

THE KHYBER PAKHTUNKHWA PREVENTION OF
CONFLICT OF INTEREST ACT, 2016.

(KHYBER PAKHTUNKHWA ACT NO. XIII OF 2016)

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THE KHYBER PAKHTUNKHWA PREVENTION OF
CONFLICT OF INTEREST ACT, 2016.

(KHYBER PAKHTUNKHWA ACT NO. XIII OF 2016)

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AN
ACT

to establish clear conflict of interest and related post-employment principles for public office holders, to prevent and minimize the possibility of conflicts arising between the private interests and public duties of public office holders in the Province of the Khyber Pakhtunkhwa.

WHEREAS it is expedient to establish clear conflict of interest and related post-employment principles for public office holders, to prevent and minimize the possibility of conflicts arising between the private interests and public duties of public office holders and provide for the resolution of those conflict in the public interest should they arise, to establish an independent Commission with the mandate to determine the measures necessary to avoid conflict of interest and to determine whether a contravention of this Act has occurred, to encourage experienced and competent persons to seek and accept public office and to facilitate interchange between the private and public sector and not to deny equal opportunities to relatives of public office holder, as the relatives cannot be barred from legal business activities and for matters connected therewith and ancillary thereto;

It is hereby enacted as follows:

CHAPTER-I
PRELIMINARY

1. Short title, application and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Prevention of Conflict of Interest Act, 2016.

(2) It shall apply to all the public office holders.

(3) It shall come into force on such date as Government may, by notification

in the official Gazette, specify and different dates may be specified for different provisions of this Act.

CHAPTER-II INTERPRETATIONS

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

- (a)
- (b)
- (c)
- (a)
- (e)
- (g)
- (h)

”

“assets” mean and include any movable and immovable property, money, securities, actionable claims, rights, interests and includes any trusts in respect of which a public office holder or a member of his family is a beneficiary;

“Commission” means the Prevention of Conflict of Interest and Ethics Commission, established under section 3 of this Act;

“conflict of interest” means the unlawful financial benefit or a liability accruing to the public office holder or his family due to his official position;

“family” means the spouse, dependent children, dependent children of spouse and dependent parents of the public office holder;

“Government” means the Government of the Province of the Khyber Pakhtunkhwa;

“local council” means local council as defined in the Khyber Pakhtunkhwa local Government Act, 2013 (Khyber Pakhtunkhwa Act No. XXIII of 2013);

“Provincial Assembly” means the Provincial Assembly of the Province of the Khyber Pakhtunkhwa;

“public office holder” includes a person who-

- (i) Governor of the Province;

- (ii) Chief Minister and Provincial Cabinet, the Speaker of the Provincial Assembly, the Deputy Speaker of the Provincial Assembly, a Provincial Minister, an Advisor to the Chief

Minister, a Special Assistant to the Chief Minister, the Advocate-General of the Province of the Khyber Pakhtunkhwa including an Additional Advocate-General and Assistant Advocate General, a Political Secretary, a Consultant to the Chief Minister and one who holds or has held a post or office with the rank or status of a Provincial Minister; and

(iii) | Chief Secretary, Additional Chief Secretary, Administrative Secretaries and Special Secretaries to Government; and

(i) "Selection Committee" means a Selection Committee constituted under this Act for selection and recommendation of persons to be appointed as Chairman and members of the Commission.

CHAPTER-II PREVENTION OF CONFLICT OF INTEREST AND ETHICS COMMISSION

3. Establishment of the Khyber Pakhtunkhwa Prevention of Conflict of Interest and Ethics Commission.---(1) Government shall, by notification in the official Gazette, establish an independent Commission to be known as Khyber Pakhtunkhwa Prevention of Conflict of Interest and Ethics Commission.

(2) The Commission shall be a body corporate, having perpetual succession and a common seal, with power to enter into agreements, acquire, hold, manage and dispose of property and by its name to sue and be sued:

Provided that for the disposal of any immovable property the Commission shall have to obtain the prior approval of Government:

Provided further that the property shall have to be disposed of through competitive bidding only.

(3) The Commission shall comprise of a Chairman to be appointed by the Government on the recommendation of the Selection Committee, who shall be eligible to become a judge of the High Court and two members to be appointed by Government on the recommendation of selection committee in such a manner;

(a) one member of the Commission shall be a retired civil servant in BPS-20 or above; and

(b) the other member of the Commission shall be a person having expertise in financial management.

(4) Government shall constitute a Selection Committee comprising of two (02) members, one from the Treasury Benches to be nominated by the Speaker Provincial Assembly and one from Opposition Benches to be nominated by the Leader of Opposition in the Provincial Assembly to select and recommend a panel of three (03) persons, each for the post of Chairman and member of the Commission and member from the Treasury Benches shall be designated as Chairman of the Selection Committee, who shall have a casting vote.

(5) The Chairman and the members of the Commission shall hold office for a term of three (03) years from the date on which they enter in office or until they attain the age of sixty-five (65) years, whichever is earlier.

(6) Upon completion of their term, the Chairman and the members of the Commission shall not be eligible for reappointment.

(7) Government may remove, the Chairman or members of the Commission before the expiry of their term on ground of misconduct or of being incapable of properly performing the duties of their office by reason of physical or mental incapacity:

Provided that before removing the Chairman or a member of the Commission, as the case may be, Government shall give them an opportunity of being heard in person.

(8) In the event of the absence or incapacity of the Chairman or any of the members, or if that office is vacant, Government may appoint any qualified person for that office in the interim period for a term not exceeding three months on the terms and conditions so fixed by the Government.

(9) The Chairman and members of the Commission shall engage exclusively in the duties and functions of the Commission and shall not hold any other office of profit or engage in any other employment for reward.

(10) On the terms and conditions as specified by the Commission so determined through regulations, the Commission may employ any officers and employees and may engage the services of any agents, advisers and consultants that the Commission considers necessary for the proper conduct of the work of the Commission.

(11) | Prior to each fiscal year, the Commission shall cause to prepare an estimate of the sums that shall be required to pay the charges and expenses of the Commission during the coming fiscal year.

(12) The remuneration payable to the Chairman and members of the Commission and administrative expenses of the office, including the remuneration payable to the staff shall be expenditure charged upon the Provincial Consolidated Fund.

4. Meetings.---(1) The Commission shall meet at least once in a month but the Chairman may, at any time, call a special meeting of the Commission.

(2) The Commission shall conduct its meetings, take decisions and keep record of the proceedings of the meetings in such manner as may be prescribed, and until so prescribed as may be determined by the Commission.

(3) The Commission shall take decisions through simple majority.

(4) The quorum for a meeting shall be two including the Chairman and in case of disagreement, the issue shall be placed before full Commission.

5. Validity of proceedings.---No act, proceeding, decision or order of the Commission shall be invalid only by reason of existence of a vacancy.

CHAPTER-IV RULES GOVERNING CONFLICT OF INTEREST AND ROLE OF THE COMMISSION

6. Duty to recuse.---The public office holder shall inform the higher authority in prior writing with reason alongwith the copy to Commission and rescue himself from any discussion, decision, debate or vote on any matter in respect of which he would be in a conflict of interest.

7. Summary statement.---A public office holder shall, within one hundred and twenty (120) days after the date on which he is appointed, sign a summary statement, containing such information as may be prescribed by the Commission through regulation and provide it to the Commission.

8. Annual review.---The Commission shall review annually in relation to each public office holder the information contained in his assets and interests reports and the measures taken to satisfy his obligations under this Act.

9. Compliance order.---The Commission may order a public office holder, in respect of any matter, to take any compliance measure, including divestment or recusal that the Commission determines is necessary to comply with this Act.

CHAPTER-V LIMITED APPLICABILITY

10. Waiver or reduction of limitation.---(1) On application by a public office holder the Commission may waive or reduce any applicable period under this Act.

(2) In exercising discretion under sub-section (1), the Commission shall consider whether the public interest in granting the waiver or reduction outweighs the public interest in maintaining the prohibition.

(3) In determining the public interest for the purposes of sub-section (2), the Commission shall consider the following factors:

- (a) the circumstances under which the public office holder left his office;
- (b) the general employment prospects of the public office holder;

(c) the nature, and significance to Government, of information possessed by the public office holder by virtue of that office holder's public office;

(d) the facilitation of interchange between the private and public sector;

(e) the degree to which the new employer might gain unfair commercial advantage by hiring the public office holder;

(f) the authority and influence possessed by the public office holder while in public office; and

(g) the disposition of other cases.

(4) The decision made by the Commission shall be communicated in writing to the applicant referred to in sub-section (1).

(5) If the Commission has granted a waiver or reduction of limitation in accordance with this section, the Commission shall publish the decision and the reasons in the public registry maintained under section 15.

CHAPTER-VI ADVICE AND OPINION

11. Confidential advice and opinion.---In addition to carrying out other duties and functions under this Act, the Commission shall-

(a) provide confidential advice to the Chief Minister, with respect to the application of this Act to individual public office holders;

(b) provide confidential advice to individual public office holders with respect to their obligations under this Act; and

(c) issue opinions regarding the requirements of this Act and means to be adopted for compliance with its provisions.

Provided that the confidential advice and opinions referred to in this section shall not be exempted from disclosure to the Provincial Assembly.

12. Requests from citizen of Pakistan.---Any citizen of Pakistan who has reasonable grounds to believe that a public office holder has contravened the provision of this Act may, in writing, request the Commission showing his complete address with CNIC copy to examine the matter:

Provided that anonymous applications shall not be entertained by the Commission.

13. Conclusion of final report.---A conclusion by the Commission set out in a report under this Act that a public office holder has or has not contravened this Act may not be altered by anyone but is not determinative of the measures to be taken as a result of the report.

14, Powers in respect of reports.---The Commission shall have the powers to summon witnesses and require them-

(a) to give evidence orally or in writing on oath or, if they are persons entitled to affirm in civil matters, on affirmation; and

(b) to produce any documents and things that the Commission considers necessary.

CHAPTER-VIL

PUBLIC REGISTRY

15. Publication through public registry.---(1) The Commission shall maintain a registry consisting of the following documents for examination by the public:

(a) summary statements made under section 7 of this Act; and
(b) any other documents that the Commission considers appropriate.

(2) If a public office holder has recused himself in respect of a matter and a public declaration is made in respect of that recusal under section 6 of this Act-

(a) no publication of the declaration shall be made if the very fact of the recusal could reveal, directly or indirectly, any of the following:

(i) any privileged information, so defined or provided under the Qanun-e-Shahadat Order, 1984 (Presidential Order No. 10 of 1984); and

(ii) special operational information within the meaning of secret, as defined under the Official Secret Act, 1923 (Act No. XIX of 1923); and

(b) no publication of the declaration shall include any detail that could reveal, directly or indirectly, any of the following:

(i) any privileged information, so defined or provided under the Qanoon-e-Shahadat Order, 1984 (Presidential Order No. 10 of 1984);

(ii) information that is subject to lawyer-client privilege;

(iii) information that is subject to any restriction on disclosure created by or under any other Act of the Provincial Assembly or the Parliament;

(iv) information that could reasonably be expected to cause injury to international relations, national defence or national security, or to the detection, prevention or suppression of criminal, subversive or hostile activities;

(v) information that could reasonably be expected to cause injury to the privacy interests of an individual; or

(vi) information that could reasonably be expected to cause injury to commercial interests.

CHAPTER-VIII PUNITIVE DECLARATION

16. —_ ‘ Violation.---(1) Without prejudice to any other penal law for the time being in force and in addition to the penalty or penalties provided therein, every public office holder who contravenes any provision or violates any obligation, so enunciated in this Act, shall be liable to be publically declared to have committed Conflict of Interest.

(2) Such declaration by the Commission under sub-section (1) shall serve as conclusive proof of the contravention of provisions of this Act which shall be communicated to relevant Authority for initiation of necessary disciplinary or penal action or both, as the case may be, under the relevant law against the concerned public office holder.

(3) Notwithstanding proceedings under sub-section (1) of this section or otherwise, in case of non-compliance with respect to any obligatory declarations, or omission to file statement, document or report where-ever required under this Act or otherwise instructed by the Commission, the public office holder concerned shall also be liable to monetary penalty not exceeding rupees five hundred thousand:

Provided that imposition of penalty shall not be conviction and would not entail disqualification of a public office holder ipso-facto.

(4) Any contract made in violation of the provisions of this Act may be declared void and may be rescinded by the contracting governmental agency within five years of signing and execution of such contract, upon the recommendation of the Commission:

Provided that the recommendations of the Commission shall be binding and shall be given effect within thirty (30) days of receipt of such recommendations:

Provided further that in cases where a contract is invalidated, the contractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or service furnished prior to the date of receiving notice that the contract has been rescinded:

Provided further that in case the Commission finds that loss occasioned to the Government on account of Conflict of Interest is of minimum nature, whereas the benefit accruing to the Government from such transaction is of substantial value, the Commission may recommend that such contract may not be rescinded.

17. Payment of penalty.---(1) If the public office holder pays the penalty imposed by the Commission shall not absolve him from making such obligatory declaration or submitting such statement, document or report as required under any provision of this Act or otherwise instructed by the Commission.

(2) Notwithstanding the payment of monetary penalty, the Commission may also proceed to issue public office holder a notice of violation in case of persistent non-compliance.

18. Representation to the Commission.---(1) If the public office holder makes representations to the Commission in accordance with the notice of violation, the Commission shall decide, on a balance of probabilities, whether the public office holder committed the violation and if so, may impose the penalty proposed, a lesser penalty or no penalty.

(2) The Commission shall cause notice of any decision made under sub-section (1) to be served on the public office holder.

19. Failure to act.---(1) A public office holder, who fails to make representations in accordance with the notice of violation, shall be deemed to have committed the violation.

(2) If the Commission imposes the penalty, it shall notify the public office holder of the penalty so imposed. Such penalty shall thereafter be deductible from any salary or remuneration, if any, payable to the public office holder upon the order made by the Commission to the public office holder's employer or Provincial Assembly or local council, as the case may be, and where no salary is payable, the penalty shall be recoverable as arrears of land revenue.

(3) In case the Commission finds any public office holder guilty of violation, it

shall bring this fact to the notice of his employer, or to the notice of the Speaker or Secretariat of the local council in the case of members of the Provincial Assembly or local council, respectively, who may initiate disciplinary, penal or other proceedings against such violator.

20. Activities on behalf of the constituents.---Nothing in this Act prohibits a member of the Provincial Assembly who is a public office holder or former public office holder from engaging in those activities that he would normally carry out as a member of the Provincial Assembly. Moreover, nothing in this Act abrogates or derogates from any of the privileges, immunities and powers available otherwise to a member of Provincial Assembly.

21. Order and decision.---(1) Every order and decision of the Commission is final and shall not be questioned or reviewed.

(2) Any person aggrieved of the decision may file an appeal within thirty (30) days with a Tribunal to be notified by Government.

(3) Composition of the Tribunal and its procedure may be prescribed by Government.

CHAPTER-IX MISCELLANEOUS

22. Annual report.---The Commission shall submit an Annual Report to the Provincial Assembly which shall include details of all of the functions it has carried out and progress it has achieved in the relevant year under this Act and the said Report shall be placed for discussion before the Provincial Assembly within thirty (30) days of its submission.

23. Power to make rules.---Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

24. Power to make regulations.---Commission may, make regulations, not inconsistent with these rules, for carrying out the purposes of this Act.

25. Removal of difficulties.---If any difficulty arises in implementation of this Act the Government may pass such orders, not inconsistent with this Act to remove such difficulty.