

A BILL

*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 conflicts in the public interest should they arise, to establish an independent Commission with the mandate to determine the measures necessary to avoid conflicts 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 for matters connected therewith and ancillary thereto;

It is hereby enacted as follows:

Part I PRELIMINARY

- 1. Short title, extent and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Prevention of Conflict of Interest Act, 2014.
- (2) It shall extend to the whole of the Province of the Khyber Pakhtunkhwa.
- (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.

Part – II INTERPRETATION

- 2. Definitions.**---In this Act , unless there is anything repugnant in the subject or context,--
 - (a) “arm’s length transaction” means a transaction between persons, who are not related to each other and conducted in a manner that no conflict of interest arises;
 - (b) “assets” means 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;
 - (c) “Commission” means the Khyber Pakhtunkhwa Prevention of Conflict of Interest and Ethics Commission established under section 3 of this Act;

- (d) “controlled assets” means assets whose value could be directly or indirectly affected by Government decisions or policy including, but not limited to, the following:
 - (i) publicly traded securities of corporations and foreign governments, whether held individually or in an investment portfolio account such as, but not limited to, stocks, bonds, stock market indices, trust units, closed-end mutual funds, commercial papers and medium-term notes;
 - (ii) self-administered registered, retirement savings plans, self-administered registered education plan, education savings plans and registered, retirement income funds composed of at least one asset that would be considered controlled if held outside the plan or fund;
 - (iii) commodities, futures and foreign currencies held or traded for speculative purposes; and
 - (iv) stock options, warrants, rights and similar instruments;
- (e) “dependent child” means a child of a public office holder, or a child of the public office holder’s spouse, who has not reached the age of 18 years or who has reached that age but is primarily dependent on the public office holder or public office holder’s spouse partner for financial support;
- (f) “exempt assets” means assets and interests in assets for the private use of public office holders and the members of their family and assets that are not of a commercial character, including the following:
 - (i) primary and secondary residences, recreational property and farm land and buildings used or intended for use by public office holders or the members of their family;
 - (ii) household goods and personal effects;
 - (iii) Works of art, antiques and collectibles;
 - (iv) automobiles and other personal means of transportation;
 - (v) cash and deposits;
 - (vi) Prize Bonds, Saving Certificates and other similar investments issued or guaranteed by any level of government in Pakistan;

- (vii) registered retirement savings plans and registered education savings plans that are not self-administered or self-directed;
 - (viii) investments in open-ended mutual funds;
 - (ix) guaranteed investment certificates and similar financial instruments;
 - (x) public sector debt financing not guaranteed by a level of government, such as university and hospital debt financing;
 - (xi) annuities and life insurance policies;
 - (xii) pension rights;
 - (xiii) money owed by a previous employer, client or partner;
 - (xiv) personal loans receivable from the public office holder's relatives, and personal loans of less than rupees fifty thousand (Rs. 50,000) receivable from other persons if the public office holder has loaned the moneys receivable;
 - (xv) money owed under a mortgage or hypothecation of less than rupees fifty thousand (Rs. 50,000);
 - (xvi) self-administered or self-directed registered retirement savings plans, registered education savings plans and registered retirement income funds composed exclusively of assets that would be considered exempt if held outside the plan or fund; and
- (g) "family" means a person's spouse, dependent children, dependent children of spouse, parents, parents of spouse and siblings;
 - (h) "former public office holder" means a former public office holder who, while in office, was a public office holder;
 - (i) "Government" means the Government of the Province of the Khyber Pakhtunkhwa;
 - (j) "gift or other advantage" means any gratuity, favor, discount, entertainment, hospitality, loan forbearance or other item having monetary value that the recipient has no obligation to repay, and includes a service or property, the use of property or money provided without charge or at less than its commercial value, gifts of transportation, local or international travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in

advance or after the expense has been incurred, but does not include presents from relatives;

- (k) “Local Council” means Local Council as defined in the Khyber Pakhtunkhwa Local Government Act, 2013 (Khyber Pakhtunkhwa Act No. XXIII of 2013);
- (l) “lobbying” means to communicate with a public office holder or to arrange a meeting between a public office holder and any other persons in respect of-
 - (i) the development of any legislative proposal by Government or by a member of the Provincial Assembly;
 - (ii) the introduction of any bill or resolution in Provincial Assembly or the passage, defeat or amendment of any bill or resolution that is before the Provincial Assembly;
 - (iii) the making or amendment of any rules or regulations under any statutory instrument;
 - (iv) the development or amendment of any policy or program of Government;
 - (v) the awarding of any grant, contribution or other financial benefit by or on behalf of any local, Provincial or Federal Government; or
 - (vi) the awarding of any contract by or on behalf of any local, Provincial or Federal Government;
- (m) “private interest” means a benefit or a liability accruing to a person or his family but does not include an interest in a decision or matter-
 - (i) that is of general application;
 - (ii) that affects a public office holder as one of a broad class of persons; or
 - (iii) that concerns the remuneration or benefits received by virtue of being a public office holder;
- (n) “Provincial Assembly” means the Provincial Assembly of the Province of the Khyber Pakhtunkhwa;
- (o) “public office holder” includes a person who-
 - (i) is the Governor of the Province;
 - (ii) is the Chief Minister, 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, a Provincial Parliamentary Secretary, a member of the Provincial Assembly, the Advocate-General of the Province of the Khyber Pakhtunkhwa including an Additional Advocate-General and a Deputy 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;

- (iii) is the member of Subordinate Judiciary;
- (iv) is holding, an office or post in the service of the Province, or in the service of Pakistan but performing duties under the Provincial Government, or any service in connection with the affairs of the Province, or of a public sector entity, or of a local government institution, public authority or council constituted under any provincial law relating to the constitution of local governments, municipal or development authority, co-operative societies or in the management of corporations, banks, financial institutions, firms, concerns, undertakings or any other institution or organization established, controlled or administered by or under the Provincial Government;
- (v) is the Nazim or Naib Nazim of a Local Council;
- (p) “public sector entity” means a department or agency of the Government, or a company or corporation established by or under an Act of Provincial Assembly or any other entity to which Government may appoint a person;
- (q) “public servant” has the same meaning as assigned to it by section 21 of the Pakistan Penal Code, 1860 (XLV of 1860);
- (r) “relative” means those related to a person by birth, marriage, adoption or affinity and include such person’s spouse, children, siblings, parents, parents’ siblings, nephews, nieces, parents of spouse, siblings of spouse, and children and nephews and nieces of spouse; and
- (s) “spouse” means a person who is married to the person in question, and is not living separate and apart but does not include a person from whom a public office holder is separated through a divorce deed, a separation agreement or a court order.

Part – III
PREVENTION OF CONFLICT OF INTEREST AND
ETHICS COMMISSION

3. Establishment of the Khyber Pakhtunkhwa Prevention of Conflict of Interest and Ethics Commission.---(1) Subject to the provisions of sub-section (2), Government shall, by notification in the official Gazette, establish an independent Commission to be called the 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 to sue and be sued in its name:

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 Government, who shall be eligible to become a judge of Supreme Court of Pakistan or eligible to become a judge of Peshawar High Court, Peshawar and two other members to be appointed by Government in the following manner:

- (a) one member of the Commission shall be a retired civil servant in BPS-20 or above from Pakistan Audit and Accounts Service or Inland Revenue Service; and
- (b) the other member of the Commission shall be a person having expertise in financial management.

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

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

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

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

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

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

(9) On the terms and conditions so determined by it through regulation, 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 office of the Commission.

(10) Prior to each fiscal year, the Commission shall cause to be prepared an estimate of the sums that will be required to pay the charges and expenses of the Commission during the fiscal year.

(11) 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 should 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.

Part – IV

RULES GOVERNING CONFLICT OF INTEREST

6. Conflict of interest.---For the purposes of this Act, a public office holder is in a conflict of interest when he exercises an official power, duty or function or uses non-public information in a manner that provides an opportunity to further his private interests or those of his relatives or friends or to improperly further another person's private interests.

7. General Duty.—(1) Every public office holder shall arrange his private affairs in a manner that will prevent the public office holder from being in a conflict of interest.

(2) A public office holder shall not use information that is gained in the performance of his duties and is not available to the general public to further his private interests or those of his relatives or friends or to improperly further another person's private interests.

(3) A public office holder shall not use his position to attempt to influence a decision to be made by another person to further his private interests or those of his relatives or friends or to improperly further another person's private interests.

(4) A public office holder shall have the obligation to settle his private businesses upon the selection or appointment to the public office in

order to prevent conflict of interest in accordance with the provisions of this Act, and in the case of emergence of such a conflict, the official shall have the obligation to resolve it in a manner determined by the Commission to protect public interest.

8. Decision making.---(1) No public office holder shall make a decision or participate in making a decision related to the exercise of an official power, duty or function if the public office holder knows or reasonably should know that, in the making of the decision, he would be in a conflict of interest.

(2) No Provincial Minister shall, in his capacity as a member of the Provincial Assembly, debate or vote on a question that would place him in a conflict of interest.

9. Preferential treatment.---No public office holder shall, in the exercise of an official power, duty or function, give preferential treatment to any person or organization based on the identity of the person or organization that represents the first-mentioned person or organization.

10. Insider information.---No public office holder shall use information that is obtained in his or her position as a public office holder and that is not available to the public to further or seek to further the public office holder's private interests or those of the public office holder's relatives or friends or to improperly further or to seek to improperly further another person's private interests.

11. Influence.---(1) No public office holder shall use his position as a public office holder to seek to influence a decision of another person so as to further the public office holder's private interests or those of the public office holder's relatives or friends or to improperly further another person's private interests.

(2) No public office holder shall engage in any act of lobbying to further his private interest or those of his relatives or friends or to improperly further another person's private interests.

12. Offers of outside employment.---No public office holder shall allow himself to be influenced in the exercise of an official power, duty or function by plans for, or offers of, outside employment.

13. Gifts and other advantages.---(1) No public office holder or member of his family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.

(2) Notwithstanding to sub-section (1), a public office holder or member of his family may accept a gift or other advantage that is-

- (a) permitted under the Khyber Pakhtunkhwa Civil Servants (Conduct) Rules, 1987; and
- (b) that is given by a relative or friend.

14. Travel.---No public office holder shall accept travel on commercial, chartered or private aircraft for any purpose unless required in his capacity as

a public office holder or in exceptional circumstances approved by the Government.

15. Contracts with other entities.—(1) No public office holder shall knowingly be a party to a contract with a public sector entity under which he receives a personal benefit, other than a contract under which he is entitled to pension benefits.

(2) No public office holder shall have an interest in a sole proprietorship, partnership, private company, trust or other legal entity that is a party to a contract with a public sector entity.

(3) Sub-sections (1) and (2) shall not apply if the Commission renders an opinion prior to the execution of a contract with a public sector entity that the contract or interest is unlikely to affect the exercise of the official powers, duties and functions of the public office holder.

16. Contracting for siblings.—(1) No public office holder who otherwise has the authority shall, in the exercise of his official powers, duties and functions, enter into a contract or employment relationship with a member of his family.

(2) No public office holder, who otherwise has the authority shall permit the public sector entity for which he is responsible, or to which he is assigned, to enter into a contract or employment relationship with a member of his family except in accordance with an impartial administrative process in which the public office holder plays no part.

(3) This section does not apply to a contract for goods or services offered by a public sector entity on the same terms and conditions as to the general public or a contract for goods or services awarded after open competitive bidding in accordance with the public procurements laws in force.

17. Prohibited activities.—(1) Unless otherwise expressly provided in any law or rules for the time being in force relating to terms and conditions of appointment of public office holder, no public official holder shall-

- (a) engage in employment or the practice of a profession;
- (b) manage or operate directly or indirectly a business or commercial activity;
- (c) continue as, or become, a director or officer in a corporation or an organization;
- (d) hold office in a union or professional association;
- (e) serve as a paid consultant; or
- (f) be a partner in a partnership.

(2) Notwithstanding anything contained in sub-section (1), for the purpose of maintaining his employment opportunities or ability to practice his or her profession on leaving public office, a public office holder may engage in employment or the practice of a profession in order to retain any licensing

or professional qualifications or standards of technical proficiency necessary for that purpose if-

- (a) the public office holder does not receive any remuneration; and
- (b) the Commission is of the opinion that it is not incompatible with the public office holder's duties as a public office holder.

(3) Notwithstanding anything contained in clause (c) of sub-section (1), a public office holder, who is a director or officer in a company or corporation fully or substantially owned or controlled by Government, may continue as, or become, a director or officer in such a financial or commercial company or corporation but only if he serves in an ex-officio capacity and receives no remuneration from serving in such office other than remuneration and benefits of his own office.

(4) A public office holder may however be at liberty to continue as, or become, a director or officer in an organization of a philanthropic, charitable or non-commercial character but only if Government is of the opinion that it is not incompatible with his public duties as a public office holder.

18. Fund raising.---No public office holder shall personally solicit funds from any person or organization if it would place the public office holder in a conflict of interest.

19. Divestiture of controlled assets.---No public office holder shall, unless otherwise provided in this Act, hold controlled assets.

20. Anti-avoidance.---No public office holder shall take any action that has as its purpose the circumvention of the public office holder's obligations under this Act.

21. Condition of appointment of employment.—Compliance with this Act is a condition of a person's appointment or employment as a public office holder and shall be deemed to have been included in his terms and conditions of employment from the date of his appointment, even if prior to this Act.

Part – V RECUSAL

22. Duty to recuse.—A public office holder shall recuse himself from any discussion, decision, debate or vote on any matter in respect of which he would be in a conflict of interest.

Part – VI CONFIDENTIAL DISCLOSURE

23. Assets and interests report.—(1) A public office holder shall file annually an assets and interests report to the Commission in the manner prescribed, and the first such report shall be due within 60 days after the day on which he is appointed as a public office holder or coming into force of this Act, whichever is later.

(2) The report required under subsection (1) shall contain the following:

- (i) a description of all of the public office holder's assets and an estimate of their value;
- (ii) a description of all of the public office holder's direct and contingent liabilities, including the amount of each liability;
- (iii) a description of all income received by the public office holder during the 12 months before the day of appointment and all income the public office holder is entitled to receive in the 12 months after the day of appointment;
- (iv) a description of all activities referred to in section 17 in which the public office holder was engaged in the two-year period before the day of appointment;
- (v) a description of the public office holder's involvement in philanthropic, charitable or non-commercial activities in the two-year period before the day of appointment;
- (vi) a description of all of the public office holder's activities as trustee, executor or liquidator of a succession or holder of a power of attorney in the two-year period before the day of appointment; and
- (vii) any other information that the Commission considers necessary to ensure that the public office holder is in compliance with this Act.

(3) A Public Office holder shall also make reasonable efforts to include in the report the information referred to in subsection (2) for his spouse and dependent children.

(4) A public office holder shall include in the report a description of all benefits that he, any member of his family or any partnership or private corporation in which he or a member of his family has an interest is entitled to receive during the 12 months after the day of appointment, as a result of a contract with a public sector entity and the report shall include a description of the subject-matter and nature of the contract.

(5) If there is a material change in any matter in respect of which a public office holder is required to provide the assets and interests report under this section, the public office holder shall, within 30 days after the change, file a report with the Commission describing the material change.

24. Disclosure of gifts.—If the total value of all gifts or other advantages accepted by a public office holder or a member of his family exceeds rupees ten thousand (Rs. 10,000) from any one source other than relatives and friends in a twelve-months period, the public office holder shall disclose the gifts or other advantages to the Commission within thirty days after the day on which the value exceeds rupees ten thousand (Rs. 10,000).

25. Disclosure of offers.—(1) A public office holder shall disclose in writing to the Commission within seven days all firm offers of outside employment.

(2) A public office holder who accepts an offer of outside employment shall within fifteen days disclose his acceptance of the offer in writing to the Commission.

Part – VII PUBLIC DECLARATION

26. Obligatory declarations.—(1) If a public office holder has recused himself to avoid a conflict of interest, the public office holder shall, within sixty days after the day on which the recusal took place, make a public declaration of the recusal that provides sufficient detail to identify the conflict of interest that was avoided in the manner prescribed.

(2) A public office holder shall, within one hundred and twenty days after the day on which he is appointed as a public office holder, make a public declaration of all of his assets that are neither controlled assets nor exempt assets in the manner prescribed.

(3) A Public office holder shall, within one hundred and twenty days after the day on which he is appointed, make a public declaration with respect to all of his liabilities of rupees one million or more that provides sufficient detail to identify the source and nature of the liability in the manner prescribed.

(4) If a public office holder holds a position referred to in sub-sections (3) or (4) of section 17 of this Act, the public office holder shall, within one hundred and twenty days after the day on which he is appointed, make a public declaration of that fact in the manner prescribed.

27. Summary statement.— A public office holder shall, within 120 days after the date on which he is appointed, sign a summary statement containing such information as may be prescribed and provide it to the Commission.

Part – VIII DIVESTMENTS

28. Divestment on appointment.—(1) Subject to sub-sections (6) and (7), a public office holder shall, within one hundred and twenty days after the day on which he or she is appointed as a public office holder, divest each of his or her controlled assets by doing one of the following:

- (a) selling it in an arm's-length transaction; or
- (b) placing it in control of an Official Receiver appointed by the Commission on its own or on the application of public office holder on such terms as provided in sub-section (3).

(2) Subject to sub-sections (6) and (7), a public office holder shall, within one hundred and twenty days after the day on which he or she receives controlled assets by way of gift or testamentary disposition or in any other way over which the public office holder has no control, divest the controlled assets in the manner required by sub-section (1).

(3) The terms of appointment of Official Receiver must provide that:

- (i) the public office holder shall not have any power of management and control over the controlled assets so assigned to Official Receiver;
- (ii) the Official Receiver shall not seek or accept any instructions or advise from the public office holder concerning the management or administration of the assets;
- (iii) the assets placed in control of the Official Receiver shall be listed and schedule attached to the order of appointment of such Official Receiver;
- (iv) the terms of any such order shall be for as long as the public office holder continues to his office or until the controlled assets have been defeated;
- (v) the Official Receiver shall deliver the controlled assets to the public office holder when the order of appointment or Receiver stand terminated by the Commission;
- (vi) the Official Receiver shall not provide information about the controlled assets including its management to the public office holder, except for information it is required by law to be filled by public office holder and provide report on overall value of the controlled assets;
- (vii) the public office holder may receive any income earned by the controlled assets and add to or withdraw from the capital funds in the controlled assets;
- (viii) the Official Receiver shall be at arm's length from the public office holder and the Commission is to be satisfied that in arm's length relationship exists; and
- (ix) the Official Receiver shall provide the periodic reports verifying as to accuracy, the nature and market value of controlled assets, a reconciliation of controlled assets, the net income of the controlled assets for the preceding period and the fees of the Official Receiver if any.

(4) Notwithstanding sub-section (3), general investment instruction may be included in order of appointment of Official Receiver by the Commission provided that no oral investment instructions may be given with respect to controlled assets.

(5) A public office holder shall provide to the Commission a confirmation of sale in eventuality under sub-section (1).

(6) Subject to the approval of the Commission, a public office holder is not required to divest controlled assets that are given as security to a lending institution.

(7) A public office holder who is not a Minister, Advisor or Special Assistant to the Chief Minister, is not required to divest controlled assets if, in the opinion of the Commission, the assets are of such minimal value that they do not constitute any risk of conflict of interest in relation to the public office holder's official duties and responsibilities.

(8) For the appointment of Official Receiver under this section, the Commission shall have the same powers as are available to the Courts under Civil Procedure Code, 1908.

Part –IX FUNCTIONS OF THE COMMISSION

29. 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.

30. Determination of the appropriate measures.—The Commission shall determine the appropriate measures by which a public office holder shall comply with this Act and, in doing so, before they are finalized, shall try to achieve agreement with the public office holder.

31. Compliance Order.—In addition to the specific compliance measures provided for in this Part, 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.

32. Post employment obligations.—Before a public office holder's last day in office, the Commission shall advise the public office holder of his obligations under this Act.

Part –X RULES FOR FORMER PUBLIC OFFICE HOLDERS

33. Prohibition after leaving office.—No former public office holder shall act in such a manner as to take improper advantage of his previous public office.

34. Previously acting for Government.—(1) No former public office holder shall act for or on behalf of any person or entity in connection with any specific proceeding, transaction, negotiation or case to which the Government is a party and with respect to which the former public office holder had acted for, or provided advice to, the Government.

(2) No former public office holder shall give advice to his client, business associate or employer using information that was obtained in his capacity as a public office holder and is not available to the public.

35. Prohibition for contracting.—(1) No former public office holder shall enter into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during the period of one year immediately before his last day in office.

(2) No former public office holder shall make representations whether for remuneration or not, for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which he had direct and significant official dealings during the period of one year immediately before his last day in office.

(3) No former public office holder who was a Minister, Advisor or Special Assistant to the Chief Minister, shall make representations regarding a personal benefit to a current Minister, Advisor or Special Assistant who was a minister, advisor or special assistant at the same time as the former public office holder.

36. Time limits.— With respect to all former public office holders the prohibitions set out in sub-sections (1) and (2) of section 35 apply for the period of two years following the former public office holder's last day in office.

37. Report to the Commission.— (1) A former public office holder who, during the applicable period under section 36, has made any communication or arranges any meeting within the scope of lobbying, shall report that communication or meeting to the Commission.

(2) The former public office holder shall file a return that--

- (a) sets out, with respect to every communication or meeting referred to in sub-section (1)--
 - (i) the name of the public office holder who was the object of the communication or meeting;
 - (ii) the date of the communication or meeting;
 - (iii) particulars to identify the subject-matter of the communication or meeting; and
 - (iv) any other information that the Commission requires; and
- (b) if any information contained in the return is no longer correct or additional information that the former public office holder would have been required to provide in the return has come to his knowledge after the return was filed, provides the corrected or additional information.

38. Exemptions.— (1) The Commission may, on application, exempt from the application of section 35 or 37 a former public office holder.

(2) An exemption may only be granted under sub-section (1), in respect of a person based on the following criteria-

- (a) the person was not a senior officer;
- (b) the person's functions did not include the handling of files of a political or sensitive nature, such as confidential cabinet documents; and

- (c) the person had little influence, visibility or decision-making power in the department concerned.

(3) The decision made by the Commission shall be communicated in writing to the person who applied for the exemption.

(4) If the Commission has granted an exemption in accordance with this section, the Commission shall publish the decision and the reasons in terms of section 51 of this Act.

Part –XI

LIMITED APPLICABILITY

39. Waiver or reduction of limitation.— (1) On application by a public office holder or a former public office holder, the Commission may waive or reduce any applicable period set out in section 36.

(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 or former public office holder;
- (c) the nature, and significance to Government, of information possessed by the public office holder or former 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 or former public office holder;
- (f) the authority and influence possessed by the public office holder or former 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 in accordance with this section, the Commission shall publish the decision and the reasons in the public registry maintained under section 51.

40. Decision of the Commission.— On receipt of a report under section 37, the Commission shall immediately determine whether the former public office holder is complying with his obligations under this part.

41. Official dealings.— (1) If the Commission determines that a former public office holder is not complying with his obligations under this part, the Commission may forbid a current public office holders from engaging in official dealings with that former public office holder.

(2) All current public office holders shall comply with an order of the Commission made under sub-section (1).

42. No impact.— For greater certainty, no exemption granted in respect of a person under section 38 of this Act, and no waiver or reduction granted in respect of a person under section 39 affects any obligation or prohibition that applies to that person under any other law.

Part –XII

ADMINISTRATION AND ENFORCEMENT

43. 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, on the request of 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.

44. Requests from members of Provincial Assembly.—(1) A member of the Provincial Assembly who has reasonable grounds to believe that a public office holder or former public office holder has contravened may, in writing, request that the Commission examine the matter.

(2) The request shall identify the provisions of this Act alleged to have been contravened and set out the reasonable grounds for the belief that the contravention has occurred.

(3) If the Commission determines that the request is frivolous or vexatious or is made in bad faith, it may decline to examine the matter. Otherwise, it shall examine the matter described in the request and, having regard to all the circumstances of the case, may discontinue the examination.

(4) In conducting an examination, the Commission may consider information from the public that is brought to its attention by a member of the provincial assembly indicating that a public office holder or former public office holder has contravened any of the provisions of this Act. The member shall identify the alleged contravention and set out the reasonable grounds for believing a contravention has occurred.

(5) If a member of the Provincial Assembly receives information referred to in sub-section (4), the member, while considering whether to bring

that information to the attention of the Commission, shall not disclose that information to anyone. If the member brings that information to the attention of the Commission under that sub-section, the member shall not disclose that information to anyone until the Commission has issued a report under this section in respect of the information.

(6) Where the Commission is of the opinion that a member of the Provincial Assembly has failed to comply with the confidentiality provision of sub-section (5), the Commission may refer the matter, in confidence, to the Speaker of the Provincial Assembly.

(7) The Commission shall provide the Chief Minister with a report setting out the facts in question as well as the Commission's analysis and conclusions in relation to the request. The report shall be provided even if the Commission determines that the request was frivolous or vexatious or was made in bad faith or the examination of the matter was discontinued under sub-section (3).

(8) The Commission shall, at the same time that the report is provided under sub-section (7), provide a copy of it to the member who made the request and the public office holder or former public office holder who is the subject of the request and make the report available to the public.

(9) The Commission may not include in the report any information that it is required to keep confidential.

45. Suo moto initiative.—(1) If the Commission has reason to believe that a public office holder or former public office holder has contravened this Act, the Commission may examine the matter on its own initiative:

Provided that any person may also approach the Commission for initiation of proceedings under sub-section (1). Upon receipt of such an application, the Commission may admit the application but shall provide opportunity of hearing to public office holder, complained against, before such admission.

(2) The Commission, having regard to all the circumstances of the case, may discontinue the examination.

(3) Unless the examination is discontinued, the Commission shall provide the Chief Minister with a report setting out the facts in question as well as the Commission's analysis and conclusions.

(4) The Commission shall, ensure at the same time that the report is provided under sub-section (3) to the Chief Minister, provide a copy of it to the public office holder or former public office holder who is the subject of the report and make the report available to the public.

46. Presentation of views.—Before providing confidential advice under clause (a) of section 43 of this Act or a report under section 44 or 45 of this Act, the Commission shall provide the public office holder or former public office holder concerned with a reasonable opportunity to present his or her views.

47. Conclusion of final report.—A conclusion by the Commission set out in a report under section 44 or 45 that a public office holder or former 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.

48. Powers in respect of reports.— (1) For the purposes of clause (a) of section 43 and sections 44 and 45 of this Act, the Commission has the power 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.

(2) The Commission has the same power to enforce the attendance of witnesses and to compel them to give evidence as a Civil Court within the meanings of Code of Civil Procedure, 1908 (Act No. V of 1908).

(3) The powers referred to in sub-sections (1) and (2) shall be exercised in camera.

(4) Information given by a person under this section is inadmissible against the person in a court or in any proceeding, other than in a prosecution of the person for an offence under section 193 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860), in respect of a statement made to the Commission.

(5) Unless otherwise required by law, the Commission, and every person acting on behalf or under the direction of the Commission, may not disclose any information that comes to their knowledge in the performance of their duties and functions under this section, unless--

- (a) the disclosure is, in the opinion of the Commission, essential for the purposes of carrying out its powers under sub-section (1) or establishing the grounds for any conclusion contained in a report under section 44 or 45 of this Act; or
- (b) the information is disclosed in a report referred to in clause (a) or in the course of a prosecution for an offence under section 193 of the *Pakistan Penal Code, 1860 (Act No. XLV of 1860)*, in respect of a statement made to the Commission.

49. Suspension of examination.—(1) The Commission shall immediately suspend an examination under section 43, 44 or 45 of this Act if-

- (a) the Commission believes on reasonable grounds that the public office holder or former public office holder has committed an offence under a Provincial or Federal Statute in respect of the same subject-matter, in which case the Commission shall notify the relevant authorities; or
- (b) it is discovered that the subject-matter of the examination is also the subject-matter of an investigation being conducted by a Federal or Provincial Law Enforcement

or Prosecution Agency to determine whether an offence referred to in clause (a) has been committed or that a charge has been framed in respect of that subject-matter.

(2) The Commission may not continue an examination until any investigation or charge in respect of the same subject-matter has been finally disposed of.

50. Indemnity and Bar of Jurisdiction.—(1) The Commission, or any person acting on behalf or under the direction of the Commission, shall not be a competent authority or compellable witness in respect of any matter coming to his knowledge as a result of exercising any powers or performing any duties or functions of the Commission under this Act.

(2) No criminal or civil proceedings lie against the Commission, or any person acting on behalf or under the direction of the Commission, for anything done, reported or said in good faith in the exercise or purported exercise of any power, or the performance or purported performance of any duty or function, of the Commission under this Act.

Part –XIII PUBLIC REGISTRY

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

- (a) public declarations made under section 26 of this Act;
- (b) summary statements made under section 27 of this Act;
- (c) notes of every gift or other advantage forfeited under sub-section (3) of section 13 of this Act;
- (d) decisions on exemption applications under section 38 of this Act and the accompanying reasons;
- (e) decisions on waiver or reduction applications under section 39 of this Act and the accompanying reasons; and
- (f) 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 sub-section (1) of section 26 or section 31 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(President 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);
- (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(President Order No. 10 of 1984);
 - (ii) special operational information within the meaning of secret, as defined under the Official Secret Act, 1923(Act No.XIX of 1923); and
 - (iii) information that is subject to lawyer-client privilege;
 - (iv) information that is subject to any restriction on disclosure created by or under any other Act of the Provincial Assembly or the Parliament;
 - (v) 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;
 - (vi) information that could reasonably be expected to cause injury to the privacy interests of an individual; or
 - (vii) information that could reasonably be expected to cause injury to commercial interests.

Part –XIV

PUNITIVE DECLARATIONS

52. 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, besides publication under section 61, 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 an administrative monetary penalty not exceeding rupees one hundred thousand.

(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 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.

53. Notice of violation.— (1) If the Commission believes on reasonable grounds that a public office holder has committed a violation, the Commission may issue, and shall cause to be served on the public office holder, a notice of violation.

(2) A notice of violation shall--

- (a) set out the name of the public office holder believed to have committed a violation;
- (b) identify the violation;
- (c) inform the public office holder that he may, within thirty days after the notice is served or within any longer period specified by the Commission, make representations to the Commission with respect to the alleged violation; and
- (d) inform the public office holder that if he does not make a representation in accordance with the notice, he will be considered to have committed the violation and the Commission may declare him to have committed Conflict of Interest under sub-section (1) of Section 52.

(3) The amount of penalty, under sub-section (3) of Section 52 in each case, shall be determined taking into account the following:

- (a) the fact that penalties have as their purpose to encourage compliance with this Act rather than to punish;
- (b) the public office holder's history of prior violations under this Act during the five-year period immediately before the violation; and
- (c) any other relevant matter.

54. Regulations for service.—The Commission, with prior approval of Government, may make regulations respecting the service of documents required or authorized to be served under sections 53 to 57 of this Act, including the manner and proof of service and the circumstances under which documents are deemed to be served.

55. Payment of penalty.— (1) If the public office holder pays the penalty imposed under sub-section (3) of Section 52, this 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 administrative monetary penalty, the Commission may also proceed to issue public office holder a notice of violation under Section 53 in case of persistent non-compliance.

56. 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.

57. 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) In case of proceeding under sub-section (3) of Section 52, 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.

58. Due diligence available.— (1) Due diligence is a defense in a proceeding in relation to a violation.

(2) Any provision of the provincial or federal law, applicable to the matter that may possibly render any circumstance a justification or excuse in relation to a charge for an offence applies in respect of a violation to the extent that it is not inconsistent with this Act.

59. Evidence.— In any proceeding, a notice appearing to have been issued under sub-section (1) of section 53 or sub-section(2) of section 56 of this Act, is admissible in evidence without proof of the signature or official character of the person appearing to have signed it.

60. Limitation.— (1) Proceedings in respect of a violation may be commenced at any time within but not later than one year after the day on which the Commission became aware of the subject-matter of the proceedings, irrespective of the fact that the public office holder has ceased to hold the office.

(2) A document appearing to have been issued by the Commission, certifying the day on which the subject-matter of any proceedings became known to the Commission, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is, in the absence of evidence to the contrary, proof of the matter asserted in it.

61. Publication in respect of violation.— If a public office holder is declared to have committed Conflict of Interest or an administrative monetary penalty is imposed on a public office holder, the Commission shall make public the nature of the violation, the name of the public office holder who committed it and the amount of the penalty imposed.

Part –XV GENERAL

62. Activities on behalf of the constituents.—(1) Subject to sub-section (2) of section 8 and sections 22 and 31 of this Act, 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.

(2) Subject to sub-section (2) of section 8 and sections 22 and 31 of this Act, nothing in this Act abrogates or derogates from any of the privileges, immunities and powers available otherwise to a member of Provincial Assembly.

63. Order and decision.— Every order and decision of the Commission is final and shall not be questioned or reviewed in any court.

64. Power to make rules.--- Government may, make rules for carrying out the purposes of this Act.

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

MINISTER-IN-CHARGE