participate in these proceedings to apprise the regulator of their concerns with respect to rising cost of power and steps to be taken for making adequate supply of power”

supply of power. In the event of damages caused by distribution company's substandard services, provincial consumer protection should have recourse to energy regulators for processing and award of appropriate damages. With respect to other areas of customer service, DISCOs and Gas supply companies need to be monitored properly by NEPRA and OGRA and adequate trainings of the POIs, the DISCOs and Gas supply companies shall be undertaken by the respective regulators. Similarly, a consumers' advocate should be appointed by NEPRA and OGRA to support complainants.

Oil and Gas Sector has further issues of rate fixation and consumers need to communicate their concerns to the regulator. Active engagement with the Ministry of Petroleum may bring some change in the manner oil prices are determined, including decision to fix prices every week. OGRA has a well-developed complaint handling procedure and it can provide effective grievance redress to the consumers, if the writ of the regulator is enforced vis-a-vis gas distribution companies.

Consumer protection laws are required to be made effective by adoption of similar steps of bringing improvement in the provincial consumer laws to create certain level of uniformity against certain set standards or a national consumer policy framework and removal of administrative difficulties, enhanced coordi-

nation between district and provincial CPCs, consumer rights awareness, publication and laying of annual reports of provincial and District CPCs.

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Instant review of applicable consumer protection laws has two segments, i.e., provincial and Federal. Unlike our India with a federal Consumer Protection Act of 1986, consumer protection is believed to be a provincial subject enforced through provincial consumer protection laws (Asad, 2006). First set of such laws was promulgated in 1995 in ICT, followed by KPK, Punjab and Balochistan. Sindh does not have the requisite law. The terms of reference for the report requires coverage of Islamabad, KPK and Punjab consumer protection laws, only with respect to their effectiveness to provide efficient consumer redress mechanism. Consumer Protection Laws of ICT, and KPK deal with defective provision of goods and services and energy has been expressly defined under the head of services. In case of Punjab defective services are cognizable but energy is not mentioned specifically as one of the services to be complained against. Consumer protection laws thus provide a platform for adjudicating consumer complaints against un-fair trade practices, defective goods and services. These laws however, lack proper administration because of absence of notification of Consumer Protection Council (as in the case of ICT) or deactivation of consumer protection councils, if notified (in case of KPK). Consumers also lack awareness about this forum.

The features of federal statutes pertaining to electricity and Oil & Gas, i.e., OGRA Ordinance, and NEPRA Act are distinguishable from the provincial consumer protection laws, due to their direct control over the suppliers of energy services as their licensees. Regulating energy service activities and their performance, the energy sector regulators have specific provisions for soliciting public opinion; thus enabling consumers to contest their rights to have fairly priced, sustainable and

safe energy services. The energy regulators have also notified consumer complaint procedure laws. However, these quasi-judicial bodies do not have power to grant compensation, otherwise available with the consumer courts established under the respective consumer protection laws.

The analysis of both provincial and federal energy laws set the stage for protecting rights of consumers as acknowledged worldwide. However, effective consumer redress mechanism, only can promote and protect the economic interest of consumer (Asad, 2006), the report recommends:

- a. improvements in the administration of provincial consumer protection laws;
- b. enhanced synergy between the proceedings of provincial and district consumer protection councils; and
- c. awareness building programmes about consumer rights.

Role of the two energy regulators demands upholding the spirit of their parent statute, i.e., balancing the interests of consumers with that of service providers and implementation of policy guidelines consistent with the legal provisions. The regulatory laws, envisage isolation of the regulator from government pressures and service providers in order to ensure economic, safe and sustainable provision of energy services. (Rana Bhagwandas, 2009) Due to lack of adequate capacities in the regulators and weak accountability, rights of consumers are not safeguarded adequately. (Afia, 2012)

Finally, the report advocates protection of the rights of energy consumers by developing a system of implementing standards of services determined by energy regulators. Similarly, in case of determination of liability of their licensees by the regulators, the consumers shall be able to approach consumer courts for seeking award of compensation.

Annex 1: Islamabad Consumer Protection Act 1995

Islamabad Consumers Protection Act, 1995.

Islamabad Consumers Protection Act 1995

An Act to provide for promotion and protection of the interest of consumers.

WHEREAS it is expedient to provide for promotion and protection of the interests of consumers and for matters connected therewith and incidental thereto;

It is hereby enacted as follows: -

1. Short title, extent and commencement. – (1). This Act may be called the Islamabad Consumers Protection Act, 1995.

(2). It extends to the Islamabad Capital Territory.

(3). It shall come into force at once.

2. Definitions. – In this Act unless there is any thing repugnant in the subject or context;

(1). "Authority" means the Court of Sessions, Islamabad;

(2). "complainant" means:-

(i) a consumer;

(ii) a consumer's association; and

(iii) the Federal Government, Chief Commissioner, Islamabad capital Territory, Capital Development Authority, or any person or agency authorized by the aforesaid on their behalf to file complaint before the Authority;

(3). "consumer" means any person who-

(i) buys goods for a consideration which has been paid or partly paid and partly promised to be paid or under any system of deferred payment or hire purchase and includes any user of such goods but does not include a person who obtains such goods for re-sale or for any commercial purpose; or

(ii) hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any beneficiary of such services.

(4). "Council" means the Consumers Protection Council, Islamabad, established under section 3;

(5). "Services" includes services of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance,

- (iii) Government, concerned Council, concerned Civic Development Authority or a local body and any person or agency authorized by the aforesaid on their behalf to lodge complaint before the Authority.
- (c) 'Consumer' means any person who: -
 - (i) buys goods for a consideration which has been paid or to promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any user of such goods but does not include a person who obtains such goods for re-sale or for any commercial purpose; or
 - (ii) hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any beneficiary of such services.
- (d) 'Council' means a Consumer Protection council, established under Section-S;
- (e) '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;
- (f) 'Deficiency' means a deficiency or shortcoming in the standard of performance, quality 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 while providing a particular service;
- (g) 'Goods' means goods as defined in the Sale of Goods Act, 1930 (III of 1930);
- (h) 'Government' means the Government of North -West Frontier Province;
- (i) 'Laboratory' means a laboratory or organization recognized by Government including the Federal Government and includes any such laboratory or organization established by or under any law for the time being in force, which is maintained, financed or aided by Government including Federal Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;
- (j) 'Manufacturer' includes a person who:

- (x) falsely representing for provision of services by professionals and experts, including by doctors, engineers, advocates, medlanics, teachers, hakeems and spiritual healers;
- (xi) giving false or misleading facts disparaging the goods, services or trade of another person, firms, company or business concern;
- (xii) advertising for the sale or supply at a bargain price of goods or services which are not intended to be offered for sale or supply at such price;
- (xiii) offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction; and
- (xiv) falsely gives description of commodities and services offered through mail order.

3. The Council: – (1) As soon as may be, after the commencement of this Act, the Federal Government may, by notification in the official Gazette, establish the Consumers Protection Council, Islamabad.

(2) The Council shall consist of the following: -

- (i) The Chairman, to be appointed by the Federal Government from amongst prominent social workers permanently residing at Islamabad; Member
- (ii) Members of Parliament representing Islamabad Capital Territory; Member
- (iii) Chief Commissioner, Islamabad Capital Territory; Islamabad; Member
- (iv) Chairman, Capital Development Authority; Member
- (v) three representatives of the Consumers Associations in Islamabad; Member
- (vi) a representative of the Ministry of Interior who shall not be below the rank of Joint Secretary; Member
- (vii) a representative of the shopkeepers, vendors or manufacturers as recommended by the Chamber of Commerce and Industries, Islamabad; Member
- (viii) a representative of the Finance Division who shall not be below the rank of Joint Secretary; Member
- (ix) a representative of the Ministry of Health who shall not be below the rank of Joint Secretary; Member
- (x) a representative of the Ministry of Food, Agriculture and livestock who shall not be below the rank of Joint Secretary; Member

(xi) a representative of the Ministry of Industries and Production who shall not be below the rank of Joint Secretary; Member

(xii) a lady social worker permanently residing at Islamabad to be appointed by Federal Government. Member

(3) The existence of a vacancy in, or defect in the constitution of, the Council shall not invalidate any act or proceedings of the Council.

4. Meetings of the Council. – (1). The Council shall meet as and when necessary and at such time and place as the Chairman may fix:

Provided that not more than a period of two months shall intervene between the two meetings of the Council.

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

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

5. Objects and functions of the Council, etc. – (1) The objects and functions of the Council shall be to determine, promote and protect rights of consumers, including-

(a) the right of protection against marketing of goods which are hazardous to life and property;

(b) the right of information about the quality, quantity, potency, purity, standard and price of goods and services;

(c) the right of access to a variety of goods at competitive prices;

(d) the right for redressal against unfair trade practices of unscrupulous exploitation of consumers;

(e) the right of consumers' education; and

(f) the right of easy availability of essential services.

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

(3) For promotion and protection of the interests of consumers, the Council shall coordinate between the Government, manufacturers, producers, suppliers and consumers.

6. Authority: – (1) The Authority shall receive complaints of the consumers and those made on behalf of the council for investigation and determination thereof.

(2) The police, Capital Development Authority and other agencies of the Federal Government and Islamabad Capital Territory Administration shall act in aid of the Authority for performance of its functions under this Act.

7. Prohibition of false advertisement, etc (1) Notwithstanding anything contained in any other law for the time being in force, no company, firm or person shall advertise in any manner not authorized by law for the sale or hiring of goods or services or any property, movable or immovable, or solicit deposits for repayment at higher rates of profits or interest and thereby causes loss to any consumer, whether financial or otherwise.

(2) Notwithstanding any punishment provided for making misrepresentation, false or misleading advertisement in any other law for the time being in force, the company, firm or a person making such advertisement shall be liable to pay such compensation as the Authority may direct for causing loss to the person affected by such advertisement.

8. Procedure for disposal of the complaints. – (1) A complainant may in respect of any goods sold or delivered or any service provided or supplied or against any unfair trade practice file a complaint with the Authority.

(2) The Council may, in the case of any unfair trade practice coming to its notice, directly make complaint to the Authority through an officer authorized by it.

(3) Where on examination of the complaint received under sub-section (1) or sub-section (2), the Authority is of the opinion that any right of the consumer has been infringed, it shall cause the notice of the complaint to be served on the respondent who shall be required to give his reply within a period of seven days.

(4) After considering the complaint and the reply of the respondent and after providing the parties and opportunity of being heard, or if no reply is received and after such enquiry as the Authority may deem appropriate, it may pass such orders as the circumstance may require.

9. Penalties. – (1) Where any right of consumer required to be protected under section 5 of the Act is in any way infringed, the person responsible for such infringement shall be punished with imprisonment which may extend to two years, or with fine which may extend to forty thousands rupees, or with both.

(2) Whoever makes advertisement through print or electronic media or by chalking on walls or in any other manner in contravention of section 7, he shall be punished with imprisonment which may extend to two years, or with fine which may extend to thirty thousands rupees, or with both.

(3) The Authority may, where it deems appropriate, order for payment of compensation to the consumer to the extent the consumer has suffered any damage or loss through any unfair trade practice.

(4) The Authority may, where it deems necessary for protection of the rights of other consumers, order for confiscation of any goods or material or direct for their destruction.

10. Appeal. – An appeal against the order of Authority shall lie to the High Court and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), in respect of appeals to the High Courts shall, mutatis mutandis, apply.

11. Immunity of the Council, etc. – No suit, prosecution and other legal proceedings shall lie against the Council, its members, the Authority and other officers and authorities acting under the directions of the Council or, as the case may be, the Authority in respect of anything done under the provisions of this Act or any rules or orders made thereunder.

12. Rules. – The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

Annex 2: ICT CP Rules 2011

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EXTRAORDINARY
PUBLISHED BY AUTHORITY

ISLAMABAD, SATURDAY, NOVEMBER 00, 2011

PART II

Statutory Notifications (S.R.O.)

GOVERNMENT OF PAKISTAN

MINISTRY OF INTERIOR

NOTIFICATION

Islamabad, the 12th October, 2011

S. IL O:OQ.O(l)/2011: In exercise of the powers conferred by section 12 of the Consumers' Protection Act, 1995 (III of 1995), the Federal Government is pleased to make the following rule, namely:-

1. Short title and commencement:—(1) These rules may be called the Islamabad Capital Territory (Consumers Protection) Rules, 2011.

(2) They shall come into force at once.

2. Definitions:—(a) In these rules unless the context otherwise requires,

(a) "Act" means the Islamabad Capital Territory Consumers Protection Act, 1995 (H.Q. 11/95);

(b) "Person" includes any natural or artificial person;

[972(2011)/Ex.Gaz.]

Price : Rs. 10.50

2. THE GAS (ZEIT) OF PAKISTAN, EXT. I\NO Y.EMBER oo. 2011 (PAJITI

- (c) "Chairman" means the Chairman of the Council;
- (d) "Convenor" means the convenor of an ACA to be nominated by the IC A under rule 7;
- (e) "Consumer Association" or "ACA" means the Association of Consumers established for the purpose of protecting the interests of consumers;
- (f) "Area Consumers Association" or "ACA" means an Area Consumers Association constituted for any specified area or sector of Islamabad under rule 7;
- (g) "Respondent" means a person against whom a complaint has been filed;
- (h) "Rule" means rule of these rules;
- (i) "Damage" means any damage caused by any product or service including the product itself or economic loss arising from a deficiency in or loss of use of the product or the service;
- (j) "Manufacturer" includes a person who-
 - (i) is in the business of manufacturing a product for the purpose of trade or commerce;
 - (ii) labels a product as his own or who otherwise presents himself as manufacturer of the product;
 - (iii) as a seller exercises control over the design, construction or quality of a product;
 - (iv) assembles a product by incorporating into his product any component or part manufactured by another manufacturer;
 - (v) is a seller of a product of a foreign manufacturer, or is affiliated with the foreign manufacturer by way of partial or complete ownership or control; or
 - (vi) modifies or repairs the product for sale or distribution and assumes or administers the responsibility of the product;

PART IJ) :THE OAZiiiTE> Of-PAKISTAN, BXTRA./NOVEMBER 00, 20I I

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ki "manufacturing a product" means and includes producing, j*: •fabricatingxconstructing..!!!- igning, r<;manufacturing, reconditioning or refurbishing a product.

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(1) ,:f•product:bls the arne meanih-a igned *toth*word "goods" in
'r .the Sale of goods Act, 190 (QI of:1 0).

(m) Islamabad t;lonsumer ASQciation.or!"ICA" means the Islamabad
•< Con umer /} sociation set up under rule 4; - -

•,-"T ,,,, .. - . . . /j * : - . * . /
(ll) MeaJConsuwer Association or "ACA" means an Area- Consumer
• Associationset up under rule 7;

! . - / : ! !.
"Provincial- Government" means the Chief Commissioner,
Islamabad Capital Territory,specified in tile Islamabad Capital TeiTtory
(Administmlion) Order, 1980 (PO 18 of 1980) •and invested, *vide*
Notification No. 17(2)/SO-Pub, dated the 31st DeccmbeJ, 1980, with
the powers and duties conferred or imposed on the Provincial
• • Government under any law for the time being in force in the Islamabad
Capital Territory;

(2) Words and expressions used in these rules and not- defined shall have
the meanings respectively signed to tm in the Act. - ~

3. Procedure- of the (:ouncil:- (1) 'lile chairman of the council shall be
sanctioning authority of all activities of the council.

P : J
'(2) The council shall ele'l one of its members to be its secretary who
shall beresponsible for running its affairs;.

(3) The Secretary shall call meeting of the council after seeking approval
from the chairman..

(4) The secretary shall maintain and pulup all complaints and other record
received during the period, fQrdiseu<Sion and disposal, on a format as the Provincial
Government moy specify, ...

• ■
(tj); - The secretary hall convey, the agenda and :worJ,ing paper to
all members. fJh cQunciJ, at le?st week pri?h to tll! Ij ting of te council.

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after seeking approval from the chainnan. • • • •

4. "TireGAZEJTE OF PAKISTAN.EXTRA.,<NOVEMBER 00, 2011, (PART II

(7,) The@uncil.may rlquire the;ICA tobrif the council about the details of any complaint, b!lrore referring ic to the Authority

(8) .111e decision in meeting of the council shall be taken lly simple majority of the mefrbers present apd in case of tie, the chair!iJan shall) ave the powers to decide the;is ue.either way in accordance with the law.

(9) The secretary shall be assisted by- :m;authorized officer and such staff as may be provided by the'Provincial Government. He shall maintain record of all complaints received by the council and working therto.coordinate with the council,!ICAand the ACA(s) and represent the council before the Authority.

:(I!)) . 'There shall be a moniibly meeting to be held on first working dny of eve;y forthcoming month.

. ft!'"/r/l)I"-C>'>tlhf.

(U) The councl shall hold its meeting at such place and with such (aj:ilities as the Government may specify.

Expfanatum: Only the compfaints involving any issue of general public interest shalf be referred to the council for action into the maller.

-4. Islamabad Consumer. Association (ICA):- (1) The council shall constitutdn ICA; mpr i hg of:—

- (a) a prominent social worker to be chairman of the ICA;
- (b) a lady social worker of repute;
- (c) three repre5entutive• from the ACA's;
- (d) three representatives from the shop keepers, vendors and manufacturers;
- («) a representaive. from the office of Chief C:ommissioner. ICI;
- (f) a representative from the health department, CDA;
- (g). a.i'e'presentative, from the agriculture industries and labour directorat ICT•
- (h) a representative from (he health department, ICT;
- (i)., an expert in accounts ll'nd fiscal policies;

PART II. — GAZETTE OF PAKISTAN; EXTRA., NOV. 1980, 1011 5

(j), a representative from the public, ICT; and
(k), District Attorney, JCT,

(2) The ICA may opt services, of its own or any officer of the ICT for its assistance.

(3) The ICA shall elect a secretary who shall conduct its business in accordance with the procedure prescribed in the Act and these rules.

5. Powers and functions of the ICA:—(1) In addition to the powers and functions entrusted to it by the council, the following shall be the powers and functions of the ICA, namely:—

- (a) to assist the council in devising the ways and means to determine, promote and protect the rights of the consumers;
- (b) to scrutinize the complaints made to it by any complainant or any ACA before referring them to the council for onward submission to the Authority;
- (c) to ensure the supply of consumer items at the prices fixed by the Government;
- (d) to submit to the Council quarterly or as directed by the council report of its activities, prepared by the secretary;
- (e) to adopt all ways and means, approved by the council, to curb unfair trade practices and to carry out the purposes of the Act and these rules;

(2) The ICA may entrust its powers and functions, except those entrusted to it by the council, to any or all ACA(s) constituted under rule 7;

(3) All members of the ICA shall hold office for a period of three years, but not more than one term. This period shall be extendable for a period of one year, if the Council is satisfied that the extension shall be made on one term basis and nomination or removal of all *ex-officio* members shall be by the Government.

Explanation:—The Council may, if it is satisfied that the explanation to the rule 3 and rule 7 shall be dealt by the ICA.

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6. Procedure to be followed by the IC :- (1) A complaint, made to the council of ICA or ACA directly or by a registered p st. addressed to the chairman of the council or the secretary, ICA or convener of an ACA shall contain :-

- (a) The name, description, address and contact number of the complainant;
- (b) The name; description, address and contact number of the respondent(s) so far as they can be ascertained;
- (c) The cause of action and the place where it arose;
- (d) The evidence in support of the allegations contained in the complaint;
- (e) The relief which the complainant claims; and
- (f) The findings and recommendations of the ACA, if the complaint is referred by the ACA.

(7) Every complaint under sub-rule (1) shall be filed in such number of copies as may be determined in writing by the council, ICA or the ACA, as the case may be.

(8) If the complaint is not filed within fifteen days, unless delay is caused due to some unavoidable circumstances, of its receipt from the ICA or the complainant, as the case may be.

(4) The ICA may require from the complainant and the respondent such oral and documentary evidence, if deemed necessary, and shall dispose of the complaint after personal hearing of both the parties, if there appears no cause of action on either legal grounds or on grounds of compromise arrived at by the parties.

If the ICA is of the opinion that the complaint is not maintainable, it shall refer the complaint along with its recommendation to the Council for further action.

(6) In the event of delay in disposing of a complaint within the period specified in sub-rule (3), the ICA shall record, in writing, the reasons for the delay in such disposal.

PART III THE OAZETrB OP PAKISTAN, EXTRA- NOVI!MBE!t OQ, 2011 7

(7) If the complainant or the respondent fails to appear before the ICA after having been duly-summoned, the ICA shall forthwith decide the matter *ex parte*.

(8) The ICA shall sit at such place and be provided with such facilities as the Provincial Government may determine. There shall be monthly meeting in the manner as the council may specify.

(9) Any member may by writing under his hand addressed to the chairman, resign from his office.

(10) No act or proceeding of the ICA shall be invalid merely on ground of any existing vacancy or defect in the composition of the ICA or irregularity in proceedings unless prejudice has been caused to the complainant or the respondent.

7. ACA and its Procedure:-(1) The ICA, in consultation with the council, shall cause constitution of as many ACA(s), sector-wise or otherwise, comprising of such members and for such areas as it may deem necessary.

Explanation 1: Any convenient division like that of Magisterial/PoUce/Union Council/COA Sector etc. may be adopted by the council for constitution of the ACA(s);

(2) The ACA(s) shall work under supervision of the convenor nominated by the ICA and a secretary elected by the respective ACA and shall sit at such places as the Provincial Government may authorize. ...

(3) The ACA(s) shall ensure implementation of the Act and the rules made there under and may refer any complaint to the ICA on finding any contravention of the Act or the Rules.

(4) The ACA may resort to *interim* or *interlocutory* between the complainant and the respondent and decide the matter at the local level within fifteen days of the written complaint made to the ACA or on any matter taken on *suo motu* action.

(5) **in** case of objection is not raised at, the ACA shall refer the case to the ICA immediately.

(6) The convenor and the members of the ACA(s) shall hold office for a period of *three* years. If the ACA(s) is removed by the ICA before the expiry of the period, further that the period may be extended for such further terms as deemed appropriate by the ICA. 1 [Provided also that an extension granted, at any time, shall not exceed to more than one term.]

(8) The business of the JCA (If the ACA(s) shall be conducted in accordance with the provisions of these rules.

(9) The ACA(s) shall hold meetings at such place(s) with such facilities as the District Administration, may specify.

- *Explanation:* The complaint relating to the retail purchasers of the goods etc. shall be dealt by the respective ACA.

8. Prices to be exhibited at the business place:- Unless a price catalogue is available for issuance to every customer, the manufacturer or trader shall display prominently in his shop or display-centre, notices specifying the retail or wholesale prices along with brand and manufacturer's name, as the case may be, of every type of goods available for sale in his shop or display-centre.

9. Receipt to be Issued to the purchaser:- Every manufacturer or trader who sells any goods shall provide the purchaser a receipt or any other reasonable proof showing that the item has been sold to the purchaser:

10. Return and refund policy:- Return and refund policy of a seller shall be disclosed and delivered to the buyer clearly before the transaction is completed and the same shall be displayed prominently and properly at the most conspicuous point of the sale or display-centre. Also the return and refund policy shall be printed on the receipt issued on sale of any item:

Provided that the seller shall take back the sold item from the purchaser if the same has not been changed; altered or damaged by the purchaser, unless it is due to any act of the seller or fault of the item or a natural consequence of the act or the fault, on production of proof of purchase within warranty period or reasonable time after the sale where warranty is not applicable:

Provided further that the reasonable time shall be determined keeping in view the terms and conditions of the sale, nature of the item and circumstances of each and every case.

II. Prohibition on bait advertisement:- (1) No person shall trade, advertise or supply at a specified price, products or services which the person does not —

(a) intend to offer for supply;

(b) have reasonable grounds or capacity for believing that they can be supplied at that price for a period that is, and in quantities that are, reasonable, having regard to the nature of the products or services and the market in which the person carries on business and the nature of the advertisement made by him).

(2) Any person who has advertised products or services for supply, at specified price, shall offer such products or services for supply, at that price, for a period that is, and in quantities that are, reasonable, having regard to the nature of the products, services and the market in which the person carries on business and the nature of the advertisement made by him.

12. (1) Where a complaint is found to be frivolous or vexatious, the ACA or the CA, or the Council, as the case may be, in which the proceedings are lying pending, shall not process the complaint further.

(2) Any complaint not falling within the ambit of ACA, CA, or the Council, as the case may be, shall be returned forthwith, so as to file it before the competent forum.

(3) Every complaint taken by the ACA, CA or the Council, suo-moto or otherwise, shall be filed before the Authority for decision.

13. (1) A decision by the ACA, CA or the Council, against any person, whether complainant or respondent, shall not bar the aggrieved person to file a complaint before the Authority.

[No. 7/1/2003-ICT-II.),

NISAR MUHAMMAD,
Secty Officer.

Annex 3: Punialt Consumer Protedion Ad 2005

THE PUNJAB CONSUMER PROTECTION ACT 2005

(Pb. Act TT of 2005)

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THE PUNJAB CONSUMER PROTECTION ACT 2005

(Pb. Act 11 of 2005)

(25 January 2005)

All Act to provide for protection and promotion of the rights and interests of the consumers.

Preamble – Whereas, it is expedient to provide for protection and promotion of the rights and interests of the consumers, speedy redress of consumer complaints and for matters connected therewith;

It is hereby enacted as follows:-

Part I

LEGISLATIVE

1. Short title, extent and commencement.- (1) This Act may be called the Punjab Consumer Protection Act 2005.

(2) It shall extend to the whole of the Province of the Punjab.

(3) It shall come into force at once.

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

(a) "Act" means the Punjab Consumer Protection Act 2005;

(b) "Authority" means the District Coordination Officer of the district concerned or any other officer as may be notified by the Government;

(c) "consumer" means a person or entity who--

(i) buys or obtains on lease any product for a consideration and includes any user of such product but does not include a person who obtains any product for resale or for any commercial purpose; or

(ii) hires any service for a consideration and includes any beneficiary of such services;

Explanation:- For the purpose of sub-clause (i), "commercial purpose" does not include use by a consumer of products bought and used by him only for the purpose of his livelihood as a self-

- employed person.
- (d) "damage" means all damage caused by a product or service including damage to the product itself and economic loss arising from a deficiency in or loss of use of the product or service;
 - (c) "entity" means an organization that has a legal identity apart from its members;
 - (f) "Government" means the Government of the Punjab;
 - (g) "laboratory" means a laboratory established or recognized by the Provincial Consumer Protection Council and includes any such laboratory or organization established by or under any law for the time being in force, which is maintained, financed, aided or recognized by the Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;
 - (h) "manufacturer" includes a person or entity who—
 - (i) is in the business of manufacturing a product for purposes of trade or commerce;
 - (ii) labels a product as his own or who otherwise presents himself as the manufacturer of the product;
 - (iii) as a seller exercises control over the design, construction or quality of the product that causes damage;
 - (iv) assembles a product by incorporating into his product a component or part manufactured by another manufacturer; and
 - (v) is a seller of a product of a foreign manufacturer and assumes or administers warranty obligations of the product, or is affiliated with the foreign manufacturer by way of partial or complete ownership or control; or modifies or prepares the product for sale or distribution;
 - (i) "manufacturing a product" means producing, fabricating, constructing, designing, remanufacturing, reconditioning or refurbishing a product;
 - (j) "product" has the same meaning as assigned to the word "goods" in the Sale of Goods Act, 1930, and includes products which have been subsequently incorporated into another product or an immovable hut does not include animals or plants or natural fruits and other raw products, in their natural state, that are derived from animals or plants;
 - (k) "services" include the provision of any kind of facilities or advice or assistance such as provision of medical, legal or engineering services but does not include—
 - (i) the rendering of any service under a contract of personal service;
 - (ii) the rendering of non-professional services like astrology or palmistry; or
 - (iii) a service, the essence of which is to deliver judgment by a court of law or arbitrator;
 - (l) "reasonably anticipated alteration or modification" means a change in a product that a product manufacturer should reasonably expect to be made by an ordinary person in the same or similar circumstances and a change arising from ordinary wear or tear, but does not include—
 - (i) changes to or in a product because the product does not receive reasonable care and **maintenance; or**
 - (ii) alteration, modification or removal of an otherwise adequate warning; or
 - (iii) the failure of the seller to provide an adequate warning to the consumer where the same had been provided by the manufacturer and he could do no more; and
 - (m) "reasonably anticipated use" means a use or handling of a product that the product manufacturer should reasonably expect of an ordinary person in the same or similar circumstances.
3. Act not in derogation of any other law.—The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Part II

LIABILITY ARISING FROM DEFECTIVE PRODUCTS

4. Liability for defective products.—(1) The manufacturer of a product shall be liable to a consumer for

damages proximately caused by a characteristic of the product that renders the product defective when such damage arose from a reasonably anticipated use of the product by a consumer.

(2) A product shall be defective only if—

- (a) it is defective in construction or composition as provided in section 5;
- (b) it is defective in design as provided in section 6;
- (c) it is defective because an adequate warning has not been given as provided in section 7; and
- (d) it is defective because it does not conform to an express warranty of the manufacturer as provided in section 8.

5. Defective in construction or composition.—A product shall be defective in construction or composition if, at the time the product was manufactured, a material deviation was made from the manufacturer's own specifications, whether known to the consumer or not.

6. Defective in design.—(1) A product shall be defective in design if, at the time the product left its manufacturer's control

(a) there existed an alternative design for the product that was capable of preventing the damage to a consumer; and

(b) the likelihood and gravity of damage outweighed the burden on the manufacturer of adopting such alternative design and any adverse effect of such alternative design on the utility of the product.

(2) When the manufacturer has used reasonable care to provide adequate warning to the users or handlers of the product, it shall be considered in evaluating the likelihood of damage arising from the design of a product.

7. Defective because of inadequate warning.—(1) A product shall be defective if an adequate warning about the product that it possessed a characteristic that could cause damage, has not been provided at the time the product left its manufacturer's control or the manufacturer has failed to use reasonable care to provide an adequate warning of such characteristic and its danger to users and handlers of the product:

Provided that a manufacturer shall not be required to provide an adequate warning about his product when—

(a) the ordinary user or handler of the product could know, with the ordinary knowledge common to the community, that the product has dangerous characteristics which could cause damage; or

(b) the user or handler of the product already knows or should be reasonably expected to know that the product has characteristics which were dangerous and could cause damage.

(2) A manufacturer of a product who, after the product has left his control, acquires knowledge about the dangerous characteristics of the product that could cause damage, or who would have acquired such knowledge had he acted as a reasonably prudent manufacturer, shall be liable for damage caused by his subsequent failure to use reasonable care to provide an adequate warning of such characteristic and its danger to users and handlers of the product.

8. Defective because of non-conformity to express warranty.—A product shall be defective when it does not conform to an express warranty made at any time by the manufacturer about the product if the express warranty has induced the claimant to use the product and the claimant's damage was proximately caused because the express warranty was untrue.

9. Proof of manufacturer's knowledge.—(1) Notwithstanding anything contained in section 6, a manufacturer of a product shall not be liable for damage proximately caused by a characteristic of product's design if the manufacturer proves that at the time the product left his control—

(a) he did not know and, in the light of the then existing and reasonably available scientific and technological knowledge, could not have known the design characteristic that caused the damage or the danger of such characteristic; or

(b) he did not know and, in the light of the then existing and reasonably available scientific and technological knowledge, could not have known of the alternative design identified by the consumer

under section 6 (I); or

- (c) the alternative design identified by the consumer under section 6 (I) was not feasible in the light of the then existing and reasonably available scientific and technological knowledge or then existing economic practicality.

(2) Notwithstanding anything contained in section 7(I) or 7(2), a manufacturer of a product shall not be liable for damage if the manufacturer proves that, at the time the product left his control, he did not know and, in the light of the then existing and reasonably available scientific and technological knowledge, could not have known of the characteristic that caused the damage or the danger of such characteristic.

10. Restriction on grant of damages.—Where the consumer has not suffered any damage from the product except the loss of utility, the manufacturer shall not be liable for any damages except a return of the consideration or a part thereof and the costs.

11. Duty of disclosure.—(1) Where the nature of the product is such that the disclosure of its component parts, ingredients, quality, or date of manufacture and expiry is material to the decision of the consumer to enter into a contract for sale, the manufacturer shall disclose the same.

(2) Notwithstanding anything contained in sub-section (I), the Government may, by general or special order, require such disclosure in any particular case.

12. Prohibition on exclusions from liability.—The liability of a person by virtue of this part to a consumer who has suffered damage shall not be limited or excluded by the terms of any contract or by any notice.

Part III

LIABILITY ARISING OUT OF DEFECTIVE AND FAULTY SERVICES

13. Liability for faulty or defective services.—A provider of services shall be liable to a consumer for damages proximately caused by the provision of services that have caused damage.

14. Standard of provision of services.—(1) Where the standard of provision of a service is regulated by a special law, provincial or federal, the standard of services shall be deemed to be the standard laid down by such special law.

(2) Where the standard of a service has not been provided for in any law or by the professional or trade body concerned, the standard shall be that which at the time of the provision of the service, a consumer could reasonably expect to obtain at that time in Pakistan.

15. Restriction on grant of damages.—Where the consumer has not suffered any damages from the provision of service except lack of benefit, the service provider shall not be liable for any damages except a return of the consideration or a part thereof and the costs.

16. Duty of disclosure.—(1) Where the nature of the service is such that the disclosure of the capabilities or qualifications of the provider of the service or the quality of the products that he intends to use for provision of the service is material to the decision of the consumer to enter into a contract for provision of services, the provider of services shall disclose the same.

(2) Notwithstanding anything contained in sub-section (I), the Government may, by general or special order, require such disclosure in any case.

17. Prohibition on exclusions from liability.—The liability of a person by virtue of this Part to a person who has suffered damage shall not be limited or excluded by the terms of any contract or by any notice.

Part IV

OBLIGATIONS OF MANUFACTURERS

18. Prices to be exhibited at the business place.—Unless a price catalogue is available for issue to customer, the manufacturer or trader shall display prominently in his shop or display-centre a notice specifying the retail or wholesale price, as the case may be, of every goods available for sale in that shop or display-centre.

19. Receipt to be issued to the purchaser.—Every manufacturer or trader who sells any goods shall issue to the purchaser a receipt showing —

- (a) the date of sale;
- (h) description of goods sold;
- (c) the quantity and price of the goods; and
- (d) the name and address of the seller.

20. **Return and refund policy.**—Return and refund policy of a seller shall be disclosed to the buyer clearly before the transaction is completed by means of a sign at (be point of purchase.

Part V

UNFAIR PRACTICES

21. **False, deceptive or misleading representation.**—No person shall make a false, deceptive or misleading representation that—

- (a) the products are of a particular kind, standard, quality, grade, quantity, composition, style or model;
- (h) the products have particular history or particular previous use;
- (c) the services are of a particular kind, standard or quality;
- (d) the services are provided by a person having a requisite skill or qualification or experience;
- (e) the products were manufactured, produced, processed or reconditioned at a particular time;
- (f) the products or services have any sponsorship, approval, endorsement, performance, characteristics, accessories, uses or benefits;
- (g) the products are new or reconditioned or have been in use for a particular period of time only;
- (h) the seller or producer of products or provider of services has any sponsorship, approval, endorsement or affiliation;
- (i) the products or services are necessary for somebody's well being;
- (j) concerns the existence, exclusion or effect of any condition, guarantee, right or remedy; and
- (k) concerns the place of origin of products.

22. **Prohibition on bait advertisement.**—(1) No person shall, in trade, advertise or supply at a specified price products or services which that person—

- (a) does not intend to offer for supply; or
- (b) does not have reasonable grounds for believing that they can be supplied at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(2) Any person who has advertised products or services for supply at a specified price shall offer such products or services for supply at that price for a period that is, and in quantities that are reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

Part VI

POWERS OF THE AUTHORITY

23. **Powers of Authority.**—(1) Any person may file a complaint for violation of the provisions of sections 11, 16, 18 and 19 before the Authority who, on being satisfied that such is the case, may recover the amount that may extend to fifty thousand rupees and which may be recovered as arrears of land revenue.

(2) The Authority may file a claim for declaring a product defective under sections 4, 5, 6, 7 or 8 or a service as faulty or defective under section 13 without proof of any damage actually suffered by a consumer but likely to be suffered keeping in view the general standard of that service.

(3) The Authority may file a claim before the Consumer Court for declaring any act on the part of any person as being in contravention to Part IV of this Act without proof of any damage actually suffered but likely to be suffered due to the said contravention.

(4) The Authority on receipt of a complaint or a reference from the Consumer Protection Council or on his own motion, may hold an inquiry as to defects in products or services or practices which contravene any of the provisions of this Act. No prior notice shall be required to be given to a manufacturer or provider of

service\$ for the purposes of holding <m inquiry.

(5) The Authority, while holding an inquiry, may direct the Office or any other officer or authority of the Government to gather such evidence as it deems necessary or to perform function in accordance with law which have an impact on the inquiry.

(6) The Authority may delegate his powers under this Act through a notification to any officer of the Government with its prior approval.

(7) Any person aggrieved by the order passed under sub-section (I) may file an appeal before the Government within thirty days of such order.

Uli23-A. Powers of Government. (I) The Government may, by general or special order and subject to such conditions as may be prescribed, exercise all or any of the powers conferred upon the Authority under this Act except the power of imposition of fine under section 23(I).

(2) The Government may, from time to time, issue directions to the Authority with regard to the performance of the functions of the Authority under this Act.

(3) The Government may, at any stage, modify or set aside any order or action of the Authority subject to such condition or conditions as it may deem fit.)

Part VII

CONSUMER PROTECTION COUNCIL

24.Consumer Protection Council.— (I) The Government shall set up a Consumer Protection Council in the Province.

(2) The Government may set up Consumer Protection Councils in one or more districts which shall report to the Provincial Consumer Protection Council.

(3) The Consumer Protection Councils shall have such other functions as may be assigned to them by the Government by notification in the official Gazette.

(4) The Provincial Consumer Protection Council shall gather such information and data as may be necessary in order to remove unreasonably dangerous products and faulty and defective services from trade or commerce.

(5) Each Consumer Protection Council shall have an adequate representation of consumers and associations of trade, industry and service\$, as the case may be, duly registered under the law for the time being in force; provided that the representation of consumers on the Council, other than any ex-officio members, shall not be less than fifty per cent of its total membership.

Part VIII

DISPOSAL OF CLAIMS AND ESTABLISHMENT OF CONSUMER COURTS

25.Filing of Claims.— A claim for damages arising out of contravention of any provisions of this Act shall be filed before a Consumer Court set up under this Act.

26.Establishment of Consumer Courts.— (I) The Government shall, by notification, establish one or more separate Consumer Courts [for an area, comprising one or more districts] to exercise jurisdiction and powers under this Act.

(2) A Consumer Court shall consist of a District Judge¹²¹ [or an Additional District Judge] to be appointed by the Government in consultation with the Lahore High Court.

(1) The terms and conditions of service of [the District Judge or the Additional District Judge] appointed under sub-section (2) shall be such as may be prescribed.

27. Jurisdiction of Consumer Courts.— Subject to the provisions of this Act, the Consumer Court shall have jurisdiction to entertain complaints within the local limits of whose jurisdiction—

(a) the defendant or each of the defendants, where there are more than one, at the time of filing of the claim, actually and voluntarily resides or carries on business or personally works for gain; or

- (b) any of the defendants where there are more than one, at the time of the filing of the claim, actually and voluntarily resides, or carries on business, or personally works for gain; provided that in such a case the permission is granted by the Consumer Court or the defendants who do not reside, or carry on business, or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action wholly or in part arises.

28. Settlement of Claims.—(1) A consumer who has suffered damage, or Authority in other cases, shall, by written notice, call upon a manufacturer or provider of services that a product or service is defective or faulty, or the conduct of the manufacturer or service provider is in contravention of the provisions of this Act and he should remedy the defects or give damages where the consumer has suffered damage, or cease to contravene the provisions of this Act.

(2) The manufacturer or service provider shall, within reasonable days of the receipt of the notice, reply thereto.

(3) No claim shall be entertained by a Consumer Court unless the consumer or the Authority has given notice under sub-section (1) and provided proof that the notice was duly delivered but the manufacturer or service provider has not responded thereto.

(4) A claim by the consumer or the Authority shall be filed within thirty days of the arising of the cause of action:

Provided that the Consumer Court, having jurisdiction to hear the claim, may allow a claim to be filed after thirty days within such time as it may allow if it is satisfied that there was sufficient cause for not filing the complaint within the specified period:

Provided further that such extension shall not be allowed beyond a period of sixty days from the expiry of the warranty or guarantee period specified by the manufacturer or service provider and if no period is specified one year from the date of purchase of the products or providing of services.

29. Settlement at pretrial stage.— Any party to the dispute may, at the pretrial stage, make a firm written offer of settlement stating the amount offered for settlement and if the offer is accepted by the opposing party, the Consumer Court shall pass an order in terms of the settlement:

Provided that notwithstanding anything contained in any other law for the time being in force, the party refusing the offer of settlement shall pay actual costs of litigation, including lawyer's fees, in case the final order of the Consumer Court is passed against that party:

Provided further that the court's approval regarding settlement shall be required in the following matters—

- (i) claims of a minor;
- (ii) claims of a legally incapacitated person; and
- (iii) claims involving collective rights.

30. Procedure on receipt of complaint.—(1) The Consumer Court shall, on receipt of a claim if it relates to any products,—

- (a) forward a copy of the claim to the defendant mentioned in the claim directing him to file his written statement within a period of fifteen days or such extended period not exceeding fifteen days;
- (b) where the defendant, on receipt of claim referred to him under clause (a), denies or disputes the allegations contained in the claim, or omits or fails to present his case within the time specified, as the case may be, the Consumer Court shall proceed to settle the consumer dispute in the manner specified hereafter;
- (c) where the claim alleges that products are defective and do not conform to the accepted industry standards, the Consumer Court may decide the dispute on the basis of the evidence relating to the accepted industry standards and by inviting expert evidence in this regard;
- (d) where the dispute cannot be determined without proper analysis or test of products, the Consumer Court shall obtain sample of the products from the complainant, seal it and authenticate it in the

manner prescribed and refer the sample to a laboratory along with a direction to make analysis or test, whichever may be necessary, with a view to finding out if such product suffers from any defect and to report its findings to the Consumer Court within a period of thirty days of the receipt of the reference or within such period as may be extended, not exceeding fifteen days by the Consumer Court; and

(c) the Consumer Court may require the claimant to deposit to the credit of the Consumer Court such fees as may be specified, for payment to the laboratory for carrying out the necessary analysis or test and the fee so deposited by the claimant shall be payable by the defendant if the test or analysis support the version of the claimant.

(2) The Consumer Court shall, if the claim relates to any services,-

(a) forward a copy of such claim to the defendant directing him to file his written statement within a period of fifteen days or such extended period not exceeding fifteen days as may be granted by the Consumer Court; and

(b) on receipt of the written statement of the defendant, if any, under clause (a), proceed to settle the dispute on the basis of evidence produced by both the parties:

Provided that if the defendant does not deny or dispute the allegations made in the complaint or fails to present his case within the specified period, the dispute shall be settled on the basis of the evidence brought by the claimant.

(3) For the purposes of this section, the Consumer Court shall have the same powers as are vested in civil court under the Code of Civil Procedure, 1908 (Act XX of 1908), while trying a suit, in respect of the following matters, namely:-

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

(b) the discovery and production of any document or other material object which may be produced as evidence;

(c) the receiving of evidence on affidavits;

(d) issuing of any commission for the examination of any witness; and

(e) any other matter which may be prescribed.

(4) Every proceeding before the Consumer Court shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 or the Pakistan Penal Code 1860 (Act XLV of 1860), and section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (Act V of 1898):

Provided that the personal presence of the claimant before the Consumer Court shall not be required till the defendant has put up appearance before it.

(5) The Consumer Court shall decide the claim within six months after the service of summons on the respondent.

31. Order of Consumer Court.- If, after the proceedings conducted under this Act, the Consumer Court is satisfied that the products complained against suffer from any of the defects specified in the claim or that any or all of the allegations contained in the claim about the services provided are true, it shall issue an order to the defendant directing him to take one or more of the following actions, namely:-

(a) to remove defect from the products in question;

(b) to replace the products with new products of similar description which shall be free from any defect;

(c) to return to the claimant the price or, as the case may be, the charges paid by the claimant;

(d) to do such other things as may be necessary for adequate and proper compliance with the requirements of this Act;

(e) to pay reasonable compensation to the consumer for any loss suffered by him due to the negligence of the defendant;

- (t) to award damages where appropriate;
- (g) to award actual costs including lawyers' fees incurred on the legal proceedings;
- (h) to recall the product from trade or commerce;
- (i) to confiscate or destroy the defective product;
- (j) to remedy the defect in such period as may be deemed fit; or
- (k) to cease to provide the defective or faulty service until it achieves the required standard.

32. **Penalties.**— (1) Where a manufacturer fails to comply or in any way infringes the liabilities provided in sections 4 to 8, 11, 13, 14, 16, 18 to 22, he shall be punished with imprisonment which may extend to two years or with fine which may extend to hundred thousand rupees or with both in addition to damages or compensation as may be determined by the court.

(2) Where a defendant or the claimant fails or omits to comply with any order made by the Consumer Court, such defendant or the claimant shall be punishable with imprisonment for a term not less than one month which may extend to three years, or with fine not less than five thousand rupees which may extend to twenty thousand rupees or with both.

33. **Appeal.**— Any person aggrieved by any final order of the Consumer Court may file an appeal in the Lahore High Court within 30 days of such order.

34. **Finality of Order.**— Every order of the Consumer Court, if no appeal has been preferred against such order under the provisions of this Act, shall become final.

35. **Dismissal of frivolous or vexatious claims.**— Where a claim is found to be frivolous or vexatious, the Consumer Court shall dismiss the claim and impose fine on the claimant up to an amount not exceeding ten thousand rupees for having willfully instituted a false claim and shall award appropriate compensation to the defendant from the amount of fine so realized.

Part IX MISCELLANEOUS

36. **Aid to the Consumer Court** — All agencies of the Government shall act in aid of the Consumer Court in the performance of its functions under this Act.

37. **Immunity.**— No suit, prosecution or other legal proceedings shall lie against any functionary under this Act, acting under the direction of the Consumer Council or the Government for anything which is in good faith done or intended to be done under this Act.

38. **Power to make rules.**— The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

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

¹¹¹ This Act was passed by the Punjab Assembly on 13 January 2005; assented to by the Governor of the Punjab on 19 January 2005; and, was published in the Punjab Gazette (Extraordinary), dated 25 January 2005, page no. 2565 to 2571.

Inserted by the Punjab Consumer Protection (Amendment) Act 2006 (XI of 2006).

Inserted by the Punjab Consumer Protection (Amendment) Act 2006 (XI of 2006).

Substituted for the words "in each district" by the Punjab Consumer Protection (Amendment) Act 2006 (XI of 2006).

Inserted *ibid*.

Substituted *ibid*, for the words; "the District Judge".

Annex 4: Punialt Consumer Protection Rules 2009

DEPARTMENT NAME. DIRECTORATE OF CONSUMER PROTECTION COUNCIL.

NAME OF RVLES. PVNJAB CO'ISVMER PROTECTION RVLES. 2009.

NO. & DATE OF NOTIFICATION. NO. SO (E) 08-35/2009 DATED:-22-5-2009

GOVERNMENT OF THE PUNJAB

INDUSTRIES DEPARTMENT

Dated Lahore the 22nd May, 2009

NOTIFICATION:-

No. SO (E) 08-35/2009. In exercise of the powers conferred by section 38 of the Punjab Consumer Protection Act, 2005 (II of 2005), the Government of the Punjab is pleased to make the following rules:

1. **SHORT TITLE AND COMMENCEMENT.** – (1) These rules may be cited as the Punjab Consumer Protection Rules 2009.
(2) These shall come into force at once.
2. **DEFINITIONS.** – (1) In these rules:
 - (a) "Act" means the Punjab Consumer Protection Act, 2005 (II of 2005);
 - (b) "council" means the Provincial Consumer Protection Council;
 - (c) "Court" means the Consumer Court established under the Act;
 - (d) "defendant" means a person or an entity against whom a claim has been filed under the Act or who has been accused of any contravention of the provisions of the Act;
 - (e) "District Council" means a District Consumer Protection Council;
 - (f) "inspector" means an officer appointed or authorized by the Government to perform functions of inspector; and
 - (g) "rules" mean the Punjab Consumer Protection Rules 2009.

(2) A word or expression used but not defined in the rules shall mean the same as is assigned to it in the Act.
3. **COMPLAINTS BY PRIVATE PERSONS TO THE AUTHORITY.** – (1) A person may file a complaint to the Authority for violation of sections 11, 16, 18 and 19 of the Act.
 - (2) The Authority shall inquire into substance of the complaint and collect such evidence as it deems necessary.
 - (3) A police officer or any other officer or authority of the Government shall assist the Authority in collection of information or evidence.
 - (4) If the Authority is satisfied that sufficient material is available to prove any violation of the provision of sections 11, 16, 18 and 19 of the Act, it shall issue notice to the defendant and afford him an opportunity of hearing before passing an order.
 - (5) If the notice has been served upon the defendant and he fails to appear before the Authority, the Authority may proceed ex-parte and impose fine on the defendant on the basis of material available on the record.
4. **CASES TO BE INQUIRED INTO BY AUTHORITY.** – (1) The Authority, on receipt of a complaint or reference from the Council or on its own motion, may hold an inquiry as to defect in a product or services or practices which contravene any of the provisions of the Act.
 - (2). No prior notice shall be required to be given to a manufacturer or provider of services for the holding of an inquiry, but the Authority may give notice, if it deems appropriate.
 - (3) In an inquiry, the Authority may follow such procedure as it deems appropriate in the peculiar facts and circumstances of a case.

5. **PROCEDURE IN CASE OF DEFECTIVE PRODUCTS.** – (1) If the Authority is enquiring about the existence of a defective product, it shall examine the following aspects of the product:
 - (a) has the manufacturer set some standards with regard to the product;
 - (b) does the product adhere to an express warranty; and
 - (c) is the product defective due to any other cause.
- (2) In determining whether the product adheres to manufacturer's specifications or warranty, the Authority may rely on the statement of an expert analyst or a panel of expert analysts.
- (3) In determining whether a product is defective due to any other cause, the Authority shall consider any defect in design or defect because of inadequate warning in accordance with sections 6 or 7 of the Act.
6. **PROCEDURE IN CASE OF DEFECTIVE SERVICES.** – (1) If the Authority is enquiring about the existence of a defective service, it shall examine the following aspects of a service:
 - (a) is the provision of services subject to statutory or professional standards;
 - (b) does the services carry an express warranty;
 - (c) is the equipment used by the service provider of satisfactory standard and quality; and
 - (d) does the service provider possess adequate capacity and qualifications to deliver the services.
- (2) In determining whether a service is defective because of lack of adherence to any professional or statutory standards or otherwise, the Authority may rely on the evidence of an expert or a panel of experts.
7. **PROOF OF MANUFACTURE.** – (1) If a manufacturer disowns the product or is likely to disown the product or when situation so requires, the Authority may direct an inspector to obtain a sample of the product.
 - (2) The inspector, when so directed, shall obtain three samples of the product from market in the presence of two persons, place a mark and seal on each sample.
 - (3) The persons present and the person, from whom a sample is taken, shall sign and put the thumb impression on the samples.
 - (4) The Authority, in case the cost of the product is high, may require only one sample to be taken.
 - (5) The inspector shall send the sealed sample or samples to a laboratory or warehouse as directed by the Authority.
 - (6) The manufacturer or the distributor or the retailer shall provide sample to the inspector and in case of refusal, the inspector may seek the help of police or any other appropriate authority to obtain the sample.
 - (8) If possible, the Inspector shall pay the market price of the sample.
 - (9) The Authority or Council shall bear the cost of buying, sealing, mailing etc. of a sample and shall pay the fee for examination of the sample.
8. **SUPPORT TO AUTHORITY IN COLLECTION OF EVIDENCE.** – (1) All Government authorities shall provide such support and information to the Authority as it may require.
 - (2) If the Authority requires certain information from a person, he shall provide the same in writing within a specified period.
 - (3) The Authority may request the Court for issuance of search warrants for authorizing an inspector, police officer or any other functionary or the Government to enter and search any premises for the purpose of collection of evidence stating in writing the nature of the evidence and the reasons to believe that such evidence is available at the premises.
 - (4) If the Authority apprehends that the evidence is likely to be destroyed during the course of issuance of search warrants by the Court, it may issue the search warrants stating in writing the reasons for doing so and submit a report to the Court.

14. DEFENCE ETC. – (1) The Court shall follow the procedure contained in section 30 of the
 - (2) **Act after the receipt of the claim.**
 If the defendant admits the allegation made by the claimant the Court shall decide the claim
 - (3) **on the basis of the merit of the case and documents available on the record.**
 If during the proceedings conducted under section 30, the Court fixes a date for hearing of the parties, the claimant and defendant or their authorized agent^[2] shall appear before the Court on such date of hearing or any other date to which hearing is adjourned.
 If the claimant or his authorized agent fails to appear before the Court on such day, the Court may dismiss the claim on default, decide it on merit or adjourn it.
 - (5) **If the defendant fails to appear on the day of hearing, the Court may decide the claim ex-parte on the basis of documents available on the record or adjourn it.**
 - (6) The Court may exercise the powers of a civil court under the Code of Civil Procedure 1908 (XX of 1908) for setting aside an ex-parte order or restitution of a claim dismissed in default.
 - (7) The Court may, on the reasonable grounds at any stage, adjourn the hearing or the claim such but not more than one adjournment shall ordinarily be given and the claim should be decided as far as possible within 121 (one hundred and eighty days) from the date of notice received by the defendant
15. ANALYSIS OF THE PRODUCT. – (1) The Court may direct the Claimant to provide more than one sample of the product.
 - (2) **If a sample has been sent to a laboratory by the Court, the laboratory shall send a copy of the final report along with the method or analysis or test used to the Court, the claimant and the defendant.**
 - (3) **If any of the party disputes the correctness of the findings or the method of analysis of the laboratory, it shall submit its objections in writing to the Court within fifteen days of receipt of the report.**
16. PROOF OF MANUFACTURE.- (1) The Court may direct an inspector or an officer of the Court to obtain a sample of the product complained against when the defendant disowns the product.
 - (2) **The inspector shall obtain three samples of the product from market in the presence of two persons, place a mark and seal on each sample.**
 - (3) The persons present and the person, from whom a sample is taken, shall sign and put the thumb impression on the samples.
 - (4) **The Court may, if the cost of the product is high, require only one sample to be taken.**
 - (5) The Court may direct that the inspector shall send the samples to a laboratory or warehouse.
 - (6) **The manufacturer or the distributor or the retailer shall provide samples to the inspector and in case of refusal, the inspector may seek the help of police or any other appropriate authority to obtain samples.**
 - (7) **If possible, the Inspector shall pay the market price of the samples.**
 - (8) The claimant shall bear the cost of buying, sealing, mailing samples and laboratory fees.
17. ORDER OF THE COURT. – The presiding officer of the Court shall sign the order.
 date it
18. **and may direct that the same shall be communicated to the parties free of charge.**
 Appeal against the order of the Court. – (1) Any person aggrieved from a final order of the Court may, within thirty days of the order, file an appeal in the Lahore High Court in accordance with the Rules of Procedure of the Lahore High Court.

[2] The words one hundred and eighty days substituted vide notification no. So (E) S-35/2009 dated 19-08-2010

- (2) A memorandum of appeal shall be accompanied by the certified copy of the order of the Court appealed against and such of the documents as may be required to support the grounds of appeal.
 - (3) When the appeal is presented after the expiry of the period of limitation as specified in the Act, memorandum of appeal shall be accompanied by an application that he has sufficient cause for not preferring the appeal within the period of limitation.
 - (4) The Lahore High Court may exercise all or any of the powers of the Court under the Act or the rules, in respect of the appeal pending before it.
19. **CONSTITUTION OF THE COUNCIL.** – (1) The Consumer Protection Council shall comprise twenty four members, of which eleven shall be official members while thirteen shall be non-official members.
- (2) The official members shall be as follows:

(i)	Minister for Industries, Punjab;	Chairperson
(i)	Chief Secretary, Punjab;	Vice Chairperson
(ii)	Secretary to the Government Home Department;	Member
(iv)	Secretary to the Government Local Government Department;	Member
(v)	Secretary to the Government Industries Department;	Member
(vi)	Secretary to the Government Agriculture Department;	Member
(vii)	Secretary to the Government Health Department;	Member
(viii)	Secretary to the Government Food Department;	Member
(ix)	Secretary to the Government Labour Department;	Member
(x)	Provincial Police Officer, Punjab;	Member
(xi)	Director of the Council.	Member/Secretary
 - (3) The non-official members shall be as follows:
 - (i) President, Lahore Chamber of Commerce and Industry;
 - (ii) four persons to be nominated by the Government who have worked in the area of consumer protection and industrial standards and who are not public officials or elected representatives;

- (iii) heads of four nonprofit organizations dealing with consumer protection to be nominated by the Government preferably certified by the Pakistan Centre for Philanthropy, Islamabad; and
 - (iv) four female social workers to be nominated by the Government.
- (4) A non-official member, other than the President Lahore Chamber of Commerce and Industry, shall hold office for a period of three years without any bar on re-appointment.
- (5) The Council may coopt any other person as member including a representative of the till (Pakistan Standard and Quality Control Authority) but such member shall not be entitled to vote in the meeting of the Council.
- (6) The Secretary of the Council may, with the approval of the Chairperson or Vice Chairperson, call a meeting of the Council.

[3] The words Pakistan Standard and Quality Control Authority substituted vide notification no. So (E) S-35/2009 dated 19-08-2010

- (7) Eight members shall constitute the quorum for a meeting of the Council and the Chairperson or Vice Chairperson shall preside a meeting of the Council
- (8) If a casual vacancy is caused by resignation or removal of a non-official member, the Government shall fill the vacancy by fresh appointment within thirty days of the occurring of such a vacancy.
20. **TERMS AND CONDITIONS OF MEMBERSHIP.** – (1) A member of the Council shall not take part in any proceedings of the Council if he has any interest which is or which may be in conflict with the interest of the Council.
- (2) No person shall be appointed as non-official member if he has been convicted of any offence involving moral turpitude or has been held to be liable in a proceeding under the Act.
- (3) No person shall be appointed as a non-official member, or remain in office, if he is or has become physically or mentally incapable of performing his functions
- (4) A non official member may resign by addressing a resignation under his hand to the Government.
- (5) The Government may, for the reasons to be recorded in writing, remove a non-official member during his tenure as member.
21. **FUNCTIONS OF THE COUNCIL.** – The Council shall:
- (i) gather such information and data as may be necessary in order to remove defective products and services from trade or commerce and submit reference to the Authority;
 - (ii) examine the work being done by the District Councils and ensure that the District Councils are performing functions in accordance with the Act, rules and instructions of the Government;
 - (iii) review the reforms proposed by the District Councils, assess the feasibility for implementation of the reforms and suggest improvements;
 - (iv) advise the Government and Authority on matters relating to protection of consumers;
 - (v) increase awareness about consumer protection issues;
 - (vi) issue information booklets on standards or products and services in different areas of Pakistan and some selected areas of the world;
 - (vii) establish and manage a laboratory for carrying out tests of the products or equipment of the services; and
 - (viii) set guidelines and standards for the laboratories managed, recognized or registered by the Council.
22. **CONSTITUTION OF THE DISTRICT COUNCILS.** – (1) The Government may, by notification in the official gazette, establish a District Council.
- (2) A District Council shall comprise of twenty members of which nine shall be official members while eleven shall be non official members.

- (3) **The official members shall be as follow:**
- (i) District Coordination Officer Chairperson;
 - (i) **Executive District Officer. Finance Member**
and Planning;
 - (i) **Executive District Officer, Health; Member**
 - (iv) **Executive District Officer. Member**
Community Development;
 - (v) **Executive District Officer, Revenue; Member**
 - (vi) District Police Officer/City Police Member
Officer/Capital City Police Officer;
 - (vii) **District Officer, Agriculture: Member**
 - (viii) one TMO nominated by the District Member
Coordination Officer; and
 - (ix) Assistant Director (Legal) of the **Member/Secretary**
Council .

- (4) **The non official members shall be as follows:**
- (i) six prominent citizens nominated by the District Coordination Officer;
 - (ii) **head of the local Chamber of Commerce and Industry; and**
 - (iii) **four female social workers to be nominated by the Executive District Officer (Community Development).**
- (5) A non-official member may resign by submitting his resignation to the **Chairperson of the District Council.**
- (6) **If a non-official member fails to attend three consecutive meetings, without obtaining leave of absence from the Chairperson of the District Council, such member shall be deemed to have resigned from the District Council.**
- (7) **The Secretary of the District Council may, with the approval of the Chairperson, call a meeting of the District Council.**
- (8) **Six members shall constitute the quorum for a meeting of the District Council and the Chairperson shall preside a meeting of the District Council.**
- (9) A member of the District Council shall not take part in any proceedings of the **District Council if he has any interest which is or which may be in conflict with the interest of the District Council.**
- (10) A non-official member, other than the head of local Chamber of Commerce and Industry, shall hold office for a period of three years and eligible for re-appointment.
- (11) **The Government may, on the recommendation of the Chairperson of the District Council and for the reasons to be recorded in writing, remove a non-official member of the District Council during his tenure as member.**
23. **FUNCTIONS OF DISTRICT COUNCILS.** – The District Council shall:
- (i) recommend reforms to the Authority and to the Council for furthering the objects and purposes of the Act;
 - (ii) **create awareness among consumers against the marketing of products which are hazardous to life and property;**
 - (iii) **provide information and access to information regarding products and services available in the district to the consumers;**
 - (iv) **create awareness among public regarding access to products and services, and protection from any unfair, illegal or dangerous practices prevalent in the market;**
 - (v) **assist in the exchange of information, views and recommendations between manufacturers, suppliers, consumers and the Government;**
 - (vi) **perform any other function as directed by the Government or the Council; and**

- (vii) assist the Council in removing defective products and services from the market
24. REGISTRATION AND CATEGORIZATION OF LABORATORIES. – (1) The Council ~~may~~ register a laboratory or conducting test of a product or equipment.
- (2) The Council ~~may~~ recognize a laboratory for the purposes of test of products or equipment.
- (3) The Council ~~may~~ categorize specific laboratories to carry out any one or more categories of tests based on specialized capacity of the laboratory and its proposed cost for carrying out the analysis.
- (4) The Council ~~may~~ for the reasons to be recorded in writing, ~~de-register or derecognize~~ a laboratory.
25. PUBLIC DISCLOSURE. – After pronouncement of the final order by the Court, the Council shall obtain a copy of the order, publish it on its website and provide easy access of information to the consumers relating to products and services.
26. APPOINTMENT OF INSPECTORS. – (1) The Government may authorize an officer to act as inspector for an area or District.
- (2) The Government may appoint any person as inspector for an area or District on such terms and conditions, as it may specify.

Sd/-

SECRETARY TO THE GOVERNMENT OF THE PUNJAB

INDUSTRIES DEPARTMENT

No. & Date Even:

A copy is forwarded for information and necessary act to:

1. All Administrative Secretaries, Government of the Punjab.
2. The Accountant General, Punjab.
3. All Heads Attached Departments.
4. All Commissioner/ Deputy Commissioners in Punjab.
5. The Director, Punjab Consumer Protection Council, Lahore.
6. All concerned
7. The Superintendent, Government Printing Press, Punjab, Lahore for publication of this Notification in the next issue of the Punjab Government Gazette.
8. Private Secretary to CS/ACS.

Annex 5: NWFP Consumer Protection Act 1997

**THE NORTH-WEST FRONTIER PROVINCE
CONSUMERS PROTECTION ACT, 1997
N.W.F.P ACT NO. VI OF 1997.**

**AN
ACT**

*To provide for promotion and protection
of the interest of consumers .*

Preamble

WHEREAS it is expedient to provide for healthy growth of fair commercial practices, the promotion and protection of legitimate interests of consumers and speedy redressal of their complaints and matters arising out of or connected therewith.

It is hereby enacted as follows:

**Part-1
Preliminary**

1. Short title, extent, Commencement and application

- (i) This Act may be called the North-West Frontier Province Consumers Protection Act, 1997.
- (ii) It shall extend to whole of the North-West Frontier Province.
- (iii) It shall come into force at once.
- (iv) Save as otherwise expressly exempted by Government through a notification, this act shall apply to all goods and services.

2. Definitions

In this Act, unless there is anything repugnant in the subject or context,

- (a) "Authority" means the District Magistrate of the District concerned.
- (b) "Complainant" means:
 - (i) a consumer;
 - (ii) a voluntary consumer's association subject to such restrictions as may be prescribed; and

- (iii) Government, concerned Council, concerned Civic Development Authority or a local body and any person or agency authorized by the aforesaid on their behalf to lodge complaint before the Authority.
- (c) 'Consumer' means any person who: -
 - (i) buys goods for a consideration which has been paid or to promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing, and includes any user of such goods but does not include a person who obtains such goods for re-sale or for any commercial purpose; or
 - (ii) hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any beneficiary of such services.
- (d) 'Council' means a Consumer Protection council, established under Section-8;
- (e) '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;
- (f) 'Deficiency' means a deficiency or shortcoming in the standard of performance, quality 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 while providing a particular service;
- (g) 'Goods' means goods as defined in the Sale of Goods Act, 1930 (iii of 1930);
- (h) 'Government' means the Government of North -West Frontier Province; (i) 'Laboratory' means a laboratory or organization recognized by Government including the Federal Government and includes any such laboratory or organization established by or under any law for the time being, in force, which is maintained, financed or aided by Government including Federal Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;
- (j) 'Manufacturer' includes a person who:

- (i) makes or manufactures any goods or part thereof; or
- (ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others and claims the end product to be goods manufactured by himself; or
- (iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself;

Explanation :- A branch office of a manufacturer shall not be deemed to be different manufacturer even though an assembly operation, distribution and sale of goods is carried out at such branch office;

- (k) "Notification" means a notification published by rules made under this Act;
- (l) "Prescribed" means prescribed by rules made under this Act;
- (m) "Section" means a section of this Act.
- (n) "Services" includes services of any description which are made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, manufacturing, processing, accountancy, supply of electrical, mechanical or any other form of energy, boarding or lodging, entertainment, medicine, education, construction work, amusement, catering, security, or purveying news or other information and similar other services, but does not include the rendering of any service free of charge or under the contract of personal services; and
- (o) "Unfair trade practice" means a trade practice which a person for the purpose of sale, use or supply of any goods or provision of any service or for their promotion, adopts one or more of the following practices, causes loss or injury through hoarding, black-marketing, adulteration, selling of expired drugs, food items and commodities unfit for human consumption, or charging for the goods and services in excess of the price fixed by an authority authorized to do so under any law for the time being in force or in furtherance of such sale, use or supply makes any statement, whether 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, by
 - (i) falsely representing that the goods or, as the case may be, services are of a particular standard, quality, quantity, grade, composition, model, style or mode;

- (ii) falsely representing rebuilt, second-hand, renovated, reconditioned or old goods as new goods;
- (iii) falsely representing that the goods or, as the case may be, services have sponsorship or approval of the competent agency or authority or possesses specified characteristics, performance, accessories, use or benefits which such goods or services do not have;
- (iv) falsely representing that the goods or services offered fulfill the prescribed standard fixed by local or international authorities;
- (v) giving misleading representation of the need for, or the usefulness of any goods or services;
- (vi) falsely giving to the public any warranty or guarantee of the performance, specification, required ingredients, efficacy or length or life of a product or any goods that is not based on an adequate or proper tests thereof;
- (vii) falsely offering for sale or on lease any premises, house, apartment shop or building with specified facilities or with the promise to deliver possession thereof within a specified period or without any escalation in price or by falsely representing that such premises, house, apartment shop or building is being sold, built or constructed in accordance with the approved plans, specification and approval of the concerned authorities;
- (viii) misleading the public concerning the price at which a product or products or goods or services have been or are ordinarily sold or provided;
- (ix) giving false or misleading facts regarding facilities available in the private educational institutions or falsely representing that such institutions have proper approval of the concerned authorities or affiliated with foreign organizations;
- (x) falsely representing for provision of services by professionals and experts, including medical practitioners, engineers, architects, advocates, teacher and Hakccms;
- (xi) giving false or misleading facts disparaging the goods, services or trade of another person, firm, company or business concern;

- (xii) advertising for the sale or supply, at a bargain price, of goods or services which are not intended to be offered for sale or supply at such price;
- (xiii) offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction; and
- (xiv) falsely gives description of commodities and services offered through mail order.

3. **Act not to supersede other laws:** - The provisions of this Act shall be in addition to and not in derogation or supersession of any other law for the time being in force.

4. **Obligation of manufacturers:** - (1) Every manufacturer shall publish or mark on every packet or container the maximum retail price, the nature, standard or type and other specifications of the goods therein, the weight, size or volume and 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 trader thereof;

Provided that if any goods are not sold in packed form or in container, it shall be sufficient for the purposes of this subsection if the required information is exhibited conspicuously in the shop where the goods are being marketed;

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

(2) Any trader who sells any goods not marked with information required under subsection (1), shall incur the liabilities of the disregard of subsection (1), unless he proves that manufacturer of the goods or some other person identified by him is responsible for the offence and the onus of proof shall lie on such trader.

5. **Price to be exhibited at business place.** - In the absence of a price catalogue meant for the 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 all goods available for sale in that shop or display center.

6. **Receipt to be issued to the purchaser.** - Every trader who sells any goods shall, on demand by purchaser, whether he is a consumer or otherwise, issue to the purchaser a receipt setting out,

- (a) the date of sale;

- (h) the specifications and other identifying particulars of the goods sold;
- (c) the quantity and price of the goods;
- (d) the nature of sale, that is to say, whether wholesale or retail; and
- (e) the name and address of the seller:

Provided that if a trader uses an electronic machine for preparation of receipt in respect of the sale made, such receipt shall be taken as sufficient compliance with the requirements this section.

7. **Prohibition of false advertisement, etc.** - (1) Notwithstanding anything contained in any other law for the time being in force, no company, firm or person shall advertise in any manner not authorized by law for the sale or hiring of goods or services or any property, movable or immovable, or solicit deposits for repayment at higher rates of profit or interest and thereby causes loss to any consumer, whether financial or otherwise.

(2) Notwithstanding any punishment provided for making misrepresentation, false or misleading advertisement in any other law for the time being in force, the company, firm or a person or undertaking making such advertisement shall be liable to pay such compensation as the Authority may direct for causing loss to the person affected by such advertisement.

PART-II

8. **The Council.** - (1) As soon as may be, after the commencement of this Act, Government may, by notification in the Official Gazette, establish a Consumers Protection Council in each Division of the Province.

(2) The Council shall consist of a Chairman and such other members as Government may, by notification in the official Gazette, specify.

(3) The existence of vacancy in, or defect in the constitution of the Council shall not invalidate any act or proceedings of the Council.

(4) The Council shall observe such procedure for conducting its business as may be prescribed.

9. **Meeting of the Council.** - (1) The Council shall meet as and when necessary and at such time and place as the chairman may determine; provided that not more than a period of two months shall intervene between the two meetings of the Councils.

(2) In the absence of the Chairman, the Council shall elect one of its members to act as Chairman.

(3) The quorum of the meeting of the Council shall be two third of the total members.

10. **Objects and functions of the Council.** - (1) The objects and functions of the Council shall be to determine, promote and protect the rights of consumers, including: -

- (a) the right of protection against marketing of goods which are hazardous to life and property;
- (b) the right of information about the quality, quantity, potency, purity, standard and price of goods and services;
- (c) the right of access to a variety of goods at competitive prices;
- (d) the right for redressal against unfair trade practices of unscrupulous exploitation of consumers;
- (e) the right of Consumer's education; and
- (f) the right of easy availability of essential services and commodities.

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

(3) For promotion and protection of the interests of consumers, the Council shall coordinate between Government, manufacturers, producers, suppliers and consumers.

(4) All persons, bodies or organization, both official and non-official shall comply with the direction of the council and extend help in advancement of its objects and functions.

(5) The Police Department, Municipal Corporation/ Committees and other agencies of Government shall act in aid of the Authority for performance of its functions under this Act..

11. **Delegation of Power.** - (1) Government may, by notification in the official gazette, direct that all or any of the powers and functions conferred on the council shall, subject to such limitations, restrictions or conditions, may from time to time impose, be exercised and performed by such member or members of the Council or by such officer or officers of Government as may be specified.

(2) Government may appoint such officers as it may deem necessary to assist the council in the performance of its duties and functions.

PART-III

Disposal of Complaints

12. **Jurisdiction of the Authority.** - (1) Subject to the other provisions of this Act, the Authority having jurisdiction to entertain complaints shall be the Authority within the local limits of whose jurisdiction.

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or personally works for gain; or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business, or personally works for gain provided that in such case either the permission of the Authority is given, or the opposite party who does not reside, or carry on business, or personally work for gain, as the case may be, acquiesces in such institution; and
- (c) the cause of action wholly or in part arises.

13. **Manner in which complaint shall be made.**- (1) A complaint, in relation to any goods sold or delivered or any service provided, may be filed with the Authority by-

- (a) the consumer to whom such goods are sold or delivered or such service is provided;
- (b) the concerned council;
- (c) any recognized consumer association whether the consumer to whom the good sold or delivered or service is provided is a member of such association or not; or
- (d) an officer or Government authorized in this behalf.

Explanation: for the purpose of this section "recognized consumer association" means any voluntary consumer association registered under the Companies Ordinance 1984 (XLVI of 1984) or the Societies Registration Act, 1860 (XXI of 1860) or the Voluntary Welfare Agencies (Registration and Control) Act., 1961 or any other law for the time being in force and Consumer Cooperative Societies registered under the cooperative Societies Act, 1925 or such other association as may be prescribed.

(2) A complaint under this section shall be submitted within ten days of the sale, delivery or rendering of the service:

Provided that the Authority having jurisdiction to hear the complaint may allow a complaint to be filed after ten days and within such time as it may allow if it is satisfied that there was sufficient cause for not filing the same within the specified period:

Provided further that such extension shall not be allowed beyond a period of sixty days from the expiry of the warranty or guarantee period specified by the manufacturer of the goods or seller of the services and if no such period is specified, one year of the date of purchase of the goods or providing services.

14. Procedure on receipt of complaints.—(1) The Authority may either dispose off the complaint itself or transfer the same to a subordinate magistrate. The Authority or the magistrate subordinate to it, as the case may be, shall on receipt of a complaint, if it relates to any goods:

- (a) refer a copy of the complaint to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days;
- (b) where the opposite party on receipt of complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to present his case within the time specified as the case may be, the Authority or the magistrate as the case may be, shall proceed to settle the consumer dispute in the manner specified hereinafter provided;
- (c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the Authority or magistrate shall obtain sample of the goods from complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to a laboratory along with a direction to make an analysis or test, whichever may be necessary with a view to finding out whether such goods suffer from any defect and to report its findings thereon to the Authority or magistrate within a period of thirty days of the receipt of the reference or within such period as may be extended by the Authority or magistrate;
- (d) before sample of the goods is referred to any laboratory under clause (c), the Authority or magistrate may require the complainant to deposit to the credit of Authority or magistrate such fees as may be specified, for payment to the laboratory for carrying out the necessary analysis or test in relation to the goods in question. The fee so deposited by the complainant shall be recovered from the opposite party if the test/analysis supports the complainant's version and paid to the complainant;
- (e) on receipt of the report from the laboratory, the Authority or magistrate shall forward a copy of the report, along with such remarks as may be deemed appropriate, to the opposite party and the whole process shall be completed within two months;

- (f) if any of the parties disputes the correctness of the findings of the laboratory, or methods of analysis or test adopted by the laboratory, the Authority or magistrate shall require the opposite party or the complainant to submit in writing his objections in regard to the report of the laboratory;
- (g) the Authority or magistrate shall give a reasonable opportunity to both the parties of being heard with regard to the correctness or otherwise of the report before making an order under section –15.

(2) The Authority or Magistrate shall, if the complaint received relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any service,

- (a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the Authority or magistrate; and
- (b) on receipt of the defence of the opposite party, if any, under clause (b), proceed to settle the dispute on the basis of evidence produced by both the parties.

Provided that if the opposite party does not deny or dispute the allegations made in the complaint or fails to present his case within the specified period, the dispute shall be sealed on the basis of the evidence brought by the complainant.

(3) for the purpose of this section, the Authority or magistrate shall have the same powers as are vested in civil court under the Code of Civil Procedure, 1908 (V of 1908), while trying a suit, in respect of the following matters, namely: –

- (i) the summoning and enforcing attendance of any defendant or witness and examining him on oath;
- (ii) the discovery and production of any document or other material object producible as evidence;
- (iii) the receiving of evidence on affidavits;
- (iv) requisitioning of the report of the concerned analysis or test from the laboratory or from any other relevant source;
- (v) issuing or any commission for the examination or any witness; and
- (vi) any other matter which may be prescribed

(4) Every proceeding before the authority or magistrate shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Pakistan Penal Code (XIV of 1860) and the authority or magistrate shall be deemed to be a civil court for the purposes of section 195, and chapter XXXV of the Code of Criminal Procedure 1898 (V of 1898) presence of complainant before the competent court shall not be required till the accused/respondent has put up appearance before the authority or magistrate.

15. Findings of the Authority. –(I) If after the proceedings conducted under section 14 the Authority or magistrate is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any or all of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following actions namely

- (a) to remove defect from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price or, as the case may be, the charges paid by the complainant;
- (d) to do such other things as may be directed for adequate and proper compliance with the requirements of section 4, section 5 or section 6;
- (e) to pay such amount as may be awarded by it as compensation to the consumer for any loss or negligence of the opposite party.

(2) Every order made by the authority or magistrate under sub-section (I) shall be signed.

16. Penalties. – (1) Where any right of consumer required to be protected under section 10 is in any way infringed, the person responsible for such infringement shall be punished with imprisonment which may extend to two years or with fine which may extend to fifty (50) thousand rupees, or with both and shall also be liable to provide such compensation /relief as may be determined by the authority or magistrate.

(2) Whoever makes advertisement through print or electronic media or by chalking on walls or in any other manner in contravention of section 7, shall be punished with imprisonment which may extend to two years or with fine which may extend to twenty five thousand rupees, or with both.

(3) The authority or magistrate may, where it is deemed appropriate, order for payment of compensation to the consumer to the extent the consumer has suffered any damage or loss through any unfair trade practice.

(4) The authority or magistrate may, where it is deemed necessary for protection of the rights of other consumers, order for confiscation of any goods or material or direct for their destruction.

(5) The Authority or magistrate may, where it is deemed appropriate, order for removal of the defect (s) of the product involved or replacement thereof.

17. **Appeal** Any person aggrieved by an order made by the authority or magistrate may prefer an appeal against such order to the court of sessions within period of thirty days from the date of the order, and the provisions of the Code of Criminal Procedure, 1898 (Act v of 1898), in respect of appeal to the High Court shall *mutatis mutandis*, apply.

11.1. **Finality of orders.** - Every order of the authority or magistrate if no appeal has been preferred against such order under the provision of this act, shall become final.

19 **Dismissal of frivolous, or vexatious complaints.**- Where a complaint is found to be frivolous or vexatious, the Authority or magistrate as the case may be, shall dismiss the complaint and may also impose a fine on the complainant not exceeding five thousand rupees. Appropriate compensation may also be awarded to the respondent from the amount of fine so realized.

20 **Principle, liable for offence of agent and servant.** - Where any offence under this act is committed by an agent or servant of any manufacturer or trader, such offence shall be deemed to have been committed by such manufacturer or trader unless he proves that such offence was committed without his knowledge.

Part –IV

Miscellaneous

21 **Immunity.** - No suit, prosecution or other legal proceedings shall lie against the Council or any member thereof or any functionary under this Act or acting under the direction of the Council or Government for anything which is in good faith done or intended to be done under this Act.

22 **Power to make rules.** - Government may, by notification in the Official Gazette make rules for carrying out the purposes of this Act.

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

Annex 6: NWFP CP Rules 2007



GOVERNMENT OF N.-W.F.P.
INDUSTRIES, COMMERCE, MINERAL DEVELOPMENT,
LABOUR AND TECHNICAL EDUCATION DEPARTMENT.

Peshawar, the 11th day of 11/11/2006

NOTIFICATION

Peshawar, dated 11th Nov 2006.

No. NWFP/CP/2007-08/11 In exercise of the powers conferred by Section 8 of the North-West Frontier Province Consumers Protection Act: 1997 (N.-W.F.P.: Act No. VI of 1997), Government of the North-West Frontier Province is pleased to establish the Consumers Protection Council for each District in the North-West Frontier Province, which shall consist of the following:

1.	District Coordination Officer of the District concerned.	Chairman
2.	District Health Officer of the District concerned	Member.
3.	District Police Officer of the District concerned	Member.
4.	Chief Executive Officer of the District concerned	Member.
5.	President, District Chamber of Commerce and Industry/Trade Association of the District concerned	Member.
6.	A representative of a recognized Consumer/Civil Society organization to be nominated by District Government of the District concerned.	Member.
7.	A representative of a recognized Voluntary Women Organization to be nominated by the District Government of the District concerned.	Member.
8.	Industrial Development Officer of the District concerned	Member/Secretary

Note: The Council may co-opt other members (both official and non-official),
- if deemed necessary.

Secretary to Govt of NWFP
Industries, Commerce, Labour, Mineral
Development & Technical Education Department.

Encl: No. SOIV(IND)/3-94/2006-07 dated 10th November, 2006

Copy Forwarded to:

- District Coordination Officer ----- for information and further necessary action.

q/...f/J.' Section
Officer IV, Industries
Department.

(5) Minutes of every meeting shall be recorded in a book to be specifically maintained by the Council and minutes recorded will be resubmitted to the meeting shall be confirmed in the subsequent meeting

(6) All the decisions of the Council shall be taken by the majority of votes; but in case of equality of votes, the Chairman shall have a casting vote.

(7) The Secretary shall be responsible to follow up the decisions taken in a meeting with quarters concerned for its proper implementation

4. Term of Members:- (1) A non-official member of the Provincial Consumers Protection Council shall hold office for a period of three years, shall be eligible for re-appointment.

(2) A non-official member may resign in writing before the expiry of his office if he fails in two consecutive meetings of the Council for cogent reason or for any other reason deemed appropriate by the Government.

(3) A non-official member appointed in place of a resigning member or is removed shall hold office for the remaining term of the member.

5. Agenda:- (1) The agenda of the meeting shall be prepared by the Secretary with the approval of the Chairman and shall be sent to the members of the Council along with the intimation being sent to them under rule (4) of the Rules.

(2) The disposal of business shall be undertaken by the Council in such order as given in the agenda.

(3) Any member desirous of bringing any matter for the consideration of the Council, shall give a prior notice of such matter included in the agenda by giving a prior notice of at least one week before the meeting.

6. Jurisdiction:- (1) The District Consumer Protection Council shall be constituted in accordance with the provisions of the District Consumer Protection Act, 1986 (No. 18 of 1986) and shall have jurisdiction over the District Consumer Protection Council.

(2) The District Consumer Protection Council shall have jurisdiction over the District Consumer Protection Council and shall have jurisdiction over the District Consumer Protection Council.

(3) The District Consumer Protection Council shall have jurisdiction over the District Consumer Protection Council and shall have jurisdiction over the District Consumer Protection Council.

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TheNetwork
for Consumer Protection