



# TRANSPARENCY INTERNATIONAL-PAKISTAN

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**Advisory Committee**

17<sup>th</sup> November 2011

Mr. Abdul Hafeez Sheikh,  
Minister of Finance,  
Government of Pakistan,  
Islamabad.

Subject: Contempt of Court in Safe City Project – TIP Letter dated 11<sup>th</sup> November 2011.

Dear Sir,

This is with reference to TI Pakistan's letter dated 11<sup>th</sup> November 2011 on the above subject.

The news report published in "Business Recorder" on 16<sup>th</sup> November, about the release of funds by EAD for Safe City Project is very disturbing, as the case is pending in the Supreme Court of Pakistan, and the honorable court on 16<sup>th</sup> May 2011 has already directed the Government "to ensure transparency in \$233.7 million contract with Huawei Technologies through open bidding rather than focusing single company in China".

Transparency International Pakistan like to remind you that the decision of Executive Committee of National Economic Council (ECNEC) to allow Economic Affairs Division to disburse management fee to Exim Bank is against the decision of ECC and the directions of the Supreme Court of Pakistan and should not be allowed by the Ministry of Finance, as this act of EAD may cause billion of rupees loss to the exchequer. This loss may also attract application of Corruption and corrupt Practices, Article 9 of NAB Ordinance 1999, and punishment under Article 10.

*NAO 1999- 9 (a) (vi) if he misuses his authority so as to gain any benefit or favour for himself or any other person, or renders or attempts to render or willfully fails to exercise his authority to prevent the grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority*

TI Pakistan is for across the board application of the Public Procurement Rules 2004.

Regards,

  
Syed Adil Gilani  
Adviser

Encl: News Report, Business Recorder.

Copies forwarded for the information of:

1. Chairman, Public Accounts Committee, Islamabad.
2. Chairman, NAB, Islamabad.
3. Registrar, Supreme Court.
4. Auditor General, Islamabad.
5. Managing Director, PPRA, Islamabad.

# Under litigation **Safe City** Project: Ecnec allows **EAD** to disburse management fee to Exim Bank

NOVEMBER 16, 2011

MUSHTAQ GHUMMAN

0 COMMENTS



## BUSINESS RECORDER

Executive Committee of National Economic Council (Ecnec) has allowed the Economic Affairs Division (**EAD**) to disburse millions of rupees to the Chinese Exim Bank as management fee to secure loans of the \$124.9 million under litigation **Safe City** Project.

The project came under consideration in the Ecnec meeting on November 11, 2011, presided over by Finance Minister Dr Abdul Hafeez Shaikh.

Transparency International Pakistan (TIP) argues that approval of the project would be a grave violation of Supreme Court's instructions.

Official documents available with Business Recorder, reveal that the meeting was informed that the ECNEC, in its meeting held on 29th July, 2011, approved the project at a revised cost of \$124.975 million with the direction that activation of the project would be subjected to the outcome of Constitutional Petition (CP) No 11/2011 pending adjudication in the Supreme Court of Pakistan and that cost recovery mechanism would be formulated to ensure sustainability of the project.

Ministry of Interior, which is the sponsor of the Project, has now informed as follows:  
"The Supreme Court has held more than eight hearings on Constitutional Petition.

The last hearing was held on 19th August, 2011.

Ministry of Interior has filed detailed response to the C.P.

and also apprised Registrar of the Supreme Court on 22nd October 2011 of the latest progress of the Project." The documents further reveal that timeframe for final outcome of the case in the Supreme Court is hard to predict and other similar applications filed in future may added more delay to the execution of project.

To ascertain, therefore, the present status of the litigation, opinion of Attorney General and Law Ministry was solicited.

Law Division has advised that "there is no injunctive Order by the Court".

Attorney General has opined that "the Supreme Court has not passed any stay order and at this point of time, the Government of Pakistan has not been restricted by the Supreme Court from proceeding with the Project and, therefore, is free to proceed with the proposed project if it so desires".

Interior Ministry which is very upset over the delay in the project told the ECNEC that the loan agreement between Pakistan and China for **Safe City** Islamabad Project has validity until 17th December, 2011.

Exim Bank of China has advised on 19th September 2011 that in the event of failure to avail the loan by that date, the lender may re-evaluate the project.

A fresh reminder was sent by the Bank on 31st October, 2011.

It was further pointed out that the proposed agreement stipulated deposit commitment fee by the borrower within thirty days of loan effectiveness notice of 13th October, 2011.



Ministry of Interior requested ECNEC to waive off restriction on activation of the project, imposed in its meeting held on 29th July 2011, in the public interest for security of Islamabad which is constantly under terrorists' threat and keeping in view the indefinite timeframe for finalisation of court case.

During the ensuing discussion, it was pointed out that in another similar case (PTCL employees pension case), which was pending adjudication in the Supreme Court of Pakistan and where, too, there was no injunctive order by the court, the Law and Justice Division had advised to wait for final decision of the case. As such, it was advocated that restriction imposed on activation of the project should not be removed.

It was, however, apprehended that in case of failure in payment of management fee of loan by 13th November 2001, the lender may re-evaluate the project which would not be beneficial to Pakistan.

It was further explained that a report on this project is being regularly submitted to the Registrar of the Supreme Court of Pakistan as per directions of the apex Court. Besides, efforts are in hand to get this case fixed for an early hearing.

ECNEC was also informed that this project has already been approved by the Cabinet.

It was, therefore, suggested that, at this point of time, the Ministry of Interior may be allowed to pay the commitment fee to secure the loan.

After detailed discussion the ECC took the following decision; (i) Economic Affairs Division should disburse the management fee of loan under the proposed Agreement, as requested by the Ministry of Interior, to Exim Bank of China to protect the loan with a clear direction that any draw down request of the Ministry of Interior shall be considered only on reconfirmation by the Economic Affairs Division in writing; (ii) Ministry of Interior should seek an early hearing of the Constitutional Petition in the Supreme Court of Pakistan; and (iii) Secretary, Law and the Attorney General for Pakistan should be invited to the next meeting of the ECNEC if by that time final outcome of the litigation is not available.

*Business Recorder* tried its best to get comments of Secretary **EAD**, Wajid Rana, but he could not be reached for his comment.

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