



KHYBER PAKHTUNKHWA

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PROVINCIAL ASSEMBLY SECRETARIAT, KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 11th August, 2016.

No. PA/Khyber Pakhtunkhwa/Bills/2016/3977.—The Khyber Pakhtunkhwa Ehtesab Commission (Amendment) Bill, 2016 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 3rd August, 2016 and assented to by the Governor of the Khyber Pakhtunkhwa on 9th August, 2016 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA EHTESAB COMMISSION (AMENDMENT) ACT, 2016

(KHYBER PAKHTUNKHWA ACT NO. X OF 2016)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 11th August, 2016).

AN
ACT

*further to amend the Khyber Pakhtunkhwa
Ehtesab Commission Act, 2014.*

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Ehtesab Commission Act, 2014 (Khyber Pakhtunkhwa Act No. I of 2014); for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. **Short title and commencement.**—(1) This Act may be called the Khyber Pakhtunkhwa Ehtesab Commission (Amendment) Act, 2016.

(2) It shall come into force at once.

2. **Amendment of section 2 of the Khyber Pakhtunkhwa Act No. I of 2014.**--- In the Khyber Pakhtunkhwa Ehtesab Commission Act, 2014 (Khyber Pakhtunkhwa Act No. I of 2014), hereinafter referred to as the said Act, in section 2,-

- (i) in clause (a), for the word "Commission", the words "Directorate General" shall be substituted;
- (ii) in clause (l), for the word "Commission" occurring for the first time, the words "Directorate General" shall be substituted;
- (iii) after clause (l), as so amended, the following new clause shall be inserted, namely:
 "(la) "Directorate General" means the Directorate General of the Commission, established under section 3A of this Act;"
- (iv) in clauses (y) and (ag), for the word "Commission", the words "Directorate General" shall respectively be substituted.

3. **Insertion of section 3A to the Khyber Pakhtunkhwa Act No. I of 2014.**---In the said Act, after section 3, the following new section shall be inserted, namely:

"3A. Directorate General of the Commission.---(1) There shall be a Directorate General of the Commission to be headed by a Director General and shall consist of Prosecutor General and Directors of the various wings mentioned in section 11 of this Act and other employees working in connection with the affairs of the Commission.

(2) All actions by the Directorate General under this Act shall be taken by the name of the Commission."

4. **Amendment of section 4 of the Khyber Pakhtunkhwa Act No. I of 2014.**---In the said Act, in section 4,-

- (a) after sub-section (1), the following new sub-section shall be inserted, namely:
 "(1A) The Commissioners shall elect among themselves one Commissioner as Chief Ehtesab Commissioner."; and
- (b) in sub-section (3), for the words "remainder for the term of the said Commissioner", the words "term of four (04) years" shall be substituted.

5. **Amendment of section 5 of the Khyber Pakhtunkhwa Act No. I of 2014.**---In the said Act, in section 5, in sub-section (3),-

- (i) in-clause (c), the word "and" appearing after the semicolon shall be deleted; and
- (ii) in clause (d), the full stop appearing at the end shall be replaced by semicolon and the word "and", and thereafter the following new clause shall be added, namely:

"(e) inquire into any allegation of abuse of authority or misconduct by the Commissioners on a complaint received from the general public or through Director Internal Monitoring and Public Complaints Wing, and if found guilty, may be removed from office in the manner applicable to a Judge of a High Court upon a reference made by the Governor. "

6. Amendment of section 8 of the Khyber Pakhtunkhwa Act No. I of 2014.---In the said Act, in section 8,-

(i) after sub-section (2), the following new sub-sections shall be inserted, namely:

"(2A) The procedure for the appointment of the Commissioners by Search and Scrutiny Committee and its subsequent confirmation by the Legislative Committee shall be completed within a period of one hundred and twenty (120) days from the date when the said position falls vacant.

(2B) Whenever, any position falls vacant that is required to be filled by the Search and Scrutiny Committee, such procedure for the selection shall be started within a period of seven (07) days from the date when the position falls vacant. "; and

(ii) in sub-section (4), the words "and the candidate with highest score as Chief Ehtesab Commissioner" shall be deleted.

7. Amendment of section 9 of the Khyber Pakhtunkhwa Act No. I of 2014.---In the said Act, in section 9,-

(i) in clauses (a), (c), (e), (f), (g) and (i), for the word "Commission", wherever occurring, the words "Directorate General" shall respectively be substituted; and

(ii) for clause (c), the following shall be substituted, namely:

"(c) approve annual budget of the Commission, Directorate General and Ehtesab Courts; "

8. Amendment of section 10 of the Khyber Pakhtunkhwa Act No. I of 2014.---In the said Act, in section 10,-

(i) in sub-section (1), for the comma and words ", as often as necessary", the words "or when required" shall be substituted; and

(ii) after sub-section (4), the following new sub-section shall be added, namely:

"(5) The Directorate General shall provide secretariat support to the Commission. "

9. Amendment of section 11 of the Khyber Pakhtunkhwa Act No. I of 2014.---In the said Act, in section 11,-

(i) in the short title, for the word "Commission", the words "Directorate General" shall be substituted; and

- (ii) for sub-section (4), the following shall be substituted, namely:

"(4) Unless otherwise provided in this Act, the officers, staff and other employees, including Advisors and Consultants, shall be appointed by the Director General, **after framing of the prescribed rules. The appointments shall be made in a transparent manner and subject to the eligibility criteria and method of appointment laid down in the terms and conditions of service prescribed by Commission;**

Provided that in case of deviation from the prescribed criteria, the Commission may declare such appointments as null and void."

10. Amendment of section 12 of the Khyber Pakhtunkhwa Act No. I of 2014.--- In the said Act, in section 12,-

- (i) in sub-section (1), in the proviso, the full stop appearing at the end shall be replaced by a colon and thereafter the following new proviso shall be added, namely:

"Provided further that the procedure for the selection of the Director General shall be completed within a period of one hundred and twenty (120) days from the date the post falls vacant.";

- (ii) in sub-section (3), in clause (e), for the word "Commissioners", the word "Commission" shall be substituted;

- (iii) in sub-section (4),-

- (a) for clause (c), the following shall be substituted, namely:

"(c) falls within one of the following categories:

- (i) is a retired Government officer in BPS 20 or above having master degree with fifteen (15) years administrative experience including three (03) years experience in investigation in a leadership position; or
- (ii) is a retired judge of the High Court."; or
- (iii) a lawyer with fifteen (15) years practice in prosecution; or
- (iv) anybody having fifteen (15) years experience in investigation/prosecution; and

- (iv) after sub-section (8), the following new sub-sections shall be added, namely:

"(9) Whenever the post of Director General falls vacant, before completion of his term due to any reason which requires the appointment of regular Director General, the Chief Ehtesab Commissioner shall appoint or designate **temporarily an officer amongst the senior officers of Directorate General** as Director General, to look after the office of Director General till the appointment of regular Director General; and"

(10) Notwithstanding anything contained in this section, the Acting Director General already designated before coming in force of this Act, shall be deemed to have been validly designated under this Act, with effect from the date of his so designated till the appointment of a regular Director General under this Act."

11. Amendment of section 13 of the Khyber Pakhtunkhwa Act No. I of 2014.---In the said Act,-

- (i) the existing section 13, shall be numbered as sub-section (1) of section 13 and in sub-section (1), as so numbered,
 - (a) for the word "Commission", wherever occurring, the words "Directorate General" shall be substituted;
 - (b) in clause (f), the word "and" shall be added at the end;
 - (c) in clause (g), the semicolon appearing at the end shall be replaced by a full stop; and
 - (d) clauses (h) and (i) shall be deleted.
- (ii) after sub-section (1), as so numbered, the following new sub-section shall be added, namely:

"(2) Subject to the provisions of this Act, where any record has been provided to or ceased by the Commission for the purpose of any inquiry or investigation, from any Department of Government, the Federal Government, local authority, bank, financial institutions, persons or any authority and institutions or department in the public or the private sector, as the case may be, shall be returned in original to the concerned institution, as soon as possible but not later than thirty (30) days:

Provided that copy of record may also be provided to the accused upon request within thirty (30) days."

12. Amendment of section 16 of the Khyber Pakhtunkhwa Act No. I of 2014.---In the said Act, in section 16, after sub-section (1), the following new sub-section shall be inserted, namely:

"(1A) No person shall be appointed as Director Internal Monitoring and Public Complaints Wing, unless he has at least master degree or equivalent qualification from a recognized university with fifteen (15) years experience with monitoring or investigation and intelligence."

13. Amendment of section 17 of the Khyber Pakhtunkhwa Act No. I of 2014.---In the said Act, in section 17,-

- (i) for the word "Commission", wherever occurring, the words "Directorate General" shall respectively be substituted; and
- (ii) for clause (f), the following shall be substituted, namely:

"(f) the Directorate General shall, within sixty (60) days following the end of every calendar year, submit to the Provincial Assembly, through the office of the Governor, a report on the activities of the Directorate General including report relating to the performance of the officers of the Directorate General and upon its publication copy shall be provided to the public on reasonable cost."

14. **Amendments of sections 18, 19, 20 and 21 of the Khyber Pakhtunkhwa Act No. I of 2014.**---In the said Act, in sections 18, 19, 20 and 21, for the word "Commission", wherever occurring, the words "Directorate General" shall respectively be substituted.

15. **Amendment of section 22 of the Khyber Pakhtunkhwa Act No. I of 2014.**---In the said Act, in section 22, for the word "Commission", wherever occurring, the words and commas "the Director General or any officer of the Directorate General duly authorized, as the case may be," shall respectively be substituted.

16. **Amendment of sections 23, 24, 29 and 32 of the Khyber Pakhtunkhwa Act No. I of 2014.**---In the said Act, in sections 23, 24, 29 and 32, for the word "Commission", wherever occurring, the words "Directorate General" shall respectively be substituted.

17. **Amendment of section 35 of the Khyber Pakhtunkhwa Act No. I of 2014.**---In the said Act, in section 35,-

(i) in sub-section (1), the full-stop appearing at the end shall be replaced by a colon and thereafter, the following provisos shall be added, namely:

"Provided that the Directorate General shall exercise its jurisdiction with respect to a project only when it involves an amount of rupees fifty (50) million and above and if, in course of inquiry, it is found that the project is less than fifty (50) million, the matter shall be referred to the Anti-Corruption Establishment for further inquiry and investigation:

Provided further that the inquiry shall be completed within a period of sixty (60) days followed by investigation which shall be completed within ninety (90) days and where before the completion of sixty (60) days, fixed for the inquiry, sufficient evidence has been collected, the inquiry shall be converted into investigation with the approval of the Director General:

Provided further that where the inquiry or investigation is not completed within the required period, the Director General, on the request of the Inquiry Officer, may extend the period of inquiry or investigation for a further period of sixty (60) and ninety (90) days respectively, after giving reasons in writing:

Provided also that the decision shall be made within a period of seven (07) days and reference shall be filed in the Court within a period of seven (07) days.

Explanation: The inquiries and investigations already commenced before the commencement of the Khyber Pakhtunkhwa Ehtesab Commission (Amendment) Act, 2016, shall continue in the same manner and shall not be considered in accordance with the provisions of this section."; and

(ii) after sub-section (1), as so amended, the following new sub-section shall be inserted, namely:

"(1A) The Directorate General shall not take action in matters involving pure procedural lapses in any ongoing Project. It shall only monitor the ongoing schemes of Government and intimate the Department about any procedural lapses and recommend corrective measures in such a manner that it shall not affect the running of ongoing projects."; and

(iii) in sub-sections (3) and (5), for the word "Commission", wherever occurring, the words "Directorate General" shall respectively be substituted.

18. **Amendment of section 36 of the Khyber Pakhtunkhwa Act No. I of 2014.**---In the said Act, in section 36, for the word "Commission", wherever occurring, the words "Directorate General" shall respectively be substituted.

19. **Amendment of section 37 of the Khyber Pakhtunkhwa Act No. I of 2014.**---(1) In the said Act, in section 37,-

(i) in sub-section (1), after the word and comma "conference,", the words and comma "presided by the Director General," shall be inserted; and

(ii) in sub-section (4), for the word "Commissioner", the words "Director General" shall be substituted;

20. **Amendment of section 38 of the Khyber Pakhtunkhwa Act No. I of 2014.**---In the said Act, in section 38, for the word "Commission", wherever occurring, the words "Directorate General" shall respectively be substituted;

21. **Amendment of sections 39 and 42 of the Khyber Pakhtunkhwa Act No. I of 2014.**---In the said Act, in sections 39 and 42, for the word "Commission", wherever occurring, the words "Directorate General" shall respectively be substituted.

22. **Amendment of section 44 of the Khyber Pakhtunkhwa Act No. I of 2014.**---In the said Act, in section 44, in sub-section (2), for the proviso, the following shall be substituted, namely:
"Provided that where a person is honourably acquitted by the final Court of appeal, he may be fully compensated."

23. **Amendment of section 49 of the Khyber Pakhtunkhwa Act No. I of 2014.**---In the said Act, in section 49, for the word "Commission", the words "Directorate General" shall be substituted.

24. **Amendment of sections 50 of the Khyber Pakhtunkhwa Act No. I of 2014.**----- In the said Act, for the section 50, the following shall be substituted namely:

"50. **Power to make rules.**-- Government may, by notification in the official Gazette, make rules not in consistent with the provisions of this Act, within 15 days of notification of this Act in the official Gazette."

25. **Amendment of sections 51 of the Khyber Pakhtunkhwa Act No. I of 2014.**----- In the said Act, for the section 51, the following shall be substituted namely:

"51. Power to make regulations.-- The Commission may, by notification in the official Gazette, make regulations not inconsistent with the provisions of this Act and rules made thereunder, within one month of notification of rules in the official Gazette."

26. Amendment of sections 52, 53, 54 and SCHEDULE of the Khyber Pakhtunkhwa Act No. 1 of 2014.--In the said Act, in sections 52, 53, 54 and SCHEDULE for the word "Commission" wherever occurring, the words "Directorate General" shall respectively be substituted.

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

(AMANULLAH)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

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