

AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW, JUSTICE AND PARLTAMENTARY AFFAIRS DEPARTMENT,
MUZAFFARABAD

Dated: 17.02.2007

No. LD/ Legis/539-51/2007. The following Act of Assembly received the assent of the President on 12th day of February, 2007, is hereby published for general information.

(ACT II OF 2007)

AN

ACT

to provide law for the establishment of Kashmir Highway Authority (KHA).

Whereas, it is expedient and necessary to provide a law for

establishment of Kashmir Highway Authority for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and Commencement :- (1) This Act may be called the Azad Jammu & Kashmir Highway Authority Act, 2007.

(2) It shall extend to the whole of Azad Jammu & Kashmir.

(3) It shall come into force at once.

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

(a) "Auditor General" means the Auditor General of Azad Jammu & Kashmir ;

(b) "Authority" means the Kashmir Highway Authority (KHA) established under Section 3 of this Act;

(c) "Board" means the Executive Board of the Authority;

(d) "CDC" means Cabinet Development Committee of the Government;

(e) "CDWP" means the Central Development Working Party;

(f) "Chairman" means Chairman of the Council established under this Act;

(g) "Council" means the Council established under Section 8 of this Act;

(h) "ECNEC" means the Executive Committee of National

Economic Council;

(i) "Government" means Azad Government of the State of Jammu and Kashmir;

G) "Member" means member of the council or, as the case may be, of the Board;

(ky) "Kashmir Highways" means the roads specified in the Schedule to this Act and will include the roads declared by the Government by notification in the official Gazette, to be Kashmir Highway;

(0)) "Managing Director" means Managing Director of the Authority;

(m) "Regulations" means regulations framed under this Act;

(n) "Right of Way" (ROW) means the land acquired for the purpose of construction of Kashmir Highway or any other roads assigned to the Authority;

(0) "Road" means a road including land with the right of way and all works, such as carriageways, cart ways, footpaths, beams, side drains, culverts, bridges, tunnels, fences, posts, sign boards, plantations and lighting arrangements, intersections and medians assigned to the Authority; and

(p) "Rules" means rules made under this Act.

CHAPTER -II

ESTABLISHMENT OF THE AUTHORITY

Establishment of the Kashmir Highway Authority.- (I) There shall be established an Authority to be known as Kashmir Highway Authority (KHA) for carrying out the purpose of this Act.

(2) The Authority shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, and may in its name sue and be sued.

(3) The headquarters of the authority shall be at Muzaffarabad.

Purpose_and_ functions of Authority.- The purpose and function of the Authority shall be to plan, promote, organize and implement programs for construction, development operation repairs and maintenance of Kashmir Highways.

CHAPTER -III

POWERS AND MANAGEMENT OF THE AUTHORITY

Powers of the Authority.- (1) The Authority may take such measures and exercise such powers as it considered necessary or expedient for carrying out the purpose of this Act.

(2) Without prejudice to the generality of the powers

conferred by sub-section (1), the Authority may for carrying out the purpose of this Act,-

- (i) advise the government on matters relating to Kashmir Highways;
- (ii) acquire and dispose of moveable and immoveable property of interests there in accordance with law;
- (iii) undertake any work specified in sub-sections (1) and (2) of Section 6;
- (iv) incur expenditure on works specified in clause (iii);
- (v) procure plant, machinery, instruments and materials required for its use;
- (vi) enter into a perform all such contracts as it may consider necessary;
- (vii) levy, collect or cause to be collect tolls on Kashmir Highways and bridges thereon;
- (viii) regulate through licence any facilities on roads under its control on such terms as it deems fit;
- (ix) determine a building line between which and the ROW it shall not be lawful without the consent of the Authority to construct or maintain any structure or make any excavation;
- (x) cause studies, surveys, experiments and_ technical research to be made or contribute towards the cost of such studies, surveys, experiments or technical research made by any other agency;
- (xi) exercise power to award negotiated contracts for projects to be undertaken through private Sector Financing programme;
- (xii) seek and obtain advice and assistance for the preparation and execution of any plan, programme or project;
- (xiii) raise funds through borrowing, floating or bonds, sharing or leasing assets or any other means, from time to time;
- (xiv) perform any other function supplemental, incidental or consequential to the purposes aforesaid; and
- (xv) takeover ROW of the Kashmir Highways.

Plans and Schemes.-(1) The Authority shall prepare a master plan for development, construction, operation and maintenance of Kashmir Highways for approval of the Council.

(2) The authority may frame schemes for all or any of the

following matters, namely:-

(i) construction, expansion, operations and development of Kashmir Highways;

(ii) research and development in the field of Highways;

(iii) training and welfare of employees of the Authority;

(vi) any other matter pertaining to the purposes and functions of the Authority and matters incidental thereto.

Powers to eject unauthorized occupants.-Subject to the rules, the Authority shall have power to summarily eject any unauthorized occupant of Kashmir Highways or proposed site thereof and demolish and remove any structure thereon, and to use such force, including police force, as may be necessary for the purpose and to recover the cost thereof from the person responsible for such occupation or obstruction.

Council.-(1) The Authority shall have a council comprising of,-

a). The Minister for Communication & Works — Chairman

b). The Minister for Planning & Development | Member

c). The Additional Chief Secretary (Dev.) Member

d). The Secretary Finance Member

e). | The Secretary Communication & Works, Member

f). |The Managing Director KHA, Member/
Secretary

(2) The meeting of the Council shall be called by the Secretary of the Council, at least twice a year at such date and time as may be specified by the Chairman. The Chairman may, however, convene meeting of the Council any time at his discretion.

(3) The quorum for a meeting of the Council shall be four including Chairman.

Powers and functions of the Council.- (1) The functions of the Council shall be :-

(a) to approve five years plans and perspective plans, prepared by the Board in consultation with the Planning and Development Department of the Government of

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construction, development, repair and maintenance of
Kashmir Highways;

(b) to lay down policies and guidelines to be followed by the
Authority in the performance of its functions;

(c) to review and reappraise projects; and

(d) to approve the annual budget of the Authority.

(2) The Council shall have power to control, direct and
regulate the affairs of the Authority.

(3) The Chairman may, on the recommendations of the
Board, accord anticipatory approval to any matter which falls
within the jurisdiction of the Council. The matter so approved by
the Chairman shall be placed before the Council on its ensuing
meetings.

Executive Board.-(1) The general direction and administration
of the authority and its affairs shall vest in the Executive Board
which under this Act may exercise all powers, perform all
functions and do all acts and things which
may be exercised, performed or done by the Authority.

(2) The Board shall consist of

(a) The Managing Director, KHA Managing
Director

(b) Additional Secretary (Finance) Member

(c) Additional Secretary Communication & Member
Works Department.

(d) Chief Communication, Planning & Member
Development Department

(e) Superintending Engineer Highways Member

(f) Director Planning KHA Member

(g) Director Operation KHA Member/
Secretary

(3) The meetings of the Board shall be held at least once in
three months or as directed by the Managing Director.

(4) The quorum for the meeting of the Board shall be four
members including Managing Director.

Functions of the Board.- Functions of the Board shall be:

(a) to consider and approve proposals, schemes and projects
not exceeding thirty million rupees and to consider and

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recommend to the Council proposals, schemes and projects exceeding the aforesaid amount;

(b) to consider progress reports of the Authority;

(c) to perform such other functions as may be delegated to it by the Council;

(d) to recommend for approval the annual budget of the

Authority; and

(e) to approve projects to be funded through toll and other receipts from operation of Kashmir Highways.

Managing Director, his duties, functions and powers.- (1) The Government shall appoint a Managing Director who shall be the Chief Executive of the Authority and shall exercise such powers and perform such functions as may be specified by the Council.

(2) The Managing Director shall have the power to approve projects of emergent nature not exceeding ten million rupees for maintenance, rehabilitation and construction of Kashmir Highways.

(3) The Managing Director, on the recommendations of the executive Board shall have the power to re-appropriate funds from one project to another on the basis of progress of projects.

(4) The Managing Director shall receive such salary and allowances, subject to such conditions of services, as may be determined by the Government.

CHAPTER -IV ESTABLISHMENT

Appointment of Officers, staff etc.- (1) The Authority may, from time to time employ such officers and staff, or appoint such

experts or consultants, as it may consider necessary for the performance of its functions, on such terms and conditions as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), any rule made, or order or instruction issued by the Authority or in the terms and conditions of service or any person employed by or serving under the Authority, the Authority may at any time terminate the services of any person after giving him not less than thirty days' notice or pay for the period by which such notice falls short of the notice period.

(3) Service under the Authority is hereby declared to be service of the Government and every person holding a post under

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the Authority, not being a person who is on deputation to the authority from the Government, shall be deemed to be a civil servant for the purposes of the Service Tribunals Act, 1975.

Managing Director, etc; deemed to be public servants.-The Managing Director, Members, officers and staff of the Authority shall, when acting or purporting to act in pursuance of any of the provisions of this Act, be deemed to be public servants within the meaning of Section 21 of the penal Code (Act SLV of 1860).

Delegation of powers to Managing Director _etc.- The Authority may by general or special order , delegate to the Managing Director, a Member or officer of the Authority any of its powers, duties or functions under this Act subject to such conditions as it may think fit to impose.

Industrial Relations Ordinance, 1969 (XXIII of 1969) not to

apply.-Nothing contained in the Industrial Relations Ordinance, 1969 (XXIII of 1969) shall apply to, or in relation to the Authority.

Deputation to the Authority.- (1) The Government may, on

requisition of the Authority, depute such of its employees for such period as may be determined by the Government. Any Government servant sent on deputation to the Authority may, with consent of the Government, be absorbed permanently in the service of the Authority after taking his option for such absorption.

(2) The Government shall contribute to the pension, gratuity and final payment of provident fund of a person absorbed in the Authority under sub-section (1), in accordance with the rules of the Government in force at the time of such absorption.

Authority to be local Authority.-The Authority shall be

deemed to be a local authority for the purpose of borrowing money under the local Authorities loans Act, 1914 (1X of 1914).

CHAPTER -V

REPORTS AND STATEMENTS

Submission of yearly reports and returns, etc.- (1) The Authority shall submit to the Government, as soon as possible after the end of every financial year but before the last day of September next following, a report on the conduct of its affairs for that year.

(2) A copy of the report mentioned in sub-section (1), together with a copy of the audit report shall be placed by the Government before the Legislative Assembly of Azad Jammu &

Kashmir which shall refer the same to Public Accounts Committee for scrutiny and examination.

(3) The Public Accounts Committee shall scrutinize and examine the reports referred to it under sub-section (2) in the same manner, and shall in respect thereof, perform the same functions and exercise the same powers as are required to perform and exercise by it in respect of appropriation of accounts of the Government and the report of the Auditor General thereon.

(4) The Government may require the Authority to furnish it.-

(i) any return, statement, estimate, statistics or other information regarding any matter under the control of the Authority; or

(ii) its report on any such matter; or

(iii) a copy of any document in the charge of the Authority, and the Authority shall comply with every such requisition.

CHAPTER -VI FINANCE

Kashmir Highway Authority Fund.- (1) There shall be formed a non-lapsable fund vesting in the Authority known as the "Kashmir Highway Authority Fund", to be utilized by the Authority to meet charges in connection with its functions under this Act including payment of salaries and other remuneration to the Managing Director, officers, servants, experts and consultants.

(2) The Kashmir Highway Authority Fund shall be kept in scheduled banks and operated according to rules and regulations of the Authority.

(3) The Kashmir Highway Authority Fund shall have to its credit all funds received by the Authority from which the Authority can incur expenditure related to its functions including-

(i) loans obtained from the Government and other loans;

(ii) grants made by the Government ;

(iii) income from tolls and other sources;

(iv) funds provided by the Government;

(v) aid, grants and loans negotiated and raised by the Authority;

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(vi) all other sums received by the Authority, such as fees, damages, costs, refunds, forfeitures, sale proceeds, lease money, rentals, fines etc;

(vii) income from the sale of assets, land or vehicles; and

(viii) funds raised from floating bonds, shares or any other means.

Maintenance of _accounts.- The Authority shall maintain complete and accurate books of accounts in such form as may be prescribed.

Annual statement of accounts.- In the month of January each year, the Authority shall submit to the Government for approval a statement of the estimated receipts and expenditure in respect of the next financial year.

Audit.- (1) The accounts of the Authority shall be audited every year by the Auditor General and the rules framed by the Government in this behalf shall be applicable to the Authority.

(2) Copies of the audit report shall be sent to the Authority and, with the comments of the Authority, to the Government and shall also be available for public inspection.

CHAPTER -VII MISCELLANEOUS

Recovery of arrears due _as arrears of land revenues.- Any sum due to the Authority shall be recoverable as arrears of land

revenue under West Pakistan land Revenue Act, 1967, as adopted in Azad Jammu and Kashmir.

Land acquisition.- The acquisition of any land or any interest in land for the Authority or for any project under this Act shall be deemed to be acquisition for a public purpose within the meaning of the Land Acquisition Act, 1894 (Act I of 1894) and

the provisions of aforesaid Act shall apply accordingly.

Transfer _of rights and_liabilities- (1) As from the commencement of this Act all assets and liabilities and all rights and obligations of the Public Works Department to the extent of Kashmir Highways shall stand transferred to the Authority.

(2) Contracts made by the Public Works Department in respect of roads declared as Kashmir Highways shall be deemed to be contracts made by the Authority.

Authentication and other instruments of the Authority.- All

orders decisions and other instruments of the Authority shall be

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authenticated by the Managing Director or any officer of the Authority authorized by it in this behalf.

Power to enter.- Subject to any regulation made in this behalf, any person generally or specially authorized by the Authority, may whenever it is necessary for the purposes of this Act, enter upon any land or premises at any reasonable time,-

(i) make any inspection, survey, measurement, valuation or enquiry;
(ii) take levels;

(iii) dig or bore into a sub-soil;
(iv) set out boundaries and intended lines of work;

(v) make such levels, boundaries and lines by placing marks and cutting trenches; and

(vi) do other acts or things as or incidental or ancillary to the purposes aforesaid;

Provided that no such person shall enter any boundary or any enclosed court or garden attached to a dwelling-house except with the prior consent of the occupant thereof after delivering at least twenty four hours notice in writing of such intention in this behalf.

Indemnity etc.- (1) Nothing in this Act shall be construed as imposing upon the Authority, either directly or indirectly any duty enforceable by proceedings before any court.

(2) No suit, prosecution or other legal Proceedings shall lie against the Authority, the Managing Director or any Member, officer, servant, expert or consultant of the Authority or anything done or intended to be done in good faith under this Act or rules or regulations made thereunder.

Rules.- The Government may, by notifications in the Official Gazette, make rules for carrying out the purposes of this Act.

Regulations.- The Authority may make regulations, not inconsistent with this Act or rules, on the matter as it may deem expedient.

Removal of difficulties.- If any difficulty arises in giving effect to any of the provisions of this Act, the Government may make such order, no inconsistent with the provisions of this Act, as may appear to it to be necessary for the purpose of removing the difficulty.

33. Repeal.- The Azad Jammu & Kashmir Highway Authority Ordinance, 2006 (Ordinance VII of 2006) is hereby repealed.

Sd/-(Raja Zulqarnain Khan)

President

Azad Jammu and kahsmir

Sd/-(Waheed-UJ-Hassan Ch.)
Deputy Secretary (legislation)