

FROZEN OR FORFEITED DRUG ASSETS (ADMINISTRATION,
MANAGEMENT, MAINTENANCE AND DISPOSAL) RULES 2001

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S.R.O. 809(I)/2001.— In exercise of the powers conferred by section 77 of the Control of Narcotic Substances Act, 1997 (XXV of 1997), the Federal Government is pleased to make the following rules, namely:—

CHAPTER-1.—PRELIMINARY

1. Short title and commencement.—(1) These rules may be called the Frozen or Forfeited Drug Assets (Administration, Management, Maintenance And Disposal) Rules, 2001.

(2) They shall come into force at once.

2. Definitions. — (1) In these rules unless there is any thing repugnant in the subject or context:—

(a) "Act" means the Control of Narcotic Substances Act, 1997 (XXV of 1997);

(b) "Administrator" means any officer appointed by the Federal Government under sub-section (1) of section 44 of the Act;

(c) "Form" means form annexed to these rules;

(d) "Fund" means the national fund for Control of Drug Abuse constituted under sub-section (1) of section 54 of the Act; and

(e) "godown" means a godown for storage of assets frozen or forfeited to the Federal Government under the Act and received by the Administrator for management, maintenance and disposal.

(2) The words and expressions used but not defined herein shall have the same meaning as assigned to them in the Act.

CHAPTER-II.—ASSISTANCE TO THE ADMINISTRATORS

3. Assistance to the Administrators.—The Federal Government may from time to time, provide such members of staff and other persons as it thinks fit to assist the Administrator in exercise of his powers and performance of duties under these rules.

CHAPTER-III.—DESIGNATION OF GODOWNS, RECEIPT AND
MANAGEMENT OF PROPERTY

4. Designation of godowns.—(1) Subject to the approval of the Federal Government, the Administrator shall designate as many godowns as may be necessary for the storage of assets frozen or forfeited to the Federal Government under the Act and received by him for management, maintenance and disposal.

(2) The Director-General or the Administrator shall select godowns, referred to in sub-rule (1), as per Government rules, keeping in view the security of the premises, storage capacity, nature of assets and other relevant factors.

(3) Each designated godown shall have a godown keeper and a godown-in-charge to assist the Administrator.

5. Proper accounting of properties.— The Administrator shall, at the time of receiving the assets, insure proper identification of such assets with reference to its particulars mentioned in the freezing order or as the case may be, the forfeiture order made under the Act.

6. Godown register.— The Administrator shall cause to be maintained register in Form I for recording entries in respect of assets, other than the assets, referred to in rule 7.

7. Godown register for valuables.—The Administrator shall cause to be maintained a register in Form II for recording entries in respect of asset, namely gold and gold jewellery, diamonds (including rough and uncut diamonds), precious and semi-precious stones other than diamonds and wrist watches (hereinafter called 'valuables').

8. Storage of Assets.—(1) The Administrator shall ensure that the packages containing valuables are kept in the godown in an iron safe and vault, under double lock system and one key shall remain with the godown keeper and the other to be retained by the godown-incharge.

(2) Valuables as mentioned in rule-7 shall preferably be kept in the State Bank of Pakistan or any nationalized bank. Their deposit or withdrawal should be allowed on a joint signatures of two officers of gazetted rank.

(3) The packages referred to in sub-rules (1) and (2) and shall be stored systematically, inquiry-wise/case-wise, serial-wise, year-wise and with proper identification marks to facilitate re-checking and inspection.

9. Management of landed, building, property, hotels, business concerns, factories and industrial units etc.— The Administrator may authorise any member of staff and/ or other persons, provided to him by the Federal Government under rule 3, to take possession of vacant landed or building, property or hotels or business concern or factories or industrial unit, in respect of which:—

(a) an order or order of freezing of such landed or building or property or hotel or business concerns or factories or industrial unit have been made under the Act; and

(b) an order or order for forfeiture of such landed or buildings or property or hotel or business concern or factories or industrial unit have been made under the Act.

10. Occupation of landed or building or property or assets like hotel, business concern, factories and industrial unites.— (1) Where any property or business in the nature of land or building or hotel or business concern or factories or industrial unit etc. is in possession of a lessee or a tenant or any management and against such property or assets a freezing order under the Act has been made, the Administrator may, with the approval of the Federal Government, allow the lessee or tenant management of assets to continue to be in occupation of such land or building or property or assets like hotel, business concern, factory, industrial unit etc. in accordance with such terms and condition which existed on the date of passing a freezing order or orders under the Act.

(2) The income derived from such property or ^{assets} shall be kept in the National Banks of Pakistan as in the case of government money.

(3) Where any property or asset is declared not liable to be forfeited under the Act, the Administrator shall, within the time fixed by the court or in the absence of such fixation of time within reasonable time, return to the person such property or asset and the income derived therefrom after deducting such expenses, if any, which were incurred under his administrative control on the maintenance and management of the property or asset.

11. Record of landed or building or property or assets like hotel, business concern, factory, industrial unit etc.— The Administrator shall maintain a record of landed or building property or assets like hotel, business concern, factory, industrial unit etc in Form III.

12. Storage of assets other than valuables.—(1) Moveable assets other than valuables shall be stored in almirahs and racks.

(2) Each almirah and rack shall have a stockcard indicating the case number and full description of the assets stored therein.

13. **Placement of stock-cards.**— The godown in charge shall ensure that the racks or almirahs or any other thing used for storage of assets, display stock card indicating the inquiry number or Case number. and full description of the assets stored.

14. **Opening and re-sealing of the packages.**—(1) Where any package is to be opened for any reason, the same shall be opened in the presence of the owner and the concerned godown-in-charge after obtaining the order of the Director-General or Administrator.

(2) The packages shall be re-sealed immediately after the purpose, for which such packages were opened, is served in the presence of the owner and the concerned godown-in-charge

(3) At the time of re-sealing, the owner and the concerned godown-in-charge, shall affix their seals.

15. **Maintenance of frozen, forfeited or confiscated conveyances.**— Conveyance such as aircrafts, vessels, motor vehicles and any other mode of conveyance shall be properly kept in godown.

CHAPTER-IV.—DISPOSAL OF ASSETS

16. **Disposal of livestocks, perishables, etc.**— Subject to the sale proceeds being credited to the Fund, save when the Director-General otherwise directs, the committee, to be nominated by Director-General in consultation with the Administrator, shall dispose of the livestock and assets which is perishable in nature or prone to decay in the manner as deemed fit.

17. **Disposal of valuables.**— Subject to the sale proceeds being credited to the Fund and subject to the approval to the Director-General, the committee, to be nominated by Director-General in consultation with the Administrator, shall dispose of the valuables mentioned below in the following manner, namely:—

- (a) the valuables, such as gold, gold jewellery, silver and silver jewellery, shall be deposited in the Fund;
- (b) (i) rough and uncut diamonds shall be sold either by auction or tender to the import licence holders against debit of their licences; and

- (ii) cut and polished diamonds shall be sold by auction or tender with the specific condition that such diamonds shall be exported;
- (c) (i) rough and uncut precious and semi-precious stones other than diamonds shall be sold by auction or tender to holder of import licences against debit of their licences, in the internal market: and
- (ii) cut and polished precious and semi-precious stones, other than diamonds shall be sold internally, by auction or by tender.

18. **Disposal of currency.**— Pakistan and Foreign currency shall be deposit in State Bank of Pakistan or in any nationalizes bank in a PLS account.

19. **Disposal of other assets.**— Assets other than those referred to yhin rules 16 to 18 shall be disposed of by public auction.

20. **Disposal of landed or building property or assets like hotel, business concern factories, industrial unit etc.**— Subject to the relevant provisions of any law relating to the acquisition or disposal of immovable property and also subject to the sale proceeds being credited to the Fund under section 54 of the Act, the landed or building property or assets like hotel, business concern, factories, industrial unit shall be disposed of by public auction by the committee to be nominated by the Director-General in consultation with the Administrator.

21. **Disposal of conveyances.**— Conveyances, such as aircrafts, vessels, vehicles and other mode of conveyance, shall be sold by public auction or by tender, by a Committee to be nominated by Director-General in consultation with the Administrator.

22. **Disposal of frozen bank deposits.**— In case of frozen bank deposits, the full amount is to be credited in Fund.

23. **Furnishing reports and returns.**— The Administrator shall furnish a quarterly statement to the Director-General for submission to the federal Government indicating the value of the assets received and disposed of and the closing balance of all assets kept in the godowns and banks.

CHAPTER-V.—PERIODICAL RECORD AND INSPECTIONS

24. **Periodical reports.**— The godown in-charge shall submit, every month, a report to the Administrator of the assets received or disposed of during that period.

25. **Periodical Inspection.**— The Director-General and Administrator with a view to ensuring safety, security, proper accounting and management of all assets in the godowns, may conduct physical inspection and verification with the help of such officers and experts as he thinks fit on six monthly basis.

26. **Record of receipt and disposal.**— The administrator shall maintain a record of receipt and disposal of all assets received and disposed of under the rules and shall also maintain an account of all income received and expenditure incurred on receipt, management and disposal of such assets.

CHAPTER-VI— SHARING WITH FOREIGN STATE

27. **Sharing forfeited property with foreign State.**— (1) In pursuance to an agreement signed between the competent authorities of a foreign State and Government of Pakistan as provided in section 65 of the Act, the Director-General, after obtaining approval of Ministry of Foreign Affairs, Ministry of Finance and the Secretary Narcotics Control Division, shall be the competent authority on behalf of the Federal Government of Pakistan to sign this agreement in order to regulate the reciprocal sharing of the following proceeds of disposition, namely:—

- (i) property forfeited by the Federal Government of Pakistan in accordance with the provisions of the Act and the Proceeds arising from disposition of property by the foreign State; and
- (ii) amount paid or recovered on account of fines imposed in accordance with the provisions of the Act, in relation to proceedings commenced at the instance of the Government of Pakistan and amounts paid or recovered on account of fines imposed in lieu of forfeiture under the laws of that foreign State, where law enforcement agencies of that foreign State, or of Pakistan, as the case may be, have participated in the investigation of the offence or offences that led to the forfeiture of the property of the imposition of the fine.

28. **Contribution of each State.**— The Director-General shall determine a percentage representing the contribution of the Government of Pakistan, with prior approval of Ministry of Foreign Affairs and Ministry of Finance, to be determined as per bilateral agreement between the ^{two} ~~low~~ countries.

29. Determination of amount available for sharing.—(1) The amount that is available for sharing shall include :—

- (a) amount of net proceeds of a person's property that has been forfeited in connection with one or more offences committed by such persons ; and
- X
X (b) the amount of any fine ordered by the court to be paid by the person in connection with the offence or offences committed by such person.

(2) The following amounts may be subtracted from the above amount before sharing with foreign government or agencies, subject to the approval of law and Finance Divisions, namely :

- (a) defraying expenses properly incurred in the prosecution and other processes and issues connected thereto; and
- (b) payments to any person on account of compensation or rewards by Director-General.

CHAPTER-VII.—FUNCTIONS AND POWERS OF DIRECTOR-GENERAL

30. Functions of the Director-General.—The Director-General shall perform the following functions, namely :—

- (a) provide consultative and other services to law enforcement agencies in relation to the seizure or forfeiture of any property under the Act.
- (b) subject to the Code of Criminal Procedure, 1898 (Act V of 1898). the Act and any other law for the time being in force, manage any property referred to in the rules in such manner as the Director-General considers appropriate, by advancing money to :—
 - (i) maintain the ongoing operation of the property; and
 - (ii) satisfy the terms of any order concerning environmental, industrial labour or property standards to which the property is subject.
- (c) supervise the Fund and ensure that the funds are kept in a profit and loss account in the National Bank of Pakistan.

- (d) supervise the work of committee headed by Administrator as constituted by him.
- (e) on behalf of Federal Government, receive, from Foreign Governments, all money to be transferred to Pakistan pursuant to any agreement entered into under rule 27 and share the money in accordance with the rules.
- (f) hire the services of any person after due sanction of Federal Government and
- (g) do any other thing that the Federal Government may consider to be incidental to, or necessary or expedient for, carrying out the purposes of these rules.

FORM I

(See rule 6)

GODOWN REGISTER

1. Godown entry S. No.
2. Narcotics drugs and Psychotropic Substances Crime No.
3. Description of asset in the sealed packages/containers.
4. No. of packages/containers.
5. Quantity (package/containerwise).
6. Name(s) and address(es) of accused.
7. Name with official designation and address of freezing/seizing/depositing officer.
8. Facsimile of the seal put on the packages/containers by the freezing officer/seizing officer/depositing officer.
9. Date and time of deposit.
10. Particulars of exit and re-entry for exhibiting to competent authority/court.

11. Date and time of removal for disposal.
12. Disposal particulars.
13. Certificate of disposal including price payment particulars and credit to the Fund.
14. Remarks of the Inspecting Officer(s).

FORM II

(See rule 7)

GODOWN REGISTER FOR VALUABLE

1. Godown entry S. No.
2. Narcotics Drugs and Psychotropic Substances Crime No.
3. Description of the valuables in packages/containers.
4. No. of packages/containers (item-wise).
5. Condition of seal at the time of entry.
6. Quantity (package/container-wise).
7. Name(s) and address(es) of accused.
8. Name with official designation and address of freezing/seizing/depositing officer.
9. Facsimile of the seal put on the packages/containers by the freezing/seizing/depositing officer.
10. Date and time of deposit.
11. Particulars not exit and re-entry for exhibiting to Competent Authority court.
12. Date and time of removal for disposal.

13. Disposal particulars.
14. Certificate of disposal including price payment particulars and credit to the National Fund for control of Drugs Abuse.
15. Remarks of the Inspecting Officer(s).

FORM III

(See rule 11)

RECORD FOR LANDED AND BUILDING PROPERTY

| S. No. No. | Crime No. | Particulars of the last owner(s) | Location | Description as per Municipal revenue or other relevant records | Area in case of Land) | Value | Monthly/ Annual income | Remarks |
|---------------|--------------|--|----------|---|-----------------------------|-------|------------------------------|---------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |

ASSET SHARING MODEL AGREEMENT

AGREEMENT BETWEEN

THE GOVERNMENT OF _____

AND "

THE GOVERNMENT OF THE _____¹REGARDING THE SHARING OF FORFEITED OR
CONFISCATED ASSETS AND EQUIVALENT FUNDS²

The Governments of _____ and of _____, hereinafter referred to as "the Parties",

Considering the commitment of the Parties to co-operate on the basis of the Treaty On Mutual Legal Assistance in Criminal Matters, which was signed on _____ and entered into force on _____, as well as the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of December 20, 1988;³

Desiring to improve the effectiveness of law enforcement in both countries in the investigation, prosecution and suppression of crime and in the tracing, freezing, seizure and forfeiture or confiscation of assets related to crime; and⁴

Desiring also to create a framework for sharing the proceeds of disposition of such assets;⁵

¹Full name of the relevant States.

²Some States impose a pecuniary penalty order, rather than a confiscation or forfeiture order. Some may impose a fine in lieu of confiscation/forfeiture where the assets are dissipated or relocated to a locale where confiscation/forfeiture is difficult or impossible. If a fine is imposed a mandatory term of incarceration could be imposed to compel the offender to pay the fine. In any event sharing of the confiscated/forfeited asset or the fine is the goal of the agreement.

³This preamble captures 1988 Drug Convention's specific recognition of the sharing concept (see Article 5, subparagraph (b) (ii) and any possible mutual legal assistance in criminal matters. The parties could also elect to add references to Recommendations 38 & 39 of the FATE's Forty Recommendations.

⁴This captures the essence of asset sharing. It recognised co-operation as a general goal rather than a specific case driven activity.

⁵This recognises the need to have a framework general agreement, rather than a case specific agreement. A general agreement is preferred since specific cases can be addressed through the channels of communication set out in paragraph 5.

Have agreed as follows :

1. Where one party (the Assisting Party) has participated in investigations or proceedings resulting in a confiscation or a forfeiture or the payment of funds equivalent to a forfeiture in the jurisdiction of the other Party (the Assisted Party), the Assisted Party may, consistent with its domestic laws, share with the Assisting Party the net proceeds realised.¹
2. For the purposes of this Agreement, "forfeiture or the payment of funds equivalent to a forfeiture" shall mean, for——— an order of forfeiture of assets related to crime or the payment of funds equivalent to a forfeiture, either of which order is made on behalf of——— and for———, "confiscation" [or an analogous term in either State that requires a definition or a reference to specific provision in law] shall mean ———. ²
3. Amount to be shared and the proportion of such amounts to be received by the Assisting Party shall be determined in accordance with the laws of the Assisted Party.³
4. Sharing pursuant to this Agreement shall be between the Government of ——— and the Government of ———. The Assisted Party shall not place any conditions in respect of the use of amounts paid nor shall it make any payments conditional on the Assisting Party sharing them with any state, government, organisation or individual.⁴
5. The Assisting Party may bring any co-operation that led, or is expected to lead, to a confiscation, forfeiture or the payment of funds equivalent to a forfeiture to the attention of the Assisted Party.
6. Shares payable pursuant to Article 1 shall be paid in the currency of the Assisted Party. In cases where Canada is the Assisting Party, payments shall be made to the——— and sent to the ———. In cases where ——— is the Assisting Party, payments shall be made as designated by———. ⁵
7. The channels of communication for all matters concerning the implementation of this Agreement shall be, for ———, the——— and, for———, the———. ⁶

¹The State where the targeted assets are located applies its domestic laws to determine the amount available for sharing. This means that it protects innocent third parties, deducts its own costs (if any) to manage the asset and determines the net proceeds. Therefore the specific asset (e.g. a car, boat, plane or real property), other than cash, is assumed to have been sold and the proceeds of sale accumulated with any forfeited currency in order to arrive at a "net proceeds" amount that is available for sharing.

²Each country may define confiscation/forfeiture and fines in a different manner. They can each set out their differences in this paragraph.

³The country that has the "net proceeds" is responsible for determining how much it intends to share with the other country that assisted in the case that led to the forfeiture/confiscation of fine in lieu of forfeiture. This agreement covers a share of accumulated currency, rather than specific assets.

⁴Sharing is conducted at the State to State level. The country that sends the shared money is presumed to have shared with any other relevant State. It shares with another State, that is a party to this bilateral agreement, unconditionally. The recipient can determine, at its sole discretion, how it will use the shared money.

⁵This Paragraph allows both States to specify how the sharing cheque is endorsed and where the cheque is to be sent.

⁶This paragraph provides for effective channel of communication.

8. This Agreement shall enter into force upon signature.

9. Either Party may terminate this Agreement, at any time, by giving written notice to the other Party. Termination shall become effective six months after receipt of the notice.

Done at....., day of....., One
Thousand Nine Hundred and Ninety....., in the English and.....
languages, each text being equally authentic.

For the Government of _____

For the Government of _____

[No. F. 11-6/95-Policy]

Sd/-
MUHAMMAD ASHRAF CHEEMA,
Deputy Secretary,
Government of Pakistan
Narcotics Control Division
Islamabad.