





or with both.

21. Offences by corporate body.- A corporate body shall be held liable for an offence under this Ordinance if the offence is committed by it or with both. Provided that such punishment shall not absolve the criminal liability of the natural person who has committed the offence.

Explanation.- For the purposes of this section corporate body, includes a body of persons incorporated under any law such as the Companies Act, 1974.

### CHAPTER-III

#### PROSECUTION AND TRIAL OF OFFENCES

22. Offences to be compoundable and non-cognizable.- All offences under this Ordinance shall be compoundable, non-cognizable and shall be tried by a Magistrate.

23. Prosecution and trial of offences.- (1) The Tribunal shall take cognizance of and try any offence under this Ordinance .

(2) In all matters with respect to which no procedure has been provided in this Ordinance or the rules made thereunder, the procedure shall be the same as in the Code of Criminal Procedure, 1973.

(3) All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meanings of sections 193 and 228 of the Code of Criminal Procedure, 1973.

24. Order for payment of compensation.- The Tribunal may, on awarding punishment of imprisonment or fine or both for commission of an offence under this Ordinance, order the offender to pay compensation to the person who has suffered loss or damage. Provided that the compensation awarded by the Tribunal shall not prejudice any right to a civil remedy for the recovery of damages.

### CHAPTER-IV

#### ESTABLISHMENT OF INVESTIGATION AND PROSECUTION AGENCIES

25. Establishment of investigation agencies and prosecution.- The Federal Government shall establish a specialized investigation agency for the purpose of investigating offences under this Ordinance. Provided that till such time any agency is so established, the investigation and prosecution of an offence shall be conducted in accordance with the provisions of the Code of Criminal Procedure, 1973.

Provided further that any police officer investigating an offence under this Ordinance may seek assistance of any special investigation agency.

26. Powers of officer.- (1) Subject to obtaining search warrant an investigation officer shall be entitled to,-

- (a) have access to and inspect the operation of any electronic system;
- (b) use or cause to be used any such electronic system to search any data contained in or available to such electronic system;
- (c) have access to or demand any information, code or technology which has the capability of retransforming or unscrambling encrypted data;
- (d) require any person by whom or on whose behalf, the investigating officer has reasonable cause to believe, any electronic system to provide him with any such information, code or technology;
- (e) require any person having charge of, or otherwise concerned with the operation of such electronic system to provide him with any such information, code or technology necessary to decrypt data required for the purpose of investigating any such offence.

Explanation.- Decryption information means information or technology that enables a person to readily retransform or unscramble encrypted data.

(2) The police officer may, subject to the proviso, require a service provider to submit subscriber information relating to such system. Provided that the investigating officer shall get prior permission to investigate any service provider from the licensing authority.

(3) Any person who obstructs the lawful exercise of the powers under sub-sections (1) or (2) shall be liable to punishment with imprisonment for a term not exceeding six months, or with fine not exceeding five thousand rupees, or with both.

27. Real-time collection of traffic data.- (1) The Federal Government may require a licensed service provider, within its existing means of an electronic system. (2) The Federal Government may also require the service provider to keep confidential the fact that it has collected such data.

28. Retention of traffic data,- (1) A service provider shall, within its existing or required technical capability, retain its traffic data for a period of six months from the date of collection. The Federal Government may extend the period to retain such data as and when deems appropriate. (2) The service providers shall retain the traffic data under sub-section (1) by fulfilling all the requirements of data retention under the Information and Communication Technologies Act, 2002.

(3) Any person who contravenes the provisions of this section shall be punished with imprisonment for a term of six months, or with fine not exceeding five thousand rupees, or with both.

(4) The Federal Government may, subject to the proviso, require a service provider to submit subscriber information relating to such system.

**29. Trans-border access.- For the purpose of investigation the Federal Government or the investigation agency may**

Government or international agency access publicly available electronic system or data notwithstanding the geographical location of such system or data. Provided that such access is not prohibited under the law of the foreign Government or the international agency:

Provided further that the investigating agency shall inform in writing the Ministry of Foreign Affairs of Government of Pakistan and the concerned foreign Government or international agency.

### CHAPTER - V

#### INTERNATIONAL COOPERATION

**30. International cooperation.- (1) The Federal Government may cooperate with any foreign Government, Interpol or**

it has, or establishes, reciprocal arrangements for the purposes of investigations or proceedings concerning offences related to interception of data.

(2) The Federal Government may, without prior request, forward to such foreign Government, Interpol or other international agency information which might assist the other Government or agency in initiating or carrying out investigations or proceedings concerning any offence under this Ordinance.

(3) The Federal Government may require the foreign Government, Interpol or other international agency to keep the information confidential.

(4) The investigating agency shall, subject to approval of the Federal Government, be responsible for sending and answering requests for information.

(5) The Federal Government may refuse to accede to any request made by such foreign Government, Interpol or international agency if such request is not in accordance with the law of the Federal Government.

(6) The Federal Government may postpone action on a request if such action would prejudice investigations or proceedings concerning any offence under this Ordinance.

Chapter - VI

#### INFORMATION AND COMMUNICATION TECHNOLOGIES TRIBUNAL

31. Information and Communication Technologies Tribunal .- (1) As soon as possible after the commencement of this Ordinance , the Federal Government shall constitute a Tribunal for the purpose of investigating and trying offences under this Ordinance .

(2) The Tribunal may hold its sittings at such place or places as the Federal Government may decide.

(3) The Tribunal shall consist of a chairman and as many members as the Federal Government may determine but not more than seven.

(4) The Chairman may constitute Benches of the Tribunal and unless otherwise directed by him a Bench shall consist of not less than three members.

(5) The Federal Government shall appoint the Chairman and members of the Tribunal.

32. Qualifications for appointment.- (1) A person shall not be qualified for appointment as Chairman unless he is, or has been, or is qua

(2) A person shall not be qualified for appointment as a member unless he -

- (a) has for two years served as a District and Sessions Judge;
- (b) has for a period of not less than ten years been an advocate of a High Court; or
- (c) has special knowledge of legislation and professional experience of not less than ten years in the field of telecommunication an

33. Salary, allowances and other terms and conditions of services.- The salary, allowances, privileges and the other terms and condition

34. Resignation and removal.- (1) The Chairman or a member of the Tribunal may, by writing under his hand addressed to the Federal C  
Provided that the Chairman or a member shall, unless he is permitted by the Federal Government to relinquish his office sooner, contin

(2) The Chairman or a member of the Tribunal shall not be removed from his office before expiry of the term determined under section

(3) The Federal Government may, by rules, regulate the procedure for the investigation of misconduct or physical or mental incapacity c

35. Saving Tribunal's proceedings.- No act or proceedings of the Tribunal shall be called in question in any manner on the ground merel

36. Employees of the Tribunal.- (1) The Federal Government shall provide the Tribunal with such employees as the Government may de

(2) The employees of the Tribunal shall perform their duties under general superintendence of the Chairman of the Tribunal.

(3) The salaries, allowances and other conditions of service of the employees of the Tribunal shall be such as may be prescribed by the

37. Right to legal representation.- The parties in appeal may either appear in person or authorize one or more legal practitioners,

38. Amicus curiae. - (1) The Tribunal may, if it so requires, be assisted in technical aspects in any case by an amicus curiae having know

(2) The Federal Government shall maintain a list of amicus curiae having relevant qualifications and experience.

(3) The Tribunal in consultation with the Federal Government shall determine the remuneration of the amicus curiae and the Tribunal ir

39. Procedure and powers of Tribunal.- (1) Subject to the provisions of this Ordinance and the rules made thereunder, the Tribunal,--

(i) may, where it deems necessary, apply the procedures as provided in the Code or, as the case may be, in the Code of Civil Procedu

(ii) in the exercise of its civil jurisdiction, shall have powers vested in the civil court under the Code of Civil Procedure, 1908; and

(iii) in the exercise of its criminal jurisdiction, shall have the same powers as are vested in the Court of Session under the Code.

40. Appeal to Tribunals.- (1) Any person aggrieved by any of the following orders may, within fifteen days from the date of such order, i

(a) any decision of the Authority; or

(b) any decision of the Electronic Certification Accreditation Council:

Provided that no appeal shall lie to the Tribunal from an order passed by the Authority or the Electronic Certification Accreditation Coun

(2) Any appeal against a decision of the Authority shall be accompanied by a court fee,-

(a) ten thousand rupees where the valuation of the subject matter in issue is not more than five million rupees;

(b) fifty thousand rupees where the valuation of the subject matter in issue is more than five million rupees but not more than ten milli

(c) one hundred thousand rupees where the valuation of the subject matter in issue is more than ten million rupees. if,

(3) The appeal filed before the Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and the Tribunal sha

41. Powers of Tribunal.- The Tribunal while hearing an appeal under section 40 shall have all the powers as are vested in the court of fi

42. Limitation".- The provisions of the Limitation Act, 1908 (IX of 1908), shall, mutatis mutandis , apply to the proceedings of Tribunal. 4

(1) any decision or order of the Tribunal made under section 40 may prefer second appeal to the respective High Court within thirty da  
Provided that appeal under this clause shall lie only if the High Court grants leave to appeal;

(ii) an order of conviction passed by the Tribunal in respect of any offence under this Ordinance may prefer an appeal to the respect

(2) An appeal against an order of the Tribunal under section 40 or an order of sentence exceeding ten years shall be heard by the Divi

44. Civil court not to have jurisdiction.- No court shall have jurisdiction to entertain any suit or proceeding in respect of any matter

45. Transitory proceedings.- (1) Until the establishment of the Tribunal all cases, proceedings and appeals, subject matter of whic

(2) On the constitution of the Tribunal all cases, proceedings and appeals shall stand transferred to and be heard and disposed of by t

(3) On transfer of cases, proceedings and appeals under sub-section (2), the Tribunal shall proceed from the stage the proceedings ha

## CHAPTER - VII MISCELLANEOUS

46. Ordinance to override other laws.- The provisions of this Ordinance shall have effect notwithstanding anything to the contrary

47. Power to amend Schedule.- The Federal Government may, by notification in the official Gazette, amend the Schedule so as to e

48. Powers to make rules. - (1) The Federal Government may , by notification in the official Gazette, make rules for carrying out pu

49. Removal of difficulties. - If any difficulty arises in giving effect to the provisions of this Ordinance, the Federal Government may

**THE FIRST SCHEDULE**

(See section 2(p)(ii))

1. The Electronic Transactions Ordinance, 2002 (LI of 2002).
2. The Pakistan Telecommunication (Re-organization) Act, 1996 (XVII of 1996).
3. The Telegraph Act, 1885 (XIII of 1885).
4. The Wireless Telegraphy Act, 1933 (XVII of 1933).

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