

**[AS INTRODUCED IN THE SENATE]**

**A**

**BILL**

*to provide for the prevention and management of conflicts of interest and to establish clear conflict of interest principles for Public servants in the Federal Government and for matters connected therewith or incidental thereto*

**WHEREAS** it is expedient to prevent, manage and resolve conflict of interests arising between the private interests and public duties of Public Servants to provide clear conflict of interest and related post-employment principles for such persons, and provide 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 Prevention and Management of Conflict of Interest Act, 2017.

(2) It shall extend to the whole of Pakistan wherever Federal Government has its offices.

(3) It shall come into force at once.

**Part – II  
INTERPRETATION**

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

(a) **"dependent children"** means a child or step-child of a Public Servant who has not reached the age of 18 years or, who has reached that age but is primarily dependent on the Public Servant or Public Servant's spouse for financial support;

(b) **"family member"** in relation to a Public Servant, means:

(i) his spouse, parents, dependent children, siblings and other relatives that are dependent on the Public Servant;

(ii) his spouse's parents, siblings and other relatives that are dependent on the Public Servant or the Public Servant's spouse; and

(c) **"Government"** means the Government of Pakistan;

- (d) **"Gift or other advantage"** means any direct or indirect benefit, including but not limited to any gratuity; gifts; favor; discount; exemptions or waivers; research funding; services that are monetary or in kind; entertainment; hospitality, including local or international travel costs, lodgings and meals; forbearance or write offs of loans or other payment obligations; transfer, sale or provision of, or allowing the use of, any property having monetary value for which the recipient has no obligation to provide consideration or is required to pay consideration at less than the commercial value; and excludes lawful compensation and gifts from family members;
- (e) **"head of department"** means:
- (i) in relation to a Minister, Secretary or Advisor or Special Assistant of a Ministry or Department, or the Head of an Attached Department, the Prime Minister; and
  - (ii) in relation to a Government employee, the Minister, Secretary, Advisor, Special Assistant, Head of Attached Department or such other senior officer responsible for the administration and affairs of the Government department or public sector entity;
- (f) **"private interest"** does not include an interest in a decision or matter:
- (i) that is of general application;
  - (ii) that affects a Public Servant as one of a broad class of persons; or
  - (iii) that concerns the lawful compensation received by such Public Servant by virtue of being a Public Servant;
- (g) **"public employee"** means a person employed, on a permanent or temporary basis, or otherwise for the time being engaged, by a public sector entity, and excluding the Minister, Secretary, Advisor or Head of the Attached Department responsible for a public sector entity;
- (h) **"public servant"** means any person who is serving the Federal Government of Pakistan in any capacity;
- (i) **"public project"** means any project or program or activity or scheme proposed or undertaken by a public sector entity, including projects, programs or activities proposed or undertaken through public-private partnerships and privatization;

- (j) "**public sector entity**" means the Ministry, Department or Attached Department of the Government or any entity established by the Government under any law; and
- (k) "**spouse**" in relation to a Public Servant, means the person who is married to such Public Servant, and excludes a person from whom such Public Servant is legally separated.

(2) All terms used in this Act but not defined under sub-section (1) shall have the same meaning as ascribed to them under the Federal Government Rules of Business, 1973.

**3. Conflict of Interest.-** (1) For the purposes of this Act, a Public Servant is in conflict of interest when he exercises an official power, duty or function that provides an opportunity to further his private interests or those of his family member's or to improperly further another person's private interests.

**Explanation.-** A conflict of interest may exist even if no unethical, improper or illegal act results from it.

(2) For the purposes of this Act, a Public Servant has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the said person's ability to exercise an official power or perform an official duty or function must have been affected by his Private interest or those of his family member's or of another person.

### **Part III RULES GOVERNING CONFLICT OF INTEREST**

**4. General Duty.-** Every Public Servant shall arrange and manage his Private affairs in a manner that prevents such person from having a conflict of interest or an apparent conflict of interest, and, if a conflict of interest or an apparent conflict of interest arises during the course of his tenor as a Public Servant, he shall disclose and manage it in accordance with the provisions of this Act.

**5. Decision making.-** A Public Servant shall not render advice or make a decision or participate in the making of a decision related to the exercise of an official power, duty or function if such person knows, or reasonably should know, that, in the rendering of such advice or making of such decision, he would be in a conflict of interest or apparent conflict of interest.

**6. Inside information.-** A Public Servant shall not, directly or indirectly, use information that is obtained in his official capacity and that is not available in the public domain to further, or seek to further, the Private interests of such persons, his family members, or the private interests of another person.

**7. Influence.-** A Public Servant shall not use his position or office to seek to influence a decision of another person so as to further, or seek to further, the private interests of such person or his family members, or the Private interests of another person.

**8. Offers of outside employment.-** A Public Servant shall not allow himself to be influenced in the exercise of an official power, duty or function by plans for, or offers of, outside employment or engagement as independent contractor.

**9. Gifts and other advantages.-** (1) In addition to and without prejudice to the provisions of the Government Servants (Conduct) Rules, 1964, a Public Servant or his family member shall not accept any gift or other advantage from any person that might reasonably be seen to have been given to influence such person in the exercise of an official power, duty or function.

(2) Notwithstanding anything contained in sub-section (1), a Public Servant or Government servant or his family member may accept a gift or other advantage that is-

- (a) permitted under the Government Servants (Conduct) Rules, 1964;
- (b) received as a normal expression of courtesy or protocol, or is within the customary standards, that normally accompany the Public Servant or Government servant's position; or
- (c) in exceptional circumstances, with the prior approval of the head of the department.

(3) A gift or other advantage received under clause (c) of sub-section (2) and having a value of over Rs. 10,000 (Rupees Ten Thousand) shall be immediately reported in writing to the head of department and, unless otherwise determined by the head of department, be forfeited to the head of department in right of the concerned public sector entity.

**10. Contracting.-** (1) No Public Servant who otherwise has the authority shall, in the exercise of his or her official powers, duties and functions, enter into a contract or employment relationship with any of his family member.

- (2) Sub-section (1) shall not apply:
  - (a) in the case, where the head of the department is of the opinion that such contract is unlikely to affect the exercise of the official powers, duties and functions of the Public Servant; and

- (b) in the case of clause (a), where the contract is for goods or services and that is awarded after an open competitive bidding process under public procurement laws for the time being in force, or where the contract is otherwise awarded in accordance with an impartial administrative process in which the Public Servant plays no part.

**11. Activities on behalf of the constituents.-** Nothing in this Act prohibits an elected representative of the people from engaging in political activities that he would normally carry out on behalf of the constituents.

#### **Part – IV DISCLOSURE OF CONFLICT OF INTEREST**

**12. Disclosure of conflict of interest.-** (1) A Public Servant who knows or has reasonable grounds to believe that he has, or is likely to have, a conflict of interest or an apparent conflict of interest in a matter that is under consideration by the Government or at a meeting of the public sector entity, as the case may be, shall:

- (a) make a disclosure of the general nature of the conflict of interest to the head of department; and
- (b) recuse himself from participating and voting in any discussion, decision or debate in respect of such matter.

(2) Disclosure under sub-section (1) shall, preferably and so far as practical, be made to the head of department prior to or at the meeting at which the matter is being considered. In all other cases, disclosure shall be made to the head of the department at any subsequent meeting at which the matter is under consideration.

(3) All disclosures and recusals made under sub-section (1) shall be duly recorded in the minutes of the meeting at which the matter is under consideration.

(4) The head of department shall take such interim measures as are deemed appropriate to deal with the conflict of interest or apparent conflict of interest disclosed by the Public Servant, including but not limited to the appointment or assignment of another Public Servant on the concerned matter or public project.

#### **Part – V DUTIES AND RESPONSIBILITIES OF PUBLIC SECTOR ENTITY**

**13. Duties of public sector entity.-** (1) Every public sector entity shall be responsible for the prevention and management of conflicts of interests in accordance with the provisions of this Act.

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(2) Without prejudice to the generality of the foregoing, every public sector entity shall take the following minimum actions:

- (a) spread conflict of interest literacy and awareness among the public sector entity and promote awareness of the safeguards available to prevent conflict of interest through publications, media, seminars and other available means;
- (b) a public sector entity which is engaged in planning or performance of a public project shall not engage or utilize any Public Servant, under a contract or otherwise, for such project if they know, or has to believe, that such person has or is likely to have a conflict of interest in respect of such project;
- (c) if at any time it comes to the notice of such public sector entity that any Public Servant has or is likely to have a conflict of interest in respect of a public project, the public sector entity shall forthwith ensure that such person ceases to be engaged or associated with such project, regardless of whether such project commenced before or after the coming into force of this Act;
- (d) determine, after consultation with a Public Servant, the appropriate measures that are required to be taken by such person for the purposes of compliance with the provisions of this Act;
- (e) in addition to, and without prejudice to, the specific compliance measures provided for in this Act, request a Public Servant, in respect of any matter, to take any compliance measure that is necessary to comply with the provisions of this Act;
- (f) inquire into complaints and take *suo moto notice* of matters relating to conflict of interests in accordance with the provisions of this Act;
- (g) take enforcement and administrative actions against such persons who are found to have contravened the provisions of this Act. However, in the case of a Public Servant information regarding the violation of this Act shall be forwarded to the respective head of Department; and
- (h) to the extent applicable, provide reports to the Prime Minister on an annual basis or at such intervals as the Prime Minister deems fit, providing details of the measures and safeguards adopted by the public sector entity to prevent and manage conflict of interest in accordance with the provisions of this Act.

**Part – VI**  
**ADMINISTRATIONS AND INVESTIGATIONS**

**14. Investigations.-** (1) A head of department may, on his own initiative or on a written complaint by any person who has reasonable grounds to believe that a Public Servant has contravened any provisions of this Act, open an investigation into the matter against the concerned Public Servant.

(2) A complaint under sub-section (1) 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, including any information from the public indicating or evidencing that a Public Servant has contravened any of the provisions of this Act.

(3) The head of department may, having regard to all the circumstances of the case, decline to initiate an investigation on the complaint of any person or discontinue the investigation. Where the head of department declines to initiate an investigation he shall communicate his reasons for doing so in writing to the person who has lodged the written complaint.

(4) Irrespective of whether an examination is conducted, declined or discontinued under this Section, the head of department shall prepare a report setting out the facts in question, the head of departments analysis and conclusions in relation to the request:

Provided, that before preparing the report under this sub-section, the head of department shall provide the Public Servant concerned with a reasonable opportunity to present his views.

(5) The head of department shall provide a copy of the report prepared under sub-section (4) to the Public Servant who is the subject of the investigation and, to the extent applicable, to the Prime Minister.

(6) The Prime Minister may make a report under sub-section (4) available to the public subject to such omissions, deletions and reductions as may be considered necessary to secure the confidentiality of information that is required to be kept confidential under any law, or if the Prime Minister is of the opinion that disclosure of such information would not be in the public interest, the said information shall not be disclosed to public.

**Part –VII  
MISCELLANEOUS**

**15. Violation.-** Where a Public Servant is held, after having given an opportunity of a hearing, to have contravened the provisions of this Act, the Head of Department shall initiate necessary disciplinary, penal or other action against the concerned person under the applicable laws.

**16. Payment of administrative penalty.-** (1) Without prejudice and in addition to the proceedings under Section 15, a Public Servant who is held, after having given an opportunity of a hearing, to have contravened any obligatory disclosures or actions under Section 12 of this Act, shall be liable to an administrative monetary penalty starting from PKR 100,000 (*Rupees One Hundred Thousand*) and upto the amount as may be determined by head of department.

(2) If a penalty is imposed under sub-section (1), the amount of penalty, 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 Servant's history of prior violations under this Act; and
- (c) any other relevant matter.

(3) If the Public Servant pays the penalty imposed under sub-section (1), this shall not absolve him from making such obligatory disclosure or taking such actions as required under Section 12 or otherwise taking such actions or submitting such statement, document or information as required.

(4) Penalty shall be deductible from the salary or remuneration payable to the Public Servant by the public sector entity that employs, engages or is otherwise associated with such Public Servant, and where no salary is payable, the penalty shall be recoverable as arrears of land revenue.

**17. Voidability of transaction.-** (1) The failure of any Public Servant to comply with Section 12 does not of itself invalidate any contract or other transaction to which the failure to comply with Section 12 relates, but the contract or other transaction is voidable at the option of the Government before the expiration of six months from the date of the decision authorizing such contract or transaction, and without prejudice to the right of the counterparties to retain or receive the reasonable value of the property or service provided prior to the date of rescission of such contract or transaction.

(2) A contract or transaction shall not be voidable under sub-section (1) as against any person who acted in good faith and without actual notice of the failure to comply with Section 12.

**19. Power to remove difficulties.-** If any difficulty arises in implementation of this Act, the Government may pass such orders, though notification in the official Gazette, and not inconsistent with this Act, as may be necessary to remove such difficulty.

**20. Provisions of this Act to override other laws.-** In the event of any inconsistency or conflict between the provisions of this Act and any other law for the time being in force, the provisions of this Act shall prevail.

**21. Power to make rules.-** The Government may, by way of notification in the official Gazette, prescribe rules for carrying out the purposes of this Act.

#### **STATEMENT OF OBJECTS AND REASONS**

For the purposes of ensuring transparency and objectivity in acts of public servants, it is necessary that issues wherein they may have any personal interest (direct or indirect) are disclosed to and they rescue themselves from such decision making. This will ensure good governance and better service to the populace of Pakistan.

**SENATOR BARRISTER MURTAZA WAHAB  
SENATOR MUKHTIAR AHMED DHAMRAH @ AAJIZ  
MEMBERS-IN-CHARGE**