

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
G A Z E T T E

KHYBER PAKHTUNKHWA

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GOVERNMENT OF THE KHYBER PAKHTUNKHWA LAW, PARLIAMENTARY AFFAIRS AND HUMAN RIGHTS DEPARTMENT.

NOTIFICATION

Dated Peshawar, the 15th October, 2020.

No. LEGIS: 1(3)89/Vol-IV. The following Ordinance by the Governor of the Khyber Pakhtunkhwa is hereby published for general information:

THE PAKHTUNKHWA ENERGY DEVELOPMENT ORGANIZATION ORDINANCE, 2020.

(KHYBER PAKHTUNKHWA ORD. NO. XIV OF 2020)

AN ORDINANCE

*to provide for the sustainable and green development of power
resources of the Province of Khyber Pakhtunkhwa.*

WHEREAS it is expedient to provide for the sustainable and green development of power resources and for the generation, transmission, distribution and regulation of electric power within the Province of the Khyber Pakhtunkhwa;

AND WHEREAS facilitation of private sector investment and participation in the energy resources of the Province of the Khyber Pakhtunkhwa is the priority of the Provincial Government;

AND WHEREAS to achieve the objectives, it is expedient to re-organize the Pakhtunkhwa Energy Development Organization and corporatize the existing power sector entities, with focus on delivery and cost management and for matters connected therewith and ancillary thereto;

AND WHEREAS the Provincial Assembly is not in session and the Governor of the Khyber Pakhtunkhwa is satisfied that circumstances exist which render it necessary to take immediate action;

NOW THEREFORE, in exercise of the powers conferred by Clause (1) of Article 128 of the Constitution of the Islamic Republic of Pakistan, the Governor of the Khyber Pakhtunkhwa is pleased to make and promulgate the following Ordinance:

CHAPTER-I
GENERAL

1. **Short title, extent and commencement.**---(1) This Ordinance may be called the Pakhtunkhwa Energy Development Organization Ordinance, 2020.
 - (2) It extends to the whole of the Province of the Khyber Pakhtunkhwa.
 - (3) It shall come into force at once.
2. **Definitions.**---In this Ordinance, unless there is anything repugnant in the subject or context,-
 - (a) “**Chairman**” means the Chairman of the Executive Committee;
 - (b) “**Chief Executive Officer**” means the Chief Executive Officer of the PEDO, appointed under section 9 of this Ordinance;
 - (c) “**company**” for the purpose of this Ordinance, means a company, established by the PEDO, with the approval of Government, under the Companies Act, for carrying out one or more of its functions;
 - (d) “**Companies Act**” means the Companies Act, 2017 (Act No. XIX of 2017);
 - (e) “**electric power**” means electrical energy or the capacity for the production of electric power;
 - (f) “**electric power services**” include the generation, transmission, distribution, supply, sale or trading of electric power and all other services incidental thereto;
 - (g) “**energy plan**” means the activities approved by Government, from time to time, for the development of energy resources of the Province in accordance with the energy policy;

- (h) "energy policy" means the policy, directions and guidance, approved by Government from time to time, for the development of energy resources of the Province;
- (i) "Executive Committee" means the Executive Committee, constituted under section 7 of this Ordinance;
- (j) "Government" means the Government of Khyber Pakhtunkhwa;
- (k) "PEDO" means the Pakhtunkhwa Energy Development Organization, re-organized under section 3 of this Ordinance;
- (l) "PEDO Fund" means the PEDO Fund established under section 16 of this Ordinance;
- (m) "Policy Board" means the Policy Board, established under section 5 of this Ordinance;
- (n) "power" means and includes power or electrical energy, generated by any means including steam, gas, coal, re-gasified liquefied natural gas, wind, solar, bagasse, waste to energy or any other form of power generation notified as such by Government;
- (o) "prescribed" means prescribed by rules or regulations;
- (p) "projects" mean to build, finance, own, operate and maintain the power generation, transmission and distribution projects, in the public sector, private sector or in joint venture of public private partnership mode, within the Province;
- (q) "property" means and includes any right, title or interests in property, moveable or immovable, tangible or intangible and in whole or in part;
- (r) "Province" means the Province of Khyber Pakhtunkhwa;
- (s) "repealed Act" means the Pakhtunkhwa Energy Development Organization Act, 1993 (Khyber Pakhtunkhwa Act No. I of 1993), repealed under section 33 of this Ordinance;
- (t) "regulations" mean regulations made under this Ordinance;

- (u) "rules" mean rules made under this Ordinance;
- (v) "scheduled bank" means a scheduled bank, licensed by the State Bank of Pakistan; and
- (w) "sponsor" means a person, including consortium from the private or public sector, who intends to invest or have already invested in the power sector.

CHAPTER-II

THE PAKHTUNKHWA ENERGY DEVELOPMENT ORGANIZATION

3. **Re-organization of PEDO.**--- (1) Soon after the promulgation of this Ordinance, the Pakhtunkhwa Energy Development Organization, established under section 3 of the repealed Act, shall be re-organized in accordance with the provisions of this Ordinance and shall be known as the Pakhtunkhwa Energy Development Organization, hereinafter referred to as "PEDO", for the development and utilization of the power and energy resources of the Province.

(2) The PEDO shall be a body corporate having perpetual succession and a common seal, with power, subject to the provisions of this Ordinance, to enter into agreements and contracts, acquire, hold and sell property, both movable and immovable, undertake projects, generate, transmit, distribute and regulate electricity, issue licenses and determine tariff within the Province and shall have the power to sue and be sued.

(3) The head office of the PEDO shall be at Peshawar.

4. **Functions and powers of the PEDO.**--- (1) Notwithstanding anything contained in any other law for the time being in force, the PEDO shall have exclusive functions and powers for the development and utilization of the power and energy resources of the Province through public sector, private sector or through public private partnership mode.

(2) In particular and without prejudice to the generality of the foregoing powers, the PEDO shall-

- (a) approve and undertake the projects of any financial value;
- (b) regulate, generate, transmit and distribute the electric power services;

- (c) construct, maintain, own, operate and control the power houses, grids and micro grids, generation stations, transmission and distribution lines through itself, contractors or private parties etc.;
- (d) conduct feasibility studies, surveys, detailed designs, detailed engineering and researches;
- (e) place wires, poles, wall brackets, stays, apparatus and appliances for the transmission or distribution of electricity or for the transmission of telegraphic or telephone communications necessary for the proper execution of a scheme;
- (f) approve use of PEDO Fund, its appropriations and re-appropriations, grant approval for cost revisions, escalations or variations of a project;
- (g) undertake any work, incur any expenditure, procure plant, machinery and materials required for its use;
- (h) determine and prescribe procedures and standards, through rules and regulations, for determination, modification or revision of licenses, rates, charges and terms and conditions for generation of electric power, transmission, inter-connection, distribution services and power sales to consumers by licensees;
- (i) acquire by purchase, lease, exchange or otherwise and dispose of by sale, lease, exchange or otherwise, any immovable or movable property or any interest in such property;
- (j) establish one or more companies, with the approval of Government, under the Companies Act;
- (k) restrict or prohibit, by general or special order, the clearing and breaking up of land in the catchment area of any river, canal, tributary or stream;
- (l) establish thermal, solar, wind, hydro, waste to energy or other alternate renewable energy based power houses, erect test masts, collect wind and solar data for power generation, lay or cause to be laid, pipelines for supply of fuel, establish fuel supply means, engage in transmission, trading, distribution and sale of energy to industries and domestic consumers, manage demand, issue licenses, cause setting of tariff, recover and collect charges and fees;

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| (c) Additional Chief Secretary, Planning and Development Department; | Member |
| (d) Secretary to Government, Energy and Power Department; | Member |
| (e) Secretary to Government, Finance Department; | Member |
| (f) Chairman, Executive Committee; and | Member |
| (g) two (2) private members, to be appointed by Policy Board from amongst the person having at least ten (10) years' experience in field of energy and power or industry or finance sector. | Members |

(2) The meetings of the Policy Board shall be presided over by the Chairperson and in his absence, the Vice-Chairperson shall preside over its meetings.

(3) Meetings of the Policy Board shall be held as and when required, but at least once in a quarter, at the time and place as the Chairperson may determine.

(4) Presence of four (04) members of the Policy Board shall constitute the quorum for a meeting.

(5) The decisions of the Policy Board shall be taken by the majority of its members present and, in case of a tie, the Chairperson or the Vice-Chairperson, presiding over the meeting, shall have a casting vote. All orders, determinations and decisions of the Policy Board shall be reduced to writing together with a record of the discussions held in the meeting.

(6) No act or proceedings of the Policy Board shall be invalid merely by reason of vacancy in, or defect in the constitution of the Policy Board.

(7) Subject to the pleasure of Government, the term of office of the members, mentioned at clause (g) of sub-section (1), shall be three (3) years, who may be re-appointed for another term by Government on the recommendation of the Policy Board.

(8) The members, mentioned in clause (g) of sub-section (1), may, at any time, by writing under his hand, addressed to the Policy Board, resign his office which shall take effect upon acceptance by Government.

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| (c) | Member Finance of PEDO; | Member |
| (d) | Member Renewable Energy of PEDO;
and | Member |
| (e) | Member Hydro Power of PEDO. | Member |

(3) The Executive Committee may co-opt any other person or sector expert as a co-opted member of the Executive Committee, for a specific meeting as and when need so arises.

(4) The Executive Committee may appoint a Secretary of the Executive Committee, who shall possess such qualification and shall be appointed on such terms and conditions of service as may be prescribed.

(5) The Secretary, appointed under sub-section (4), shall assist the Executive Committee in the conduct of its business in the manner as may be prescribed.

(6) The Executive Committee shall facilitate sponsors, Policy Board and Government in development of the projects in accordance with the energy policy and the energy plan.

(7) No act or proceedings of the Executive Committee shall be invalid by reason only of the existence of a vacancy in or defect in constitution of the Executive Committee.

(8) The Executive Committee may establish sub-committees for discharge of its functions and powers.

8. Meeting of the Executive Committee.--- (1) The meetings of the Executive Committee shall be presided over by the Chairman and in his absence a member designated by the Chairman shall preside over its meeting.

(2) At least three (3) members of the Executive Committee, including the Chairman, shall constitute a quorum for meetings of the Executive Committee.

(3) The meetings of the Executive Committee shall be held at such time and place as the Chairman of the Executive Committee may, from time to time, determine.

(4) Decisions of the Executive Committee shall be taken by the majority of its members present and in case of a tie, the Chairman or the member presiding over the meeting, shall, as the case may be, have a casting vote.

(5) The meeting of Executive Committee shall be held at least once every month.

(6) Proceedings of the Executive Committee shall be minuted by the Secretary of the Executive Committee with the approval of the Chairman, which shall be ratified by Executive Committee, in the next successive meeting.

(7) Decisions of the Executive Committee shall be recorded in writing, reasoned and delivered expeditiously and judiciously.

9. Appointment of Chief Executive Officer and Members.--- (1) The Chief Executive Officer, Member Finance, Member Renewable Energy and Member Hydro Power of the PEDO, shall be appointed by Government, on the recommendation of the Policy Board, for a period of three years or at the pleasure of Government, as the case may be.

(2) Notwithstanding anything contained in sub-section (1), the Chief Executive Officer, appointed before the promulgation of this Ordinance, under the repealed Act, shall be deemed to have been appointed under this Ordinance and shall hold office for a period of four (4) years which shall be counted from the date of his appointment under the repealed Act:

Provided that till the constitution of the Executive Committee under this Ordinance, the Policy Board shall exercise all the powers of the Executive Committee under this Ordinance.

(3) The qualification of the Chief Executive Officer and Members of the PEDO, mentioned in sub-section (1), shall have at least fifteen years' experience in the field of energy, engineering, law, administration or finance.

(4) The other terms and conditions of the Chief Executive Officer and Members of PEDO, mentioned in sub-section (1), shall be such as may be prescribed by rules.

10. Removal of the Chief Executive Officer and Members of the PEDO.--- Government may, remove the Chief Executive Officer or any Member of the PEDO under section 9, if he-

- (a) refuses, neglects, defaults or fails to discharge, or becomes in the sole opinion or discretion of Government, incapable of discharging his responsibilities, duties or functions under this Ordinance; or
- (b) has been declared insolvent; or

- (c) has been declared to be disqualified for employment in PEDO, or has been convicted of an offence involving moral turpitude; or
- (d) has knowingly acquired or continued to hold, without permission, in writing of Government, directly or indirectly through a partner, any share or interest in any contract or employment with or by on behalf of the Executive Committee, or in any land or property which, in his knowledge, is likely to benefit or has benefited as a result of the decision of the Executive Committee; or
- (e) fails to attain the required standard as set out in the prescribed key performance indicators:

Provided that prior to removing the Chief Executive Officer or any Member, personal hearing shall be provided to him by the Policy Board.

11. Delegation of powers.--- The Executive Committee may, by general or special order, delegate to the Chairman, members of the Executive Committee, Chief Executive Officer, a Member or any officer of the PEDO, any of its powers, duties or functions under this Ordinance, subject to such conditions as it may deem appropriate.

12. Employees.--- (1) For the purposes of this Ordinance, Executive Committee may, from time to time, appoint employees on regular basis, hire, engage consultants, lawyers, experts, professionals, advisors, agents, accountants, bankers, engineers and such other staff as may be required, who shall be paid such remuneration and allowances and shall hold their employment on such terms and conditions as may be prescribed by regulations:

Provided that the PEDO, in cases of urgency or public interest, may appoint consultants, lawyers and experts for a period, not exceeding six (6) months, which may be renewed for another period of six (6) months for short term assignments.

(2) The PEDO may induct the employees of the Federal Government, Government, other Provincial Governments, autonomous or semi-autonomous bodies as it may consider necessary for the efficient performance of its functions, in such a manner and on such terms and conditions as may be prescribed.

(3) The staff of PEDO shall be liable to disciplinary action in the manner as may be prescribed by regulations.

CHAPTER-IV

RESTRUCTURING

13. **Exclusivity.**--- (1) All the hydro power project sites, within the Province, exclusively vest in Government.

(2) The hydro power project sites shall be developed by Government in the public sector or on public private partnership basis.

(3) The hydro power project sites may be allocated to the private sector for hydro power projects development with the permission of Government except for hydropower projects with capacity of less than 1 MW which may be allowed by the Executive Committee.

14. **Corporate initiatives.**--- The PEDO may-

- (a) undertake any joint venture or work in association with Government, Federal Government, Governments of other Provinces, any agency, corporation, company, Board or any person and may subscribe to the equities and acquire such other rights and obligations as may be necessary for such joint venture or association;
- (b) promote, form or sponsor any company or companies having objects of installation of thermal, hydel and renewable projects and development and utilization of any resources of energy for generation, transmission and distribution of power and for survey, investigation, exploitation and utilization of resources of energy for generation, transmission and distribution of power;
- (c) subscribe for, take or otherwise acquire, hold and dispose of shares, bonds, debentures, commercial papers or other securities of any company promoted, formed or sponsored under clause (b) and receive dividends or other payments therefrom and transfer to it any of its land or any other property, movable or immovable, tangible or intangible, against cash, shares, bonds, debentures, commercial papers or other securities as is desirable or necessary to enable it to privatize or otherwise restructure any operation of the PEDO;
- (d) enter into any of the following arrangements which may be consistent with its objects, namely:
 - (i) provision of services and personnel;

- (ii) provision of goods, appliances, plants, machinery and other material; and
- (iii) purchasing of electrical capacity and energy from any company specified in clause (b).
- (e) enter into any contract or agreement with any company or companies specified in clause (b); and
- (f) notwithstanding any terms of any contract entered into by it for the supply of electricity to any person, transfer such contract to any company or other entity promoted, formed or sponsored by PEDO.

CHAPTER-V

LOCAL COMMUNITIES AND OFF GRID PROMOTION

15. Community based organizations.--- (1) The PEDO shall encourage, promote and execute community based and local bodies-centered off-grid power projects based on locally available renewable sources.

(2) The PEDO shall develop standard protocols, processes and procedures including, but not limited to, entering into contracts, terms of partnership, cost sharing, access to land, right of way, prescription of fees, issue of licenses and determine tariffs and their mode of collection, accounting and usage, handing-over, vesting and post handing over, transfer of operation and management of such off-grid power projects based on locally available renewable sources to the local bodies or rural communities.

(3) The PEDO shall establish an effective post-completion support and monitoring system to ensure that the completed schemes are efficiently operated and maintained and get timely technical backstopping in case of emergency.

(4) All such schemes aimed at a local body or a community-based organization shall cover all aspects of development, generation, transmission, distribution, operation and maintenance, regulation and tariffs and the PEDO may enter into agreements for such purposes.

CHAPTE-VI

FINANCE

16. **PEDO Fund.**--- (1) There shall be established a Fund to be known as PEDO Fund.

(2) The Organization Fund, established under section 24 of the repealed Act, shall be deemed to be part of PEDO Fund.

(3) The PEDO Fund shall consist of-

- (a) grants, made by Government and Federal Government;
- (b) loans, obtained from Government and Federal Government;
- (c) loans or funds, obtained by the PEDO, from commercial banks or any other source with the prior approval of Government;
- (d) foreign loans, grants or any other financial assistance, obtained with the approval of Government or Federal Government;
- (e) proceeds from encashment of security instruments;
- (f) fees and all other sums, collected by it, as prescribed by rules, from time to time;
- (g) returns and profits on the investments; and
- (h) all other sums, property, revenues and charges received by or vested in the PEDO in respect of its powers and functions under this Ordinance.

17. **Expenditure to be charged on PEDO Fund.**---(1) The PEDO Fund shall be expended for the purposes of-

- (a) paying any expenditure lawfully incurred by the PEDO, including the remuneration and allowances of the Chairman, members, staff, employees, accountants, advisers, agents, consultants, lawyers, valuers and other experts, appointed and employed by the PEDO, including provident fund contributions, superannuating allowances or gratuities and legal fees and costs and other fees and costs, if any;

- (b) projects development and operation cost;
- (c) paying for expenditure incurred on-
 - (i) marketing and publicity;
 - (ii) capacity building, seminars and conferences; and
 - (iii) restructuring.
- (d) purchasing or hiring equipment, machinery and any other materials, acquiring land and constructing buildings and carrying out any other work and undertakings by the PEDO in the performance of its functions or the exercise of its powers under this Ordinance;
- (e) re-paying any financial accommodation received or moneys borrowed under or pursuant to or by virtue of this Ordinance and the profit, mark-up or return due thereon; and
- (f) paying any other expenses, costs or expenditure, properly incurred or accepted by the PEDO, in the performance of its functions or the exercise of its powers under this Ordinance.

18. **Investment.**--- The Executive Committee may, in so far as its moneys are not required to be expended under this Ordinance, invest amounts in such manner as prescribed by regulations.

19. **Bank accounts.**--- The Executive Committee may open and maintain its accounts in local and foreign currencies in such scheduled banks and other financial institutions as it may determine, from time to time, in accordance with the instructions of Government and Policy Board in this regard.

20. **Accounts.**--- (1) The Executive Committee shall maintain proper accounts and other records, relating to its financial affairs, and shall, as soon as practicable after the end of each financial year, cause to be prepared for that financial year statements of accounts of the PEDO, which shall include a balance sheet and an account of income and expenditure.

(2) The financial year of PEDO shall be the period of twelve (12) months ending on the 30th June in each year.

21. **Audit.**--- The accounts of PEDO shall be audited annually by the Auditor-General of Pakistan:

Provided that Executive Committee may require to conduct special audit of the organization through reputable firm of chartered accountants, approved by the Executive Committee, as and when considered necessary.

CHAPTER-VII
MISCELLANEOUS

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

23. **Power to make regulations.**--- The Executive Committee may, with the approval of Policy Board, by notification in the official Gazette, make regulations, not inconsistent with the rules, for carrying out the purposes of this Ordinance.

24. **Annual report.**--- The Executive Committee shall submit to the Policy Board, within ninety days of the end of every financial year, a report on the conduct of the affairs of the PEDO for the year.

25. **Information.**--- The PEDO may call for any information required by it for carrying out the purposes of this Ordinance or as is required under contracts entered into by the PEDO from any person involved, directly or indirectly, in the power sector or any matter incidental or consequential thereto and any such person shall provide the required information called by the PEDO.

26. **Directions by Government.**--- Notwithstanding anything contained in this Ordinance, Government may issue directions and guidelines to PEDO, from time to time, to protect the interests of Government, sponsors and public.

27. **Members and staff to be public servants.**--- The Chairman, members of the Executive Committee, the Chief Executive Officer and Members of the PEDO, officers, servants and other employees of the PEDO shall, when acting or purporting to act in pursuance of any of the provisions of this Ordinance, be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act No XLV of 1860).

28. **Indemnity.**--- No suit, prosecution or other legal proceeding shall lie against the Executive Committee, members, its officers, advisors, consultants and other employees, in respect of anything done or intended to be done in good faith under this Ordinance.

29. Ordinance to override other laws.--- The provisions of this Ordinance shall have effect, notwithstanding anything inconsistent contained, in any other law for the time being in force.

30. Common seal.--- The PEDO shall have a common seal and such seal shall be kept in the custody of the Secretary of the Executive Committee or such other person as may be authorized by regulations. Documents, required or permitted to be executed under the seal, shall be specified in and authenticated in such manner as shall be authorized by regulations.

31. Support of Government and Federal Government.--- Government and Federal Government and all its agencies, particularly the concerned enterprises, owned and controlled, wholly or partially, directly or indirectly by Government and Federal Government, shall render such support to the PEDO as may be necessary to fulfill its objective and functions under this Ordinance.

32. Removal of difficulties.--- If any difficulty arises in giving effect to any provision of this Ordinance, Government may make such order, not inconsistent with the provisions of this Ordinance, as may appear to it to be necessary for the purposes of removing the difficulty.

33. Repeal and savings.---(1) The Pakhtunkhwa Energy Development Organization Act, 1993 (Khyber Pakhtunkhwa Act No. I of 1993), is hereby repealed.

(2) Notwithstanding the repeal of the aforesaid Act,-

- (a) anything done, action taken, notifications or orders issued, appointments made, so far not inconsistent with the provisions of this Ordinance, shall be deemed to have been done, taken, issued and made under this Ordinance;
- (b) all assets, liabilities, rights, powers, and privileges and all property, cash and bank balances, reserve funds, investment and all other interests and rights in or arising out of such property and all debts, liabilities and obligations, of whatever kind, shall stand transferred to and vest in PEDO, re-organized under this Ordinance;
- (c) all debts and obligations incurred, or contracts entered into, rights acquired, and all matters and things engaged to be done, shall be deemed to have been incurred entered into, acquired or engaged by the PEDO, re-organized under this Ordinance;

- (d) all suits and other legal proceedings by or against the Pakhtunkhwa Energy Development Organization under the repealed Act, instituted, shall be deemed to be suits and proceedings by or against the PEDO and shall be proceeded or otherwise dealt with accordingly;
- (e) any reference to the Pakhtunkhwa Energy Development Organization under the repealed Act, in any statutory instrument or document shall, unless the context otherwise requires, be read and construed as reference to be PEDO re-organized under this Ordinance; and
- (f) all officers, consultants, advisers, auditors and other employees and staff of the Pakhtunkhwa Energy Development Organization under the repealed Act, shall stand transferred to and be officers, consultants, advisers, auditors and employees and staff of PEDO:

Provided that the civil servants, appointed to or working in the Pakhtunkhwa Energy Development Organization under the repealed Act, shall continue to be governed under the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made thereunder.

Peshawar,
dated the
14th October, 2020.

(SHAH FARMAN)
Governor of the Khyber Pakhtunkhwa.

MASOOD AHMAD
Secretary to Government of Khyber Pakhtunkhwa
Law, Parliamentary Affairs and
Human Rights Department.