

**A
BILL**

to provide for establishment of commercial courts for resolution of commercial disputes in the Khyber Pakhtunkhwa Province.

WHEREAS commerce and trade are intrinsically linked with the economic growth and development of the Province and as such during the course of commercial activities, commercial disputes may arise which hampers the efficient provision of goods to the people and need to be disposed of expeditiously for which establishment of Commercial Courts and Appellate Tribunal are necessary and also to provide for out of Court settlement mechanism in the shape of Alternative Dispute Resolution and for matters connected therewith and ancillary thereto;

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

**CHAPTER-I
PRELIMINARY**

- 1. Short title, extent, application and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Resolution of Commercial Disputes Act, 2022.
- (2) It shall extend to whole of the Province of the Khyber Pakhtunkhwa.
- (3) It shall apply to commercial disputes as defined in clause (d) of sub-section (1) of section 2 of this Act.
- (4) It shall come into force at once.

2. Definitions.---(1) In this Act, unless there is anything repugnant in the subject or context,-

- (a) **“Appellate Tribunal”** means the Appellate Tribunal, established under section 8 of this Act;
- (b) **“Code”** means the Code of Civil Procedure, 1908 (Act No. V of 1908);
- (c) **“Commercial Court”** means the Consumer Court, empowered under section 3 of this Act to act as Commercial Court;
- (d) **“commercial dispute”** means any dispute, claim or counter claim, arising out of a contractual dispute, where the value of the claim or counter claim is three hundred thousand rupees or more, or such other value as Government may notify,

relating to or connected with any transaction of trade, business or commerce, excluding sale or purchase of immovable property, between-

- (i) the domestic companies; or
- (ii) a domestic company and a foreign company or a firm; or
- (iii) the firms; or
- (iv) a firm and a domestic or foreign company; or
- (v) the foreign companies having trade in the Province; or
- (vi) a domestic company, foreign company or a firm and a private person; or
- (vii) Government entities or a Government entity and a firm or domestic company or foreign company or private person;

Explanation: For the purpose of this clause,-

- (i) **“domestic company”** means a company, incorporated and registered under the Companies Act, 2017 (XIX of 2017), or any other law, for the time being in force, for registration of companies;
- (ii) **“foreign company”** means any company or body corporate, incorporated outside Pakistan, which has a place of business, liaison office or branch office in Pakistan whether by itself or through an agent, physically or through electronic mode;
- (iii) **“firm”** means a firm registered under the Partnership Act, 1932 (IX of 1932), or the Limited Liability Partnership Act, 2017 (XV of 2017);
- (iv) **“private person”** means a merchant, trader, professional, banker, financier or any individual, involved in ordinary transaction, relating to mercantile documents, including enforcement and interpretation of such documents; and

(v) **“Government entity”** means any entity, a statutory body or any agency of Government or a private body carrying out public functions;

(e) **“Consumer Court”** means the Consumer Court, established under section 11A of the Khyber Pakhtunkhwa Consumer Protection Act, 1997 (Khyber Pakhtunkhwa Act No. VI of 1997);

(f) **“Department”** means the Industries, Commerce and Technical Education Department of Government;

(g) **“Directorate General”** means the Directorate General of Industries and Commerce, Khyber Pakhtunkhwa;

(h) **“Director General”** means the Director General of the Directorate General;

(i) **“Government”** means the Government of the Khyber Pakhtunkhwa;

(j) **“High Court”** means the Peshawar High Court, Peshawar;

(k) **“Oversight Committee”** means the Oversight Committee constituted under section 12 of this Act;

(l) **“prescribed”** means prescribed by rules;

(m) **“Province”** means the Province of the Khyber Pakhtunkhwa; and

(n) **“rules”** mean rules made under this Act.

(2) Words and expressions, used but not defined under this Act, shall have the same meanings as are respectively assigned to them in the Code.

CHAPTER-II

ESTABLISHMENT OF COMMERCIAL COURTS, INSTITUTION OF SUITS AND THEIR DISPOSAL

3. Commercial Court.---(1) Subject to the provisions of this Act, the Consumer Courts, established under section 11A of the Khyber Pakhtunkhwa Consumer Protection Act, 1997 (Khyber Pakhtunkhwa Act No. VI of 1997), shall act as Commercial Courts under this Act.

(2) Soon after the commencement of this Act, all suits and proceedings, arising from or connected with commercial disputes, shall be entertained, heard and decided by the Commercial Courts under the provisions of this Act.

(3) The area of the jurisdiction of the Commercial Courts shall be same as provided for the Consumer Courts.

4. Application of the Code.---For all matters and procedures, not specifically provided for in this Act, the provisions of the Code shall, *mutatis mutandis*, apply.

5. Institution of suit and its disposal.---(1) Every suit, under this Act, shall be instituted and disposed of in accordance with the provisions of the Code.

(2) Without prejudice to the generality of sub-section (1), the Directorate General may, for the expeditious disposal of commercial dispute under this Act, put in place e-filing system, which shall be operationalized from such date as the Department may appoint by notification in the official Gazette.

(3) For expeditious disposal of suits or appeals under this Act, the Commercial Courts or, as the case may be, the Appellate Tribunal, if it deems necessary,-

- (a) for reasons to be recorded in writing, shall, on its own motion, have the power to summon official record, maintained by the public authorities in respect of any matter connected with or arising from the subject matter of the suit or appeal; and
- (b) shall not grant unnecessary adjournments and in no case more than two adjournments shall be granted for a specific purpose:

Provided that the Commercial Courts or the Appellate Tribunal, under exceptional circumstances, may adjourn hearing of a case, for not more than seven days, subject to payment of such costs, as may be determined by the Commercial Court or the Appellate Tribunal, as the case may be.

(4) Subject to section 9 of this Act, the judgment, decree or an order passed by the Commercial Court shall be final.

6. Determination of costs.---(1) Notwithstanding anything contained in the Code or any other law, for the time being in force, the Commercial Court shall have power to determine the costs of the suit and by whom it is payable and to give all necessary directions in this regard.

Explanation: For the purposes of this section the expression "costs" shall mean reasonable costs relating to-

- (a) the fees and expenses of the witnesses incurred;
- (b) legal fees and expenses incurred; and

Deputy Legislation Officer
Government of Khyber Pakhtunkhwa
Law Department

- (c) any other expenses incurred in connection with the proceedings before the Commercial Court.

(2) Where the Commercial Court directs that costs shall not be granted, it shall state its reasons in writing.

7. Transfer of pending cases.---On commencement of this Act,-

- (a) all suits and execution petitions, connected with or arising from commercial disputes pending in any court of its original civil jurisdiction, shall stand transferred to the concerned Commercial Court;
- (b) on transfer of suits and execution petitions under this section, the Commercial Court may proceed with the case from the stage at which it was pending immediately before such transfer and it shall not be bound to re-hear any witness who has recorded his evidence;
- (c) all appeals and revisions, arising from the orders, judgment and decrees in respect of commercial dispute, pending before any court before the commencement of this Act, shall stand transferred to the Appellate Tribunal for adjudication; and
- (d) any suit, appeal or revision, in respect of commercial dispute, which has been culminated and are pending announcement of final order or decision, shall not be transferred and the relevant court shall announce the order or decision therein, as the case may be.

CHAPTER-III

ESTABLISHMENT OF APPELLATE TRIBUNAL

8. Appellate Tribunal.---(1) For the purpose of hearing appeals against the decisions of the Commercial Courts, Government may, by notification in the official Gazette, establish an Appellate Tribunal.

(2) The Appellate Tribunal shall comprise of a Chairman and two members, one legal member and one technical member, to be appointed in consultation with the Chief Justice of the High Court, in the manner as may be prescribed.

(3) The Chairman and the members shall have such qualifications and experience of service as may be prescribed.

(4) The Chairman and the others two members of the Appellate Tribunal shall be appointed for a term of three years, in such a manner and with such other terms and conditions of service, as may be prescribed.

(5) The Appellate Tribunal shall conduct its proceedings in the manner, as may be prescribed.

(6) The Appellate Tribunal shall have such staff with such terms and conditions of service, as the Government may determine, and until such staff is appointed, the Directorate General shall provide secretariat support to the Appellate Tribunal.

9. Appeals.---(1) Any person, aggrieved from the judgment or decree or an order of the Commercial Court, may prefer an appeal in the Appellate Tribunal, within a period of thirty days from the date of announcement of such judgment, decree or order.

(2) The Appellate Tribunal shall dispose of appeals in such a manner, as may be prescribed.

10. Overriding effect.---The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than this Act.

CHAPTER-IV **MISCELLANEOUS**

11. Support to the Commercial Court.---(1) The existing staff of the Consumer Court shall provide support to the Commercial Court for the performance of its functions under this Act:

Provided that the Directorate General, if required, may provide necessary additional human resource support to the Commercial Court for the purposes of this Act.

(2) The staff of the Commercial Court shall also perform the following functions, namely:

- (a) to maintain an updated record and statistical data in physical and electronic form, regarding the number and nature of cases filed, pendency of such cases, status of each case and disposal of the cases by the Commercial Court and the Appellate Tribunal and all matters connected therewith, as may be prescribed;
- (b) to maintain case laws repository; and
- (c) any other functions as may be prescribed.

(3) For the efficient and expeditious disposal of commercial disputes under this Act, the Directorate General may arrange necessary trainings for judges of the Commercial Court.

12. Oversight Committee.---Government may, by publication in the official Gazette, notify an Oversight Committee which shall consist of such number of members and shall perform such functions, as may be specified in the notification.

13. Report.---The Director General shall prepare and present an annual report on the implementation of this Act to the Oversight Committee in a manner, as may be prescribed.

14. Alternative Disputes Resolution.---Any suit or appeal relating to a commercial dispute, filed or pending in a Commercial Court or Appellate Tribunal, as the case may be, may be referred to Alternative Dispute Resolution, with the consent of the parties, by the Commercial Court or Appellate Tribunal, in accordance with the provisions of section 89-A of the Code.

15. Power of High Court to issue directions.---The High Court may issue directions to supplement the provisions of this Act or the Code, in so far as such provision apply to the hearing of commercial disputes of a specified value under this Act.

16. Bar of jurisdiction of Commercial Courts.---Notwithstanding anything contained in this Act, the Commercial Court shall not entertain or decide any suit, application or proceedings relating to any commercial dispute of Government entity in respect of which the jurisdiction of the civil court or special court is either expressly or impliedly barred under any other law for the time being in force.

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

18. Removal of difficulties.---If any difficulty arises in giving effect to any of the provisions of this Act, Government may, by notification in the official Gazette, make such provisions, not inconsistent with the provisions of this Act, as it deems fit for removal of such difficulty.

STATEMENT OF OBJECTS AND REASONS

Commerce and trade are intrinsically linked with economic growth and prosperity of the people. Contract enforcement is the key area of commerce and the existing system of contract enforcement/dispute resolution is a barrier to ease of doing business due to long period of enforcement/resolution.

In the existing mechanism in case of commercial disputes the business/parties have to approach civil courts for redressal. However due to heavy burden of works on the civil courts the litigation process take years to resolve

Deputy Legislation Officer
Government of Khyber Pakhtunkhwa
Law Department

disputes between the parties/businesses. This weak contract enforcement mechanism besides adversely affecting the commerce and trading system in the province discourages prospective both local and foreign investors and adversely affects the business environment in the province.

The Government of Khyber Pakhtunkhwa intends to provide effective legal regime for expeditious resolution/disposal of commercial disputes.

The Bill seeks to achieve the above mentioned objectives.



MINISTER-IN-CHARGE

Peshawar,
dated the: 22 / 03 / 2022.