

A

Bill

*further to amend the Khyber Pakhtunkhwa
Waqf Properties Ordinance, 1979.*

Preamble---WHEREAS, it is expedient further to amend the Khyber Pakhtunkhwa Waqf Properties Ordinance, 1979 (Khyber Pakhtunkhwa Ordinance No. 1 of 1979), for the purposes hereinafter appearing;

It is hereby enacted by the Provincial Assembly of the Khyber Pakhtunkhwa as follows:

1. Short title and commencement. --- (1) This Act may be called the Khyber Pakhtunkhwa Waqf Properties (Amendment) Act, 2020.

(2) It shall come into force at once.

2. Amendment of section 2 of the Khyber Pakhtunkhwa Ordinance No. 1 of 1979.--- In the Khyber Pakhtunkhwa Waqf Properties Ordinance, 1979 (Khyber Pakhtunkhwa Ordinance No. 1 of 1999), hereinafter referred to as the said Ordinance, in section 2,

(i) after clause (a), the following new clauses shall be inserted, namely:

“(a-i) “beneficial owner” means a natural person who owns or controls a waqf property, whether directly or indirectly or by exercising effective control of that waqf property through other means as may be prescribed; and

(a-ii) “beneficiary” means any person who gets any benefit from the waqf property or whose name is listed in the waqf document as benefiting from the waqf property;”;

(ii) after clause (b), the following new clauses shall be inserted, namely:

“(b-i) “competent authority” means the Chief Administrator or any other officer including those as prescribed in the Delegation of Power Rules made under this Ordinance; and

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(b-ii) "District Collector" means the Chief Officer-in-charge of the revenue administration of a district as defined in the West Pakistan General Clauses Act, 1956 (West Pakistan Act No. VI of 1956);";

(iii) after clause (c), the following new clauses shall be inserted, namely:

"(c-i) "investigating or prosecuting agency" means the investigating or prosecuting agency as defined in the Anti-Money Laundering Act, 2010 (Act No. VII of 2010);

(c-ii) "legal person" means any person or entity, other than a natural person, that can do the things that any person can usually do in law such as entering into contracts, sue and be sued, own property, and so on;

(c-iii) "Manager" means any person or persons as defined in the West Pakistan Auqaf Service Rules, 1962 or in case of private waqf, a person or persons who exercise administrative control or who are in charge of management and maintenance of such waqf property;

(c-iv) "natural person" means an individual or individuals, being capable of assuming obligations and holding rights; and

(c-v) "person" means a natural person or a legal person as defined in this Ordinance;";

(iv) after clause (d), the following new clauses shall be inserted, namely:

(d-i) "Registrar" means an officer as defined in the Registration Act, 1908(Act No. XVI of 1908); and

(d-ii) "reporting entity" means a person or entity as defined in clauses (o) and (u) of the Anti-Money Laundering Act, 2010 (Act No. VII of 2010);"; and

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- (v) in clause (e), the full stop at the end shall be replaced by semi colon and thereafter the following new clause shall be added, namely:

“(f) “waqif” means any person or persons who dedicate the property as waqf.”.

3. Amendment of section 4 of the Khyber Pakhtunkhwa Ordinance No. 1 of 1979.--- In the said Ordinance, in section 4, after sub-section (3), the following new sub-section shall be added, namely:

“(4) Government may appoint Deputy Administrators on such terms and conditions as may be prescribed or assign duties of the Deputy Administrator to the Assistant Commissioner (Headquarter) of each District for performance the functions of Deputy Administrator.”.

4. Substitution of section 6 of the Khyber Pakhtunkhwa Ordinance No. 1 of 1979.--- In the said Ordinance for section 6, the following shall be substituted, namely:

“6. Registration of waqf property.--- (1) Any person or persons incharge of, or exercising control over the management of any waqf property whether a creator of the waqf or otherwise, or any authorized representative nominated by them, shall get such waqf property registered with the Chief Administrator within ninety days of the creation of the waqf, providing all relevant information which may include but not limited to:

- (a) identity of waqif or dedicator;
- (b) identity of beneficial owner;
- (c) bank account statement and other financial information of the dedicator or the waqif which may include but not limited to details of debit and credit cards, cheques, traveler cheques, money orders, bank drafts and electronic money etc;
- (d) details of foreign currencies and accounts, if any;
- (e) any investments made, leases granted, assets procured, profits earned, liabilities incurred, including lending and borrowings etc. made pertaining to the waqf for at least preceding five years or life of the waqf whichever is shorter;

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- (f) to preserve complete record of the waqf property including auditable accounts statement, number of employees, advisors, investors, manager, accountants etc. Their complete bio-data for the last five years, after their involvement with the waqf ceases;
- (g) purposes for registration of waqf property; and
- (h) any other information related to the waqf, required by the Chief Administrator or the reporting entity or the law enforcement agency or any authority, duly authorized by Government:

Provided that after the commencement of the Khyber Pakhtunkhwa Waqf Properties (Amendment) Act, 2020, all the existing waqf properties shall be registered with the Chief Administrator within ninety days.

(2) Notwithstanding anything contained in the proviso of sub-section (1) of section 7 of this Ordinance any waqf property which has not been registered with the Chief Administrator as required under sub-section (1), shall be deemed to have been notified under section 7 of this Ordinance.

(3) The District Collector (revenue), being the custodian of the land record and the Registrar (revenue), being the focal point of registering all deeds, agreements and documents etc., shall furnish, in the prescribed manner, a consolidated annual report of all waqf properties recorded as waqf during the year in respect of their respective district to the Chief Administrator for information and further necessary action, as deemed appropriate by the Chief Administrator under the provisions of law for the time being in force.

(4) The Manager shall report any change in the waqf property to the Chief Administrator immediately in the manner as may be prescribed.”.

5. Insertion of new section in the Khyber Pakhtunkhwa Ordinance No. 1 of 1979.--- In the said Ordinance, after section 6, the following new section shall be inserted namely:

“6(A). To obtain and hold information.--- The Manager of the waqf property shall obtain and hold information of his respective waqf property as required under sub-section (1) of section 6, and provide to the Chief Administrator on demand, and shall ensure that the information are updated in a timely manner as may be prescribe.”.

6. **Amendment in section 7 of the Khyber Pakhtunkhwa Ordinance No. 1 of 1979.**--- In the said Ordinance, in section 7, after sub- section (2), the following new sub-sections shall be added, namely:

“(3) The Chief Administrator shall maintain a centralized record in such a manner, design and structure as may be prescribed or notified in the official Gazette, of all properties registered with him under section 6 or the administration whereof has been taken over or assumed under section 7.

(4) At the end of each financial year, the Chief Administrator shall prepare and submit report of the waqf properties registered under section 6 or the administration whereof has been taken over or assumed under section 7 to the Government.”.

7. **Insertion of new section in the Khyber Pakhtunkhwa Ordinance No. 1 of 1979.**--- In the said Ordinance, after section 7, the following new section shall be inserted, namely:

“7(A). **Provision of miscellaneous information.**--- Prior to entering into a business relationship or carrying out an occasional transaction with a reporting entity, any manager, whether a creator of the waqf or otherwise, shall disclose his status as such to the reporting entity.”.

8. **Substitution of section 8 of the Khyber Pakhtunkhwa Ordinance No. 1 of 1979.**--- In the said Ordinance, for section 8, the following shall be substituted, namely:

“8. **Eviction of persons wrongfully in possession of waqf properties.**--

(1) If any person is in occupation of, or enters upon, or is using any immovable waqf property to the occupation or use of which he is not, or has ceased to be, entitled by virtue of any provision of this Ordinance, the Chief Administrator or any other person authorized by him may, after giving such person a reasonable opportunity of showing cause against the action proposed to be taken, be evicted him forthwith from such property with use of such force as may be necessary.

(2) The Chief Administrator shall avail the assistance of the District Administration or Investigating or Prosecuting Agency and all such authority or entity shall extend such assistance to the Chief Administrator or Administrator Auqaf or any other person authorized by him as and when required for the purpose of this Ordinance.

(3) Any crop standing on any property in respect of which action is taken under sub-section (1), shall stand forfeited to the Chief Administrator.

(4) If any building or other structure has been erected on any property while it was in the occupation or use of a person evicted there-from under sub-section (1) shall stand forfeited to the Chief Administrator.”.

9. Insertion of new section in the Khyber Pakhtunkhwa Ordinance No. 1 of 1979.--- In the said Ordinance, after section 8, the following new section shall be inserted, namely:

“8(A). Lease of waqf property and use of income therefrom.--- The Chief Administrator shall lease out the waqf property for such period as may be prescribed and the income derived from such property shall be used for any purposes recognized by Islam as religious, pious or charitable as the Chief Administrator may deem fit.”.

10. Substitution of section 9 of the Khyber Pakhtunkhwa Ordinance No. 1 of 1979.--- In the said Ordinance, for section 9, the following shall be substituted, namely:

“9. Power to terminate a lease or resume a tenancy of breach of conditions.—(1) If the Administrator is satisfied that a lessee or tenant of any immovable waqf property has committed a breach, of the conditions of lease or tenancy, the Administrator may give to such lessee or tenant a notice, to appear before the authority and state his objections to an order being made for the termination of lease or resumption of the tenancy.

(2) If the lessee or tenant to whom a notice is given under sub-section (1) may state that the breach of the conditions of the lease or tenancy specified in the notice is capable of rectifications and undertake to rectify it.

(3) If the Administrator is satisfied that the breach is capable of rectification, it shall allow to the lessee or tenant, as the case may be, reasonable time which shall not be less than thirty days or more than sixty days, to rectify it and may make an order terminating the lease or resuming the tenancy if the lessee or tenant fails to rectify the breach within the time allowed.

(4) Where an order terminating the lease or resuming the tenancy has been passed under the provisions of sub-section (3), the Administrator may forthwith re-enter upon the waqf property and resume possession of it, subject to the payment of compensation to be fixed by the Administrator for un-reap and un-gathered crops or

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for the improvements, if any, that may have been made by the lessee or tenant under the terms of the lease or tenancy or with the permission of the Administrator.

(5) If a lease terminated, or tenancy resumed under sub-section (3), is allotted to any other person, the amount of the compensation, if any, paid to the outgoing lessee or tenant under sub-section (4) may be recovered from such person to whom allotted such property.”.

11. Amendment of section 24 of the Khyber Pakhtunkhwa Ordinance No. 1 of 1979.--- In the said Ordinance, in section 24,

(a) for sub-section (2), the following shall be substituted, namely:

“(2) Any person who fails to comply with any requirement under section 20 shall be punished with imprisonment which shall not be less than one year but which may extend to five years and shall be liable to fine which shall not be less than the benefits derived from the waqf property but may extend to three times of the amount of income derived from the property.”; and

(b) after sub-section (2), the following new sub-section shall be added, namely:

“(3) Any person who fails to comply with the provisions of section 6 or conceals any information or provide incomplete or incorrect information to the Chief Administrator as required under this Ordinance, shall be liable to pay such amount calculated by the concerned district Collector or Registrar (revenue) or any other authority duly authorized by the Chief Administrator to do so, for the period of factum of waqf property or in case of noncompliance due to any other reason, the defaulting person or persons shall be penalized with an amount upto rupees fifteen (15) million or imprisonment upto 05 years, or with both.”.

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STATEMENT OF OBJECTS AND REASONS

It is desirable to amend the Khyber Pakhtunkhwa Waqf Properties Ordinance 1979 (Khyber Pakhtunkhwa Ordinance No. 1 of 1979). Hence, this Bill.

