

Classifications of White-Collar Crime

This was for the first time the classification of white collar crime was done under the National Accountability Ordinance; whereas all the previous statutes did not define this term: It includes two persons:

- Holder of Public Office: which also includes the public servants as defined in Sec. 21 of the Pakistan Penal Code, 1860; and
- A person; as in the case of a Company or a body corporate, the sponsors, Chairman, Chief Executive, Managing Director, elected directors, by whatever name called.

Holder of Public Office

The holder of public office has been defined in the section 5, clause (l), of National Accountability Ordinance 1999:

“Holder of public office” means a person who:

- has been the President of Pakistan or the Governor of a Province.
- is, or has been the Prime Minister, Chairman Senate, Speaker of the National Assembly, Deputy Speaker National Assembly, Federal Minister, Minister of State, Attorney General and other Law Officer appointed under the Central Law Officers Ordinance, 1970 (VII of 1970), Advisor to the Prime Minister, Special Assistant to the Prime Minister, Federal Parliamentary Secretary, Member of Parliament, Auditor General, Political Secretary, Advisor or Consultant to the Prime Minister and holds or has held a post or office with the rank or status of a Federal Minister or Minister of State;
- is, or has been, the Chief Minister, Speaker Provincial Assembly, Deputy Speaker Provincial Assembly, Provincial Minister, Advisor to the Chief Minister, Special Assistant to the Chief Minister, Provincial Parliamentary Secretary, Member of the Provincial Assembly, Advocate General including Additional Advocate General and Assistant Advocate General, Political Secretary, Advisor or Consultant to the Chief Minister and who holds or has held a post or office with the rank or status of a Provincial Minister;
- is holding, or has held, an office or post in the service of Pakistan, or any service in connection with the affairs of the Federation, or of a Province, or of a local council constituted under any Federal or Provincial law relating to the constitution of local councils, or in the management of corporations, banks, financial institutions, firms, concerns, undertakings or any other institution or organization established, controlled or administered by or under the Federal Government or a Provincial Government, other than a person who is a member of any of the Armed Forces of Pakistan, or for the time being is subject to any law relating to any of the said Forces, except a person who is, or has been a member of the said Forces and is holding, or has held, a post or office in any public corporation, bank, financial institution, undertaking or other organization established, controlled or administered by or under the Federal Government or a Provincial Government;

- is, or has been, the Chairman or Vice Chairman of a Zila Council, a Municipal Committee, a Municipal Corporation or a Metropolitan Corporation constituted under any Federal or Provincial law relating to local councils; and “Explanation” For the purpose of this the expressions “Chairman” and “Vice Chairman” shall include “Mayor” and “Deputy Mayor” as the case may be, and the respective councilors therein;
any person who has served in and retired or resigned from or has been discharged or dismissed from the Armed Forces of Pakistan.

Commission of Offence

The white collar crime is said to be committed; when

A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices:

- If he accepts or obtains from any person or offers any gratification directly or indirectly, other than legal remuneration, as a motive or reward such as is specified in section 161 of the Pakistan Penal Code 1860 for doing or forbearing to do any official act, or for showing or forbearing to do show, in the exercise of his official functions, favor or disfavour to any person, or for rendering or attempting to render any service or disservice to any person; or
- If he accepts or obtains or offers any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his official functions or from any person whom he knows to be interested in or related to the person so concerned; or
- If he dishonestly or fraudulently misappropriates or otherwise converts for his own use, or for the use of any other person, any property entrusted to him, or under his control, or wilfully allows any other person so to do; or
- If he by corrupt, dishonest, or illegal means, obtains or seeks to obtain for himself, or for his spouse or dependants or any other person, any property, valuable thing, or pecuniary advantage; or
- If he or any of his dependants or benamidars owns, possesses, or has acquired right or title in any assets or holds irrevocable power of attorney in respect of any assets or pecuniary resources disproportionate to his known sources of income, which he cannot reasonably account for or maintains a standard of living beyond that which is commensurate with his sources of income; or
- If he mis-uses his authority so as to gain any benefit or favor for himself or any other person, or renders or attempt to render or wilfully fails to exercise his authority to prevent the grant, or rendition of any undue benefit or favor which he could have prevented by exercising his authority; or
- If he has issued any directive, policy, or any SRO (statutory Regulatory Order) or any other order which grants or attempts to grant any undue concession or benefit in any

taxation matter or law or otherwise so as to benefit himself or any relative or associate or a benamidar or any other person; or

- If he commits an offence of wilful default; or
- If he commits the offence of cheating as defined in section 415 of the Pakistan Penal Code, 1860, and thereby dishonestly induces members of the public at large to deliver any property including money or valuable security to any person; or
- If he commits the offence of criminal breach of trust as defined in section 405 of the Pakistan Penal Code (Act XLV of 1860) with regard to any property including money or valuable security entrusted to him by members of the public at large; or
- If he in his capacity as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust as provided in section 409 of the Pakistan Penal Code, 1860 in respect of property entrusted to him or over which he has dominion; and

Under Art.199 of Islamic Republic of Pakistan High Court has jurisdiction to issue writ against National Accountability Bureau and its functionaries. The Chairman NAB shall have the, at any stage of the investigation under this Ordinance, to direct that the accused, if not already arrested, shall be arrested. Accused must be informed of the grounds of his arrest.

Types of White Collar Crime

The aggrieved parties may bring their claims under the mechanism hereinafter provided in the statutes to the Courts or to a special institution known as National Accountability Bureau established under National Accountability Ordinance 1999. Followings are the types of White Collar Crime:

Embezzlement

The taking of someone's property by a person with whom it is entrusted.

Larceny

Involves taking someone's property without paying for or returning it.

Extortion

Illegal use of one's official position or powers to obtain property, funds, or patronage; also known as blackmailing.

Fraud

This often includes but is not limited to health care fraud and tax fraud.

Price Fixing

An agreement between two parties to set prices for a certain product, thereby violating free market operations.

Racketeering

The extortion of money by force or a pattern of criminal activity committed to further the interests of a criminal syndicate.

Computer Fraud

Using a computer or technological devices to commit a crime.

Securities and Commodities Law Violations

Environmental Law Violations

Bank Fraud

To engage in an act or pattern of activity where the purpose is to defraud a bank of funds.

Racketeering

The operation of an illegal business for personal profit.

Tax Evasion

When a person commits fraud in filing or paying taxes.

Bribery

When money, goods, services, information or anything else of value is offered with intent to influence the actions, opinions, or decisions of the taker. You may be charged with bribery whether you offer the bribe or accept it.

Cellular Phone Fraud

The unauthorized use, tampering, or manipulation of a cellular phone or service. This can be accomplished by either use of a stolen phone, or where an actor signs up for service under false identification or where the actor clones a valid electronic serial number (ESN) by using an ESN reader and reprograms another cellular phone with a valid ESN number.

Cyber Crime

Where computer hackers steal information sources contained on computers such as: bank information, credit cards, and proprietary information.

Insider Trading

When a person uses inside, confidential, or advance information to trade in shares of publicly held corporations.

Insurance Fraud

To engage in an act or pattern of activity wherein one obtains proceeds from an insurance company through deception.

Investment Schemes

Where an unsuspecting victim is contacted by the actor who promises to provide a large return on a small investment.

Kickback

Occurs when a person who sells an item pays back a portion of the purchase price to the buyer.

Larceny / Theft

When a person wrongfully takes another person's money or property with the intent to appropriate, convert or steal it.

Money Laundering

The investment or transfer of money from racketeering, drug transactions or other embezzlement schemes so that it appears that its original source either cannot be traced or is legitimate.

Telemarketing Fraud

Actors operate out of boiler rooms and place telephone calls to residences and corporations where the actor requests a donation to an alleged charitable organization or where the actor requests money up front or a credit card number up front, and does not use the donation for the stated purpose.

Welfare Fraud

To engage in an act or acts where the purpose is to obtain benefits (i.e. Public Assistance, Food Stamps, or Medicaid) from the State or Federal Government.

Weights and Measures

The act of placing an item for sale at one price yet charging a higher price at the time of sale or short weighing an item when the label reflects a higher weight.

For Instance, when accused is guilty of an offence mentioned above i.e.

When the Embezzlement is said to be committed?

When one or more individuals dishonestly appropriating or secreting assets, usually financial in nature, when such assets have been entrusted to them. It is a kind of financial fraud.

For instance, a clerk or cashier handling large sums of money can embezzle cash from his or her employer, a lawyer can embezzle funds from clients' trust accounts, a financial advisor can embezzle funds from investors, or a spouse can embezzle funds from his or her partner. Embezzlement may range from the very minor in nature, involving only small amounts, to the immense, involving large sums and sophisticated schemes. Often it involves the trusted person embezzling only a small proportion or fraction of the funds received, in an attempt to minimize the risk of detection. If successful, embezzlements can continue for years (or even decades) without detection. It is often only when the funds are needed, or called upon for use, that the victims realize the funds or savings are missing and that they have been duped by the embezzler. Embezzlement is a statutory offense so the definition of the crime varies. Typical elements are:

Fraudulent conversion (The requirement that the conversion be fraudulent means simply that the defendant wilfully and without claim of right or mistake converted the property to his or her own use)

Property of another; and

By a person who has lawful possession of the property.

Embezzlement is a crime against ownership; that is, the owner's right to control the disposition and use of the property. The conversion element requires a substantial interference with the true owner's property rights (unlike larceny, where the slightest movement of the property when accompanied by the intent to deprive one of the possessions of the property permanently is sufficient)

Embezzlement statutes do not limit the scope of the crime to conversions of personal property. Statutes generally include conversion of tangible personal property, intangible personal property and choses in action. Real property is not typically included. The critical element is that the defendant must have been in lawful possession of the property at the time of the fraudulent conversion and not have mere custody of the property. If the defendant had lawful possession the crime is embezzlement. If the defendant merely had custody, the crime is larceny. If the embezzlement is committed in companies the claim may be refer to the Court under Section 290 of the Companies Ordinance, 1984.

How the offender is penalized under the law of the land as guilty of such offences?

Federal Investigation Agency (FIA) in Pakistan

Corruption Establishment used to take care of the Provincial subjects in their respective provinces. National Accountability Bureau (NAB) being a Federal Agency with wide powers and laws having over riding effects was looking after whole of Pakistan. However, in 2004

section 409 PPC was deleted from FIA Act and all cases pending in special courts transferred to NAB.

Till 2004, the primary role was to investigate the cases of corruption and white collar crime. In 2004, government transferred Anti-Corruption and Economic Crime functions to the NAB.

Pakistan Penal Code 1860

Section 161 to 165-A Pakistan Penal Code, 1860, Sec 5 of Prevention of Corruption Act, 1947 and Sec 9 of the National Accountability Ordinance, 1999 are the main tools in the hands of enforcement agencies of anti-corruption laws. The Provincial Anticorruption Establishment uses the first two sets of laws while the National Accountability Bureau uses the third set of laws.

Section 161 PPC: Public servant taking gratification other than legal remuneration in respect of an official act

Section 162 PPC: Taking gratification, in order, by corrupt or illegal means, to influence public servant

Section 163 PPC: Taking gratification, for exercise of personal influence with public servant

Section 164 PPC: Punishment for abetment by public servant of offences defined in Section 162 or 163

Section 165 PPC Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant

Section 165-A. Punishment for abetment of offences defined in Sections 161 and 165

National Accountability Ordinance (No. XVIII) of 1999

The promulgation of National Accountability Ordinance was a step forward to make efforts to eliminate corruption and corrupt practices, to provide effective measures to the society by setting up an institution of National Accountability Bureau.

The National Accountability Ordinance repealed the Ehtesab Act 1997, and all the pending proceedings would be transferred to the NAB, from the date of promulgation of the Ordinance.

The prevention of Corruption Act was the first legislation in an effort to control/eradicate corruption from the country. This Act is still in force but failed to achieve the objects. Then the Federal Government of Pakistan in November 1999 promulgated the National Accountability Ordinance. The Act was made applicable not only to public servants but its scope was extended to “holders of public office” and “persons” involved in corporate business.

The provisions of the Code of Criminal Procedure, 1898. (Act V of 1898), shall mutatis mutandis, apply to the proceedings under this Order. the provisions of Chapter XXIIA of the Code shall apply to trials under this Ordinance. Although the Accountability Court may, for reasons to be recorded, dispense with any provision of the Code and follow such procedure as it may deem fit in the circumstances of the case.

Previous Legislations

Prevention of Corruption Act, 1947

Public and Representative Offices Disqualification Act, 1949 (PRODA)

Elective Bodies (Disqualification Order, 1959 (EBDO)

Pakistan Criminal Law Amendment Act, 1958

Ehtesab Act, 1996 (Repealed)

National Accountability Bureau Ordinance, 1999

Other Related Laws

Pakistan Penal Code, 1860

Criminal Procedure Code, 1898

Income Tax Act

Customs Act

Recovery of loan Ordinance

Under Art. 199 of Islamic Republic of Pakistan, High Court has jurisdiction to issue the writ against National Accountability Bureau (NAB) and its functionaries.

The Chairman NAB shall have the, at any stage of the investigation under this Ordinance, to direct that the accused, if not already arrested, shall be arrested. Accused must be informed of the grounds of his arrest.

Grant of Bail

If he aids, assists, abets, attempts or acts in conspiracy with a person or a holder of public office accused of an offence as provided in clauses (i) to (xi). All offences under this Ordinance shall be non-bail able and notwithstanding anything contained in section 426, 491, 497, 498, and 561-A or any other provision of the Code of Criminal Procedure 1898, or any other law for the time being in force no Court shall have any jurisdiction to grant bail to any person accused of any offence under the National Accountability Ordinance.

International Co-operation Request for Mutual Legal Assistance

The Chairman NAB or any officer authorized by the Federal Government may request a Foreign State to do the following acts in accordance with the law of such State; to have evidence taken, or documents or other articles produced.

Punishments for Corruption and Corrupt Practices

A person who commits the offence of corruption and corrupt practices shall be punishable with imprisonment for a term which may extend to 14 years, or with fine, or with both, and such of the assets and property of such person which is found to be disproportionate to the known sources of his income or which is acquired by money obtained through corruption and corrupt practices whether in his name or in the name of any of his dependents, or benamidars shall be liable to be forfeited to the appropriate Government.

Transfer of Property Void

While the inquiry, investigation or proceedings are pending before the NAB or the Accountability Court; and any transfer of any right, title or interest or creation of a charge on such property shall be void.

Voluntary Return and Plea Bargain

Where before the commencement of the trial at any time thereafter, with the leave of the Court, the holder of a public office or any other person accused of any offence under this Ordinance voluntarily returns to the NAB, the assets or gains acquired through corruption or corrupt practices and discloses the full particulars relating thereto, the Chairman NAB, may release the accused person with the leave of the Court, or, proceed with the trial subject to such conditions if any, as may be imposed by the Court.

Power of the Court to Freeze Property

If there appear reasonable grounds for believing that the accused has committed such an offence, order the freezing of his property, movable or immovable, or part thereof, whether in his possession or in the possession of any relative, associate or person on his behalf.

The Accountability Court shall have exclusive jurisdiction to entertain and adjudicate upon all claims or objections against the freezing of any property under Sec. 12 above. Such claims or objections shall be made before the Accountability Court within 14 days from the date of the order, freezing such property.

Disqualification to Contest Elections

Where an accused person is convicted for the offence of corruption or corrupt practices, he shall stand disqualified for 21 years for seeking or from being elected, chosen appointed or nominated as a member or representative of any public office, or any statutory or local authority of the Government of Pakistan.

Provided that any accused person who has availed the benefit of sections 26 and 27 of this Ordinance shall also be deemed to have been convicted for an offence under this Ordinance, and shall stand disqualified for 21 years as above.

Reporting of Suspicious Financial Transactions

It shall be the duty of all banks and financial institutions to take prompt and immediate notice of all unusual or large transactions with context to the account, which have no apparently genuine economic or lawful purpose and upon bona fide professional judgment of the Bank suspicion that such transactions could constitute or be related to illegal or illicit activities, corruption or corrupt practices. Where there are reasonable grounds to believe that the assets of a person or any part thereof were acquired through corruption or corrupt practices, and there was no other likely source of acquiring such assets or part thereof, it shall be presumed, unless proved to the contrary by the accused person, that such assets or part thereof were acquired, generated or obtained through corruption and corrupt practices.

Cognizance of Offences

The Court shall not take cognizance of any offence under this Ordinance except under this Ordinance except on a reference made by the Chairman NAB or an officer of the NAB duly authorized by him.

A reference under this Ordinance shall be initiated by the National Accountability Bureau on
A reference received from the appropriate government; or

Receipt of a complaint; or

Its own accord.

Where the Chairman NAB, or an officer of the NAB duly authorized by him, is of the opinion that it is, necessary and appropriate to initiate proceedings against any person, he shall refer the matter for inquiry or investigation. The responsibility for inquiry into an investigation of an offence alleged to have been committed under this Ordinance shall rest on the NAB.

Conciliation Committee

Where a person has been arrested or is in the custody of NAB on the charge that he is guilty of committing the offence of wilful default on account of non-payment of dues to a bank or financial institution or cooperative society, he may apply to the Chairman NAB for the reconciliation of his liability through Conciliation Committee and the Chairman NAB may refer the matter to a Conciliation Committee. The Governor, State Bank of Pakistan shall constitute one or more Conciliation Committees for the purposes of this Ordinance.

Accused to be Competent Witness

According to Section 29 of NAO 1999, Any person charged with an offence punishable under this Ordinance shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him; the accused shall not be compelled to be a witness against himself; and where an accused person appears as a witness of his own choice and refuses to answer any question the court may draw such adverse inference from such refusal as it may think proper.

The Accountability Court shall have the jurisdiction and power to take cognizance of an offence committed in the course of the investigation or trial of a case by any officer, any witness, including an expert, who has tendered false evidence in the case, whether he deposed in Court or not, or any other person, under sections 176 to 182 of Chapter X, or sections 191 to 204, or 211 to 223, or 225-A of Chapter XI, of the Pakistan Penal Code 1860 (Act XLV of 1860), or under any other law relating to false evidence and offences against public justice, and to summarily try him and award punishment provided for the offence under the law.

Prohibition to Hamper Investigation

If any person concerned with inquiry, investigation and prosecution of a case consciously and deliberately and with malice compromises, hampers, misleads, jeopardizes or defeats an inquiry or investigation of a case under process before NAB or any concerned agency or authority or the Court.

According to Section 31-A of NAO 1999, Whoever absconds in order to avoid being served with any process issued by any Court or any other authority or officer under this Ordinance or in any manner prevents, avoids or evades the service on himself of such process or conceals himself to screen himself from the proceedings or punishment under this Ordinance shall be guilty of an offence under this ordinance punishable with imprisonment which may extend to three years notwithstanding the provisions of Sec. 87 and 88 of Code of Criminal Procedure, 1898, Code or any other law for the time being in force.

Withdrawal from Prosecution

According to Section 31-B of NAO 1999, The Prosecutor General Accountability may, with the consent of the Court, withdraw from the prosecution of any accused person generally or in respect of any one or more of the offences for which he is tried and upon such withdrawal before a charge has been framed.

Court to take Cognisance of Offence with Prior Approval of the State Bank

According to Section 31-C of NAO 1999, No Court established under this Ordinance shall take cognisance of an offence against an officer or an employee of a bank or financial institution for writing off, waiving, restructuring or refinancing any financial facility; interest or mark-up without prior approval of the State Bank of Pakistan.

Appeal and Revision

Any person convicted or the Prosecutor General Accountability, if so directed by the Chairman NAB, aggrieved by the final judgment and Order of the Court under this Ordinance may, within ten days of the final judgment and Order of the Court prefer an appeal to the High Court of the Province where the Court is situated. Provided that no appeal shall lie against any interlocutory order of the Court.

All appeals against the final judgment filed before the High Court will be heard by a Bench of not less than two Judges constituted by the Chief Justice of the High Court and shall be finally disposed of within thirty days of the filing of the appeal.

No revision shall lie against any interlocutory order of the Court.

According to Section 16-B of the National Accountability Ordinance, 1999, The Court shall have the power to punish for contempt of Court with imprisonment for a term which may extend to six months and with fine which may extend to one million rupees.

Structure and Functioning of the National Accountability Bureau (NAB)

National Accountability Bureau (NAB)

There shall be constituted a National Accountability Bureau for the whole of Pakistan

Chairman National Accountability Bureau

Acting Chairman, National Accountability Bureau

Deputy Chairman, National Accountability Bureau

Appointment of members of the staff and officers of the National Accountability Bureau is done by the Chairman NAB or any other person on his behalf.

Prosecutor General Accountability

Power to Seek Assistance

According to Section 27 of NAO 1999, The Chairman NAB shall have the power to seek full and complete assistance and call for all or any documents and information relevant to or in connection with any matter or proceedings pending before the NAB, from any Department of the Federal Government, Provincial Government, Local Authority, Bank, Financial institution, person or any authority and institution or department in the public sector or the private sector, as he may deem it fit and proper to demand or require, provided that in any case in which a question of secrecy is involved or is raised at time, the Chairman's decision shall be final.

Reporting of Public Contracts

According to Section 33B, All Ministries, Divisions and Attached Departments of the Federal Government, all departments of Provincial and local governments, the Federal Government or Provincial Government holders of public office shall furnish to NAB a copy of any contract, entered into by such Ministries, Divisions and Attached Departments of the Federal Government, all departments of Provincial Government or local governments, statutory corporations or authorities established by the Federal Government or Provincial Government or such holders of public office on its behalf, as the case may be, of the minimum monetary value of fifty million rupees or more, within such time as is reasonably practicable from the date of signing such contract.

Measures of Prevention of Corruption and Corrupt Practices

According to Sec.33C of NAO 1999, The Chairman NAB, shall from time to time, constitute committee comprising officers of the NAB or other persons or organizations from the private or public sectors to promote and educate the people how to combat and attenuate the corrupt practices in the society and to implement the laws and monitor its implementation.

NAB to submit Annual Report

According to Sec 33-B, The Chairman NAB shall as soon as possible after the end of every calendar year but before the last day of March next following, submit to the President a report of its affairs for that year which report shall be a public document and on the publication copies thereof shall be provided to the public at a reasonable cost.

Section 36 of the National Accountability Ordinance, also provides the immunity to concerned authorities that no suit, prosecution, or any other proceedings shall lie against the Federal Government, Provincial Government, Chairman NAB, or any other member of the NAB or any person exercising any power or performing any function under this Ordinance. And under sec. 37 of The National Accountability Ordinance 1999, the Chairman of the National Accountability Bureau with the approval of the President has the power to issue an order and also make rules, not inconsistent with the provisions of the ordinance to remove any difficulty which arises, while giving effect to its provisions.