

[TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

A
BILL

to provide for establishment of clear conflict of interest and related post employment principles for public office holders.

WHEREAS, it is expedient to provide for establishment of clear conflict of interest and related post employment principles for public office holders.

Part I

1. **Short title, extent and commencement.**-(1) This Act may be called the National Conflict of Interest Act, 2016.

• This Act shall come into force on such date as the Government may, by notification in the official Gazette, specify.

Part -II Interpretation

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

• "assets" means any movable and immovable property, money, securities, actionable claims, rights, interests and includes any trusts in respect of which a public office holder or a member of his or her family is a beneficiary.

• "Commission" means the Conflict of Interest and Ethics Commission appointed under section 3 of the Act.

• "controlled assets" means assets whose value could be directly or indirectly affected by government decisions or policy including, but not limited to, the following:

• publicly traded securities of corporations and foreign governments, whether held individually or in an investment portfolio account such as, but not limited to, stocks, bonds, stock market indices, trust units, closed-end mutual funds, commercial papers and medium-term notes;

• self-administered registered retirement savings plans, self-administered registered education savings plans and registered retirement income funds composed of at least one asset that would be considered controlled if held outside the plan or fund;

• commodities, futures and foreign currencies held or traded for speculative purposes; and

• Stock options, warrants, rights and similar instruments.

• "Dependent child" means a child of a public office holder, or a child of the public office holder's spouse, who has not reached the age of 18 years or who has reached that age but is primarily dependent on the public office holder or public office holder's spouse partner for financial support.

•"exempt assets" means assets and interests in assets for the private use of public office holders and the members of their family and assets that are not of a commercial character, including the following:

- primary and secondary residences, recreational property and farm land and buildings used or intended for use by public office holders or the members of their family;
- household goods and personal effects;
- works of art, antiques and collectibles;
- automobiles and other personal means of transportation;
- cash and deposits;
- Prize Bonds, Saving Certificates and other similar investments issued or guaranteed by any level of Government in Pakistan;
- registered retirement savings plans and registered education savings plans that are not self-administered or self-directed;
- investments in open-ended mutual funds;
- guaranteed investment certificates and similar financial instruments;
- public sector debt financing not guaranteed by a level of government, such as university and hospital debt financing;
- annuities and life insurance policies;
- pension rights;
- money owed by a previous employer, client or partner;
- personal loans receivable from the public office holder's relatives, and personal loans of less than Rupees fifty thousand (Rs. 50,000) receivable from other persons if the public office holder has loaned the moneys receivable;
- money owed under a mortgage or hypothecation of less than Rupees fifty thousand (Rs. 50,000.0);
- self-administered or self-directed registered retirement savings plans, registered education savings plans and registered retirement income funds composed exclusively of assets that would be considered exempt if held outside the plan or fund; and
- Investments in limited partnerships that are not traded publicly and whose assets are exempt assets.

•"Former public office holder" means a former public office holder who, while in office, was a public office holder.

•"gift or other advantage" means

- an amount of money if there is no obligation to repay it; and
- A service or property, or the use of property or money that is provided without charge or at less than its commercial value.

•"lobbying" means to communicate with a public office holder or to arrange a meeting between a public office holder and any other persons in respect of

- the development of any legislative proposal by the Government or by a

- member of The National Assembly,
 - the introduction of any Bill or resolution in National Assembly or the passage, defeat or amendment of any Bill or resolution that is before the National Assembly,
 - the making or amendment of any rules or regulations under any statutory instrument,
 - the development or amendment of any policy or program of the Government, or
 - the awarding of any grant, contribution or other financial benefit by or on behalf of any local, Provincial or Federal Government,
 - the awarding of any contract by or on behalf of any local, provincial or federal government.
- "private interest" does not include an interest in a decision or matter
 - that is of general application;
 - that affects a public office holder as one of a broad class of persons; or
 - That concerns the remuneration or benefits received by virtue of being a public office holder.
 - "public office holder" includes a person who
 - Is the Head of the State
 - Is the Prime Minister, Speaker National Assembly, Deputy Speaker National Assembly, Federal Minister, Advisor to the Prime Minister, Special Assistant to the Prime Minister, Federal Parliamentary Secretary, Member of the National Assembly, Attorney General including Deputy Attorney General, Political Secretary, Consultant to the Prime Minister and who holds or has held a post or office with the rank or status of a Federal Minister;
 - is the Judge of the Supreme Court, High Court or that of Subordinate Judiciary;
 - is holding, an office or post in the service of the Government, or any service in connection with the affairs of the Federal Government constituted under any federal law relating to the constitution of local government co-operative societies or in the management of corporations, banks, financial institutions, firms, concerns, undertakings or any other institution or organization established, controlled or administered by or under the Federal Governments
 - "public sector entity" means a department or agency of the Government, or a Company or Corporation established by or under an Act of National Assembly or any other entity to which the Government may appoint a person.
 - "public servant" has the meaning assigned by subsection 21 of the Pakistan Penal Code, 1860.
 - "spouse" means a person who is married to another person, and is not living separate and apart but does not include a person from whom a public office holder is separated through divorce deed, a separation agreement or a court order.
- (2) The following are the members of a public office holder's family for the purposes of this Act:
- his or her spouse; and

- his or her dependent children and the dependent children of his or her spouse.

(3) Persons who are related to a public office holder by birth, marriage, adoption or affinity are the public office holder's relatives for the purposes of this Act unless the Commission determines, either generally or in relation to a particular public office holder, that it is not necessary for the purposes of this Act that a person or a class of persons be considered a relative of a public office holder.

Part - III Conflict of Interest and Ethics Commission

3. Establishment of the National Conflict of Interest and Ethics Commission.-(1) Government shall, by notification in the official Gazette, establish an independent Commission to be called the National Conflict of Interest and Ethics Commission.

- The Commission shall be a body corporate, having perpetual succession and a common seal, with power to enter into agreements, acquire, hold, manage and dispose off property and to sue and be sued in its name:

Provided that for the disposal of any immovable property the Commission shall have to obtain the prior approval of the Government.

Provided further that the property shall have to be disposed off through competitive bidding only.

- The Commission shall comprise of a Chairman and not less than two Members to be appointed by the Government after consultation with Leader of the Opposition in National Assembly, in such manner and on such terms and conditions as may be prescribed, and until so prescribed as may be determined by the Government.

- In order to be appointed under subsection (3), the Chairman of the Commission or a member thereto must be

- a former judge of the Supreme Court of Pakistan or any of the High Courts; or
- a former civil servant of BPS 21 or above, who has demonstrated expertise in one or more of the following:
 - conflicts of interest,
 - financial arrangements,
 - professional regulation and discipline, or
 - adjudication for determination of civil rights; or

- an eminent member of civil society, with twenty years experience of heading a registered and well reputed civil society organization, including an NGO, a charitable institution, a social welfare organization or non-profit entity.

- The Chairman or the member, as the case may be, is eligible to be reappointed for one or more terms of up to three years each.

- The Chairman and members hold office during good behavior and pleasure of the Government for a term of three years but may be removed for a sufficient cause earlier.

- In the event of the absence or incapacity of the Chairman or any of the members, or if that office is vacant, the Government may appoint any qualified person to hold that office in the interim for a term not exceeding six months on the terms and conditions so fixed by the Government.

- The Chairman and members shall engage exclusively in the duties and functions of the

Commission and may not hold any other office of profit or engage in any other employment for reward.

- On the terms and conditions so determined by it through regulation, the Commission may employ any officers and employees and may engage the services of any agents, advisers and consultants that the Commission considers necessary for the proper conduct of the work of the office of the Commission.

- The Commission may, subject to the conditions that the Commission may generally or specifically specify, authorize any person to exercise any powers under this Act on behalf of the Commission.

- Prior to each fiscal year, the Commission shall cause to be prepared an estimate of the sums that will be required to pay the charges and expenses of the Commission during the fiscal year.

- The estimate referred to in subsection (9) shall be considered by the Speaker of the National Assembly and then transmitted to the Finance Minister, who shall lay it before the Assembly for approval with the budget estimates of the Government for the fiscal year.

4. Meetings.-(1) The Commission shall meet at least once in a month but the Chairman may, at any time, call a special meeting of the Commission.

- The Commission shall conduct its meetings, take decisions and keep record of the proceedings of the meetings in such manner as may be prescribed, and until so prescribed as may be determined by the Commission.

- The Commission shall take decisions through simple majority with the casting vote of Chairman.

- The quorum for a meeting shall be two including the Chairman.

5. Validity of proceedings.-No act, proceeding, decision or order of the Commission shall be invalid only by reason of existence of a vacancy or any defect in the constitution of the Commission.

Part-IV

Rules governing Conflict of Interest

6. Conflict of Interest.-For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests.

7. General Duty.-Every public office holder shall arrange his or her private affairs in a manner that will prevent the public office holder from being in a conflict of interest.

8. Decision Making.-(1) No public office holder shall make a decision or participate in making a decision related to the exercise of an official power, duty or function if the public office holder knows or reasonably should know that, in the making of the decision, he or she would be in a conflict of interest.

(2) No Federal Minister shall, in his or her capacity as a member of the National Assembly, debate or vote on a question that would place him or her in a conflict of interest.

9. Preferential Treatment.-No public office holder shall, in the exercise of an official power, duty or function, give preferential treatment to any person or organization based on the identity of the person or organization that represents the first-mentioned person or organization.

10. Insider Information.-No public office holder shall use information that is obtained in his or her position as a public office holder and that is not available to the public to further or seek to further the public office holder's private interests or those of the public office holder's relatives or friends or to improperly further or to seek to improperly further another person's private interests.

11. Influence.-No public office holder shall use his or her position as a public office holder to seek to influence a decision of another person so as to further the public office holder's private interests or those of the public office holder's relatives or friends or to improperly further another person's private interests.

12. Offers of outside employment.-No public office holder shall allow himself or herself to be influenced in the exercise of an official power, duty or function by plans for, or offers of, outside employment.

13. Gifts and other advantages.-(1) No public office holder or member of his or her family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function.

(2) Despite subsection (1), a public office holder or member of his or her family may accept a gift or other advantage

- that is given by a relative or friend; or
- that is received as a normal expression of courtesy or protocol, or is within the customary standards that normally accompany the public office holder's position.

(3) When a public office holder or a member of his or her family accepts a gift or other advantage referred to in subsection (2)(c) that has a value of Rupees ten thousand (Rs. 10,000) or more, the gift or other advantage is, unless otherwise determined by the Commission, forfeited to the Government.

14. Travel.-No public office holder shall accept travel on non-commercial chartered or private aircraft for any purpose unless required in his or her capacity as a public office holder or in exceptional circumstances or with the prior approval of the Commission.

15. Contracts with other entities.-(1) No public office holder shall knowingly be a party to a contract with a public sector entity under which he or she receives a personal benefit, other than a contract under which he or she is entitled to pension benefits.

(2) No public office holder shall have an interest in a partnership or private corporation that is a party to a contract with a public sector entity under which the partnership or corporation receives a benefit.

(3) Subsections (1) and (2) do not apply if the Commission is of the opinion that the

contract or interest is unlikely to affect the exercise of the official powers, duties and functions of the public office holder.

16. Contracting for siblings.-(1) No public office holder 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 his or her spouse, child, sibling or parent.

(2) No public office holder, who otherwise has the authority shall permit the public sector entity for which he or she is responsible, or to which he or she is assigned, to enter into a contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent except in accordance with an impartial administrative process in which the public office holder plays no part.

(3) This section does not apply to a contract for goods or services offered by a public sector entity on the same terms and conditions as to the general public.

17. Prohibited Activities.-(1) No public office holder shall, except as required in the exercise of his or her official powers, duties and functions,

- engage in employment or the practice of a profession;
- manage or operate a business or commercial activity;
- continue as, or become, a director or officer in a corporation or an organization;
- hold office in a union or professional association;
- serve as a paid consultant; or
- be an active partner in a partnership.

(2) Notwithstanding anything contained in subsection (1), for the purpose of maintaining his or her employment opportunities or ability to practice his or her profession on leaving public office, a public office holder may engage in employment or the practice of a profession in order to retain any licensing or professional qualifications or standards of technical proficiency necessary for that purpose if

- the public office holder does not receive any remuneration; and
- the Commission is of the opinion that it is not incompatible with the public office holder's duties as a public office holder.

(3) Notwithstanding subsection (1)(c) of this section, a public office holder who is a director or officer in a Company or corporation fully or substantially owned or controlled by the Government, may continue as, or become, a director or officer in such a financial or commercial company or corporation but only if the Commission is of the opinion that it is not incompatible with his or her public duties as a public office holder.

(4) A public office holder may however be at liberty to continue as, or become, a director or officer in an organization of a philanthropic, charitable or non-commercial character but only if the Commission is of the opinion that it is not incompatible with his or her public duties as a public office holder.

(5) Nothing in this section prohibits or restricts the political activities of a public office holder of political nature.

18. Fund Raising.-No public office holder shall personally solicit funds from any person or organization if it would place the public office holder in a conflict of interest.

19. Divestiture of controlled assets.-No public office holder shall, unless otherwise provided in this Act, hold controlled assets.

20. Anti-avoidance.-No public office holder shall take any action that has as its purpose the circumvention of the public office holder's obligations under this Act.

21. Condition of appointment of employment.-Compliance with this Act is a condition of a person's appointment or employment as a public office holder and shall be deemed to have been included in his terms and conditions of employment from the date of his appointment, even if prior to this Act.

Part- V Recusal

22. Duty to Recuse.-A public office holder shall recuse himself or herself from any discussion, decision, debate or vote on any matter in respect of which he or she would be in a conflict of interest.

Part- VI Confidential Disclosure

23. Confidential Report.-(1) A public office holder shall, within 60 days after the day on which he or she is appointed as a public office holder, provide a confidential report to the Commission.

(2) The report required under subsection (1) must contain the following:

- a description of all of the public office holder's assets and an estimate of their value;
- a description of all of the public office holder's direct and contingent liabilities, including the amount of each liability;
- a description of all income received by the public office holder during the 12 months before the day of appointment and all income the public office holder is entitled to receive in the 12 months after the day of appointment;
- a description of all activities referred to in section 17 in which the public office holder was engaged in the two-year period before the day of appointment;
- a description of the public office holder's involvement in philanthropic, charitable or non-commercial activities in the two-year period before the day of appointment;
- a description of all of the public office holder's activities as trustee, executor or liquidator of a succession or holder of a power of attorney in the two-year period before the day of appointment; and
- any other information that the Commission considers necessary to ensure that the public office holder is in compliance with this Act.

(3) A Public Office holder shall also make reasonable efforts to include in the report the information referred to in subsection (2) for each member of his or her family.

(4) A public office holder shall include in the report a description of all benefits that he or she, any member of his or her family or any partnership or private corporation in which he or she or a member of his or her family has an interest is entitled to receive during the 12 months after the day of appointment, as a result of a contract with a public sector entity and the report must include a description of the subject-matter and nature of the contract.

(5) If there is a material change in any matter in respect of Which a public office holder is required to provide a confidential report under this section, the public office holder shall, within 30 days after the change, file a report with the Commission describing the material change.

24. Disclosure of Gifts.-(1) If the total value of all gifts or other advantages accepted by a public office holder or a member of his or her family exceeds Rupees ten thousand (Rs. 10,000) from anyone source other than relatives and friends in a 12-month period, the public office holder shall disclose the gifts or other advantages to the Commission within 30 days after the day on which the value exceeds Rupees ten thousand (Rs. 10,000).

25. Disclosure of Offers.-(1) A public office holder shall disclose in writing to the Commission within seven days all firm offers of outside employment.

(2) A public office holder who accepts an offer of outside employment shall within seven days disclose his or her acceptance of the offer in writing to the Commission.

Part- VII Public Declaration

26. Obligatory Declarations.-(1) If a public office holder has recused himself or herself to avoid a conflict of interest, the public office holder shall, within 60 days after the day on which the recusal took place, make a public declaration of the recusal that provides sufficient detail to identify the conflict of interest that was avoided.

(2) A public office holder shall, within 120 days after the day on which he or she is appointed as a public office holder, make a public declaration of all of his or her assets that are neither controlled assets nor exempt assets.

(3) A Public office holder shall, within 120 days after the day on which he or she is appointed, make a public declaration with respect to all of his or her liabilities of Rupees one million or more that provides sufficient detail to identify the source and nature of the liability but not the amount.

(4) If a public office holder holds a position referred to in subsection 17(3) or (4), the public office holder shall, within 120 days after the day on which he or she is appointed, make a public declaration of that fact.

(5) If a public office holder or a member of his or her family accepts any single gift or other advantage that has a value of Rupees ten thousand or more, other than one from a relative or friend, the public office holder shall, within 30 days after accepting the gift or

other advantage, make a public declaration that provides sufficient detail to identify the gift or other advantage accepted, the donor and the circumstances under which it was accepted.

(6) If travel has been accepted in accordance with section 14, from any source, the public office holder shall, within 30 days after the acceptance, make a public declaration that provides sufficient detail to identify the source and the circumstances under which the travel was accepted.

27. Summary Statement.-(1) A public office holder shall, within 120 days after the day on which he or she is appointed, sign a summary statement containing the information required under subsection (2) and provide it to the Commission.

(2) The summary statement must contain the following:

- for each controlled asset of the public officer holder, and for each asset of the public office holder that the Commission has ordered divested under section 31, a description of the asset and the method used to divest it;
- for each matter in respect of which the Commission has ordered a public office holder to recuse himself or herself under section 31, a description of the matter and information regarding the process to be put in place by the public office holder and others to effect the recusal; and
- for any other matter in respect of which the Commission has issued an order to the public office holder under section 31, a description of the matter and the order, and the steps taken to comply with the order.

Part - VIII Divestments

28. Divestment on appointment.-(1) Subject to subsections (9) and (10), a public office holder shall, within 120 days after the day on which he or she is appointed as a public office holder, divest each of his or her controlled assets by doing one of the following:

- selling it in an arm's-length transaction; or
- placing it in a blind trust that meets the requirements of subsection (4).

(2) Subject to subsections (9) and (10), a public office holder shall, within 120 days after the day on which he or she receives controlled assets by way of gift or testamentary disposition or in any other way, over which the public office holder has no control, divest the controlled assets in the manner required by subsection (1).

(3) For greater certainty, a public office holder may not divest his or her controlled assets by any measure other than one referred to in subsection (1), including by placing them in a blind management agreement.

(4) The terms of a blind trust must provide that

- the assets to be placed in trust shall be registered to the trustee unless they are in a registered retirement savings plan account;
- the public office holder shall not have any power of management or control over the trust assets;
- the trustee shall not seek or accept any instruction or advice from the public office

holder concerning the management or the administration of the assets;

- the assets placed in the trust shall be listed on a schedule attached to the instrument or contract establishing the trust;
- the term of any trust shall be for as long as the public office holder who establishes the trust continues to hold his or her office, or until the trust assets have been depleted;
- the trustee shall deliver the trust assets to the public office holder when the trust is terminated;
- the trustee shall not provide information about the trust, including its composition, to the public office holder, except for information that is required by law to be filed by the public office holder and periodic reports on the overall value of the trust;
- the public office holder may receive any income earned by the trust, and add to or withdraw from the capital funds in the trust;
- the trustee shall be at arm's length from the public office holder and the Commission is to be satisfied that an arm's length relationship exists; and
- the trustee shall provide the Commission, on every anniversary of the trust, a written annual report verifying as to accuracy the nature and market value of the trust, a reconciliation of the trust property, the net income of the trust for the preceding year, and the fees of the trustee, if any.

(5) Despite subsection (4), general investment instructions may be included in a blind trust instrument or contract but only with the prior approval of the Commission. The instructions may provide for proportions to be invested in various categories of risk, but may not be industry-specific, except if there are legislative restrictions on the type of assets that a public office holder may own.

(6) For greater certainty, no oral investment instructions may be given with respect to a blind trust contract or instrument.

(7) A public office holder shall provide to the Commission a confirmation of sale or a copy of any contract or instrument establishing the trust in respect of any controlled asset divested under subsection (1).

(8) Unless otherwise required by law, the Commission shall keep confidential all information provided by a public office holder relating to a divestment under subsection (1), except the fact that a sale has taken place or that a trust exists.

(9) Subject to the approval of the Commission, a public office holder is not required to divest controlled assets that are given as security to a lending institution.

(10) A public office holder who is not a Minister, Advisor or Special Assistant to the Prime Minister or Chief Minister, is not required to divest controlled assets if, in the opinion of the Commission, the assets are of such minimal value that they do not constitute any risk of conflict of interest in relation to the public office holder's official duties and responsibilities.

Part-IX

Functions of the Commission

29. Annual Review.-The Commission shall review annually with each public office holder the information contained in his or her confidential reports and the measures taken to

satisfy his or her obligations under this Act.

30. Determination of the appropriate measures.-Before they are finalized, the Commission shall determine the appropriate measures by which a public office holder shall comply with this Act and, in doing so, shall try to achieve agreement with the public office holder.

31. Compliance Order.-In addition to the specific compliance measures provided for in this Part, the Commission may order a public office holder, in respect of any matter, to take any compliance measure, including divestment or recusal, that the Commission determines is necessary to comply with this Act.

32. Reimbursement of costs.-(1) The Commission may order that the following administrative costs incurred by a public office holder be reimbursed

- in relation to a divestment of assets,
 - reasonable legal, accounting and transfer costs to establish and terminate a trust determined to be necessary by the Commission,
 - annual, actual and reasonable costs to maintain and administer the trust, in accordance with rates set from time to time by the Commission,
 - commissions for transferring, converting or selling assets where determined necessary by the Commission,
 - costs of other financial, legal or accounting services required because of the complexity of the arrangements for the assets, and
 - commissions for transferring, converting or selling assets if there are no provisions for a tax deduction under the Income Tax Ordinance, 2001; and
- in relation to a withdrawal from activities, the costs of removing a public office holder's name from federal or provincial registries of corporations.

(2) The following administrative costs are not eligible to be reimbursed under subsection (1):

- charges for the day-to-day operations of a business or commercial entity;
- charges associated with winding down a business;
- costs for acquiring permitted assets using proceeds from the required sale of other assets; and
- any income tax adjustment that may result from the reimbursement of trust costs.

33. Post Employment Obligations.-Before a public office holder's last day in office, the Commission shall advise the public office holder of his or her obligations under this Act.

Part-X

Rules for Former Public Office Holders

34. Prohibition after leaving office.-No former public office holder shall act in such a manner as to take improper advantage of his or her previous public office.

35. Previously acting for Government.-(1) No former public office holder shall act for or on behalf of any person or organization in connection with any specific proceeding,

transaction, negotiation or case to which the Government is a party and with respect to which the former public office holder had acted for, or provided advice to, the Government.

(2) No former public office holder shall give advice to his or her client, business associate or employer using information that was obtained in his or her capacity as a public office holder and is not available to the public.

36. Prohibition for contracting.- (1) No former public office holder shall enter into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office.

(2) No former public office holder shall make representations whether for remuneration or not, for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office.

(3) No former public office holder who was a Minister, Advisor or Special Assistant to the Prime Minister or Chief Minister, shall make representations regarding a personal benefit to a current Minister, Advisor or Special Assistant who was a minister, advisor or special assistant at the same time as the former public office holder.

37. Time limits.-(1) With respect to all former public office holders except former ministers, Advisors and Special Assistant, the prohibitions set out in subsections 36(1) and (2) apply for the period of one year following the former public office holder's last day in office.

(2) With respect to former ministers, advisors and special assistants, the prohibitions set out in subsections 36(1) to (3) apply for a period of two years following their last day in office.

38. Report to the Commission.- (1) A former public office holder who, during the applicable period under section 37, has made any communication or arranges any meeting within the scope of lobbying, shall report that communication or meeting to the Commission.

(2) The former public office holder shall file a return that

- sets out, with respect to every communication or meeting referred to in subsection (1),
- the name of the public office holder who was the object of the communication or meeting,
- the date of the communication or meeting,
- particulars to identify the subject-matter of the communication or meeting, and
- any other information that the Commission requires; and
- if any information contained in the return is no longer correct or additional

information that the former public office holder would have been required to provide in the return has come to his or her knowledge after the return was filed, provides the corrected or additional information.

39. Exemptions.- (1) The Commission may, on application, exempt from the application of section 36 or 38 a former public office holder.

(2) An exemption may only be granted under subsection (1) in respect of a person based on the following criteria:

- the person was not a senior officer;
- the person's functions did not include the handling of files of a political or sensitive nature, such as confidential cabinet documents;
- the person had little influence, visibility or decision-making power in the Department concerned; and
- the person's salary level was not commensurate with the person having an important role in that office.

(3) The decision made by the Commission shall be communicated in writing to the person who applied for the exemption.

(4) If the Commission has granted an exemption in accordance with this section, the Commission shall publish the decision and the reasons in terms of section 52.

Part-XI

Functions of the Commission

40. Waiver or Reduction of limitation.-(1) On application by a public office holder or a former public office holder, the Commission may waive or reduce any applicable period set out in section 37.

(2) In exercising discretion under subsection (1), the Commission shall consider whether the public interest in granting the waiver or reduction outweighs the public interest in maintaining the prohibition.

(3) In determining the public interest for the purposes of subsection (2), the Commission shall consider the following factors:

- the circumstances under which the public office holder left his or her office;
- the general employment prospects of the public office holder or former public office holder;
- the nature, and significance to the Government, of information possessed by the public office holder or former public office holder by virtue of that office holder's public office;
- the facilitation of interchange between the private and public sector;
- the degree to which the new employer might gain unfair commercial advantage by hiring the public office holder or former public office holder;
- the authority and influence possessed by the public office holder or former public

office holder while in public office; and the disposition of other cases.

(4) The decision made by the Commission shall be communicated in writing to the applicant referred to in subsection (1).

(5) If the Commission has granted a waiver or reduction in accordance with this section, the Commission shall publish the decision and the reasons in the public registry maintained under section 52.

41. Decision of the Commission.- On receipt of a report under section 38, the Commission shall immediately determine whether the former public office holder is complying with his or her obligations under this Part.

42. Official Dealings.- (1) If the Commission determines that a former public office holder is not complying with his or her obligations under this Part, the Commission may order any current public office holders not to have official dealings with that former public office holder.

(2) All current public officer holders shall comply with an order of the Commission made under subsection (1).

43. No impact.- For greater certainty, no exemption granted in respect of a person under section 39 and no waiver or reduction granted in respect of a person under section 40 affects any obligation or prohibition that applies to that person under any other law.

Part-XII Administration and Enforcement

44. Confidential Advice.-In addition to carrying out other duties and functions under this Act, the Commission shall

- provide confidential advice to the Prime Minister, including on the request of the Prime Minister, with respect to the application of this Act to individual public office holders; and
- provide confidential advice to individual public office holders with respect to their obligations under this Act.

45. Requests from members of National Assembly.-(1) A member of the National Assembly who has reasonable grounds to believe that a public office holder or former public office holder has contravened this Act may, in writing, request that the Commission examine the matter.

(2) The request 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.

(3) If the Commission determines that the request is frivolous or vexatious or is made in bad faith, it may decline to examine the matter. Otherwise, it shall examine the matter.

described in the request and, having regard to all the circumstances of the case, may discontinue the examination.

(4) In conducting an examination, the Commission may consider information from the public that is brought to its attention by a member of the national assembly indicating that a public office holder or former public office holder has contravened this Act. The member shall identify the alleged contravention and set out the reasonable grounds for believing a contravention has occurred,

(5) If a member of the National Assembly receives information referred to in subsection

(4), the member, while considering whether to bring that information to the attention of the Commission, shall not disclose that information to anyone. If the member brings that information to the attention of the Commission under that subsection, the member shall not disclose that information to anyone until the Commission has issued a report under this section in respect of the information.

(6) Where the Commission is of the opinion that a member of the National Assembly has failed to comply with the confidentiality provision of subsection (5), the Commission may refer the matter, in confidence, to the Speaker of the National Assembly.

(7) The Commission shall provide the Prime Minister with a report setting out the facts in question as well as the Commission's analysis and conclusions in relation to the request. The report shall be provided even if the Commission determines that the request was frivolous or vexatious or was made in bad faith or the examination of the matter was discontinued under subsection (3).

(8) The Commission shall, at the same time that the report is provided under subsection (7), provide a copy of it to the member who made the request - and the public office holder or former public office holder who is the subject of the request - and make the report available to the public.

(9) The Commission may not include in the report any information that it is required to keep confidential.

46. Suo Motto initiative.-(1) If the Commission has reason to believe that a public office holder or former public office holder has contravened this Act, the Commission may examine the matter on its own initiative.

(2) The Commission, having regard to all the circumstances of the case, may discontinue the examination.

(3) Unless the examination is discontinued, the Commission shall provide the Prime Minister with a report setting out the facts in question as well as the Commission's analysis and conclusions.

(4) The Commission shall, at the same time that the report is provided under subsection (3) to the Prime Minister, provide a copy of it to the public office holder or former public office holder who is the subject of the report and make the report available to the public.

47. Presentation of views.-Before providing confidential advice under Section 44(a) or a report under section 45 or 46, the Commission shall provide the public office holder or former public office holder concerned with a reasonable opportunity to present his or her views.

48. Conclusion of Final Report.- A conclusion by the Commission set out in a report under section 45 or 46 that a public office holder or former public office holder has or has not contravened this Act may not be altered by anyone but is not determinative of the measures to be taken as a result of the report.

49. Powers in respect of Reports.- (1) For the purposes of Section 44(a) and sections 45 and 46, the Commission has the power to summon witnesses and require them

- to give evidence - orally or in writing - on oath or, if they are persons entitled to affirm in civil matters, on affirmation; and
- to produce any documents and things that the Commission considers necessary

(2) The Commission has the same power to enforce the attendance of witnesses and to compel them to give evidence as a Civil Court within the meanings of Code of Civil Procedure, 1908.

(3) The powers referred to in subsections (1) and (2) shall be exercised in camera.

(4) Information given by a person under this section is inadmissible against the person in a court or in any proceeding, other than in a prosecution of the person for an offence under section 193 of the Pakistan Penal Code, 1860 in respect of a statement made to the Commission.

(5) Unless otherwise required by law, the Commission, and every person acting on behalf or under the direction of the Commission, may not disclose any information that comes to their knowledge in the performance of their duties and functions under this section, unless

- the disclosure is, in the opinion of the Commission, essential for the purposes of carrying out its powers under subsection (1) or establishing the grounds for any conclusion contained in a report under section 45 or 46; or
- the information is disclosed in a report referred to in paragraph (a) or in the course of a prosecution for an offence under section 193 of the Pakistan Penal Code, 1860 in respect of a statement made to the Commission.

50. Suspension of examination.-(1) The Commission shall immediately suspend an examination under section 44, 45 or 46 if

- the Commission believes on reasonable grounds that the public office holder or former public office holder has committed an offence under a Provincial or Federal Statute in respect of the same subject-matter, in which case the Commission shall notify the relevant authorities; or

- it is discovered that the subject-matter of the examination is also the subject matter of an investigation to determine whether an offence referred to in paragraph (a) has been committed or that a charge has been framed in respect of that subject-matter.

(2) The Commission may not continue an examination until any investigation or charge in respect of the same subject-matter has been finally disposed of.

51. No summons.-(1) The Commission, or any person acting on behalf or under the direction of the Commission, is not a competent or compellable witness in respect of any matter coming to his or her knowledge as a result of exercising any powers or performing any duties or functions of the Commission under this Act.

(2) No criminal or civil proceedings lie against the Commission, or any person acting on behalf or under the direction of the Commission, for anything done, reported or said in good faith in the exercise or purported exercise of any power, or the performance or purported performance of any duty or function, of the Commission under this Act.

Part -XIII Public Registry

52. Publication through public registry.-(1) The Commission shall maintain a registry consisting of the following documents for examination by the public:

- public declarations made under section 26;
- summary statements made under section 27;
- notes of every gift or other advantage forfeited under subsection 13(3);
- decisions on exemption applications under section 39 and the accompanying reasons;
- decisions on waiver or reduction applications under section 40 and the accompanying reasons; and
- any other documents that the Commission considers appropriate.

(2) If a public office holder has recused himself or herself in respect of a matter and a public declaration is made in respect of that recusal under Section 26(1) or section 31,

- no publication of the declaration shall be made if the very fact of the recusal could reveal, directly or indirectly, any of the following:
 - any privileged information, so defined or provided under the Qanoon-e- Shahadat Order, 1984,
 - special operational information within the meaning of secret, as defined under the Official Secret Act, 1923; and
- no publication of the declaration shall include any detail that could reveal, directly or indirectly, any of the following:
 - any privileged information, so defined or provided under the Qanoon-e- Shahadat Order, 1984,
 - special operational information within the meaning of secret, as defined under the Official Secret Act, 1923; and

- information that is subject to lawyer-client privilege,
- information that is subject to any restriction on disclosure created by or under any other Act of the Provincial Assembly or the Parliament,
- information that could reasonably be expected to cause Injury to international relations, national defence or national security, or to the detection; prevention or suppression of criminal, subversive or hostile activities,
- information that could reasonably be expected to cause injury to the privacy interests of an individual, or
- information that could reasonably be expected to cause injury to commercial interests.

Part-XIV

Administrative Monetary Penalties

53. Violation.- Without prejudice to any other penal law for the time being in force and in addition to the penalty or penalties provided therein, every public office holder who contravenes any provisions or violates any obligation, so enunciated in this Act, shall be liable to an administrative monetary penalty not exceeding rupees one hundred thousand.

54. Notice of Violation.-(1) If the Commission believes on reasonable grounds that a public office holder has committed a violation, the Commission may issue, and shall cause to be served on the public office holder, a notice of violation.

(2) A notice of violation must

- set out the name of the public office holder believed to have committed a violation;
- identify the violation;
- set out the penalty that the Commission proposes to impose;
- inform the public office holder that he or she may, within 30 days after the notice is served or within any longer period specified by the Commission, pay the penalty set out in the notice or make representations to the Commission with respect to the alleged violation or proposed penalty and set out the manner for doing so; and
- inform the public office holder that, if he or she does not pay the penalty or make representations in accordance with the notice, he or she will be considered to have committed the violation and the Commission may impose a penalty in respect of it.

(3) The amount of a proposed penalty is, in each case, to be determined taking into account the following matters:

- the fact that penalties have as their purpose to encourage compliance with this Act rather than to punish;
- the public office holder's history of prior violations under this Act during the five-year period immediately before the violation; and
- any other relevant matter.

55. Regulations for service.-The Commission, with prior approval of the Government, may make regulations respecting the service of documents required or authorized to be

served under sections 54 to 58, including the manner and proof of service and the circumstances under which documents are deemed to be served.

56. Payment of Penalty.-If the public office holder pays the penalty proposed in the notice of violation, he or she is considered to have committed the violation and proceedings in respect of it are ended.

57. Representation to the Commission.- (1) If the public office holder makes representations to the Commission in accordance with the notice of violation, the Commission shall decide, on a balance of probabilities, whether the public office holder committed the violation and, if so, may impose the penalty proposed, a lesser penalty or no penalty.

(2) The Commission shall cause notice of any decision made under subsection (1) to be served on the public office holder.

58. Failure to act.-(1) A public office holder who neither pays the penalty nor makes representations in accordance with the notice of violation is deemed to have committed the violation. The Commission shall impose the penalty proposed and notify the public office holder of the penalty imposed. Penalty so imposed, shall thereafter be recoverable as arrears of land revenue.

(2) In case the Commission finds any public office holder guilty of violation, it shall bring this fact to the notice of his or her employer, who amongst other things, may choose to initiate departmental proceedings against such violator.

59. Due diligence available.-(1) Due diligence is a defense in a proceeding in relation to a violation.

(2) Any provision of the provincial or federal law, applicable to the matter that may possibly render any circumstance a justification or excuse in relation to a charge for an offence applies in respect of a violation to the extent that it is not inconsistent with this Act.

60. Evidence.- In any proceeding, a notice appearing to have been issued under subsection 54(1) or 57(2) is admissible in evidence without proof of the signature or official character of the person appearing to have signed it.

61. Limitation.- (1) Proceedings in respect of a violation may be commenced at any time within but not later than three years after the day on which the Commission became aware of the subject-matter of the proceedings, irrespective of the fact that the public office holder has ceased to hold the office.

(2) A document appearing to have been issued by the Commission, certifying the day on which the subject-matter of any proceedings became known to the Commission, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is, in the absence of evidence to the contrary, proof of the matter asserted in it.

62. Publication in respect of penalty.-If an administrative monetary penalty is imposed on a public office holder in respect of a violation, the Commission shall make public the nature of the violation, the name of the public office holder who committed it and the

amount of the penalty imposed.

Part-XV
General

63. Activities on behalf of the Constituents.-(1) Subject to subsection 8(2) and sections 22 and 31, nothing in this Act prohibits a member of the National Assembly who is a public office holder or former public office holder from engaging in those activities that he or she would normally carry out as a member of the National Assembly.

(2) Subject to subsection 8(2) and sections 22 and 31, nothing in this Act abrogates or derogates from any of the privileges, immunities and powers available otherwise to a member of National Assembly.

64. Orders and decision final.-Every order and decision of the Commission is final and shall not be questioned or reviewed in any court.

STATEMENT OF OBJECTS AND REASONS

The bill is aimed to establish clear conflict of interest and related post- employment principles for public office holders, to minimize the possibility of conflicts arising between the private interests and public duties of public office holders and provide for the resolution of those conflicts in the public interest should they arise, to establish an independent Commission with the mandate to determine the measures necessary to avoid conflicts of interest and to determine whether a contravention of this Act has occurred, to encourage experienced and competent persons to seek and accept public office; and to facilitate interchange between the private and public sec

Sd/-

Mr. MURAD SAEED
Member National Assembly