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PART III

Other Notifications, Orders, etc.

NATIONAL ASSEMBLY SECRETARIAT

Islamabad, the 11th August, 2020

No. F. 22 (47)/2020-Legis.—Pursuant to rule 235 (4) of the Rules of Procedure and Conduct of Business in the National Assembly, 2007, the following reports of the Standing Committees, presented to the National Assembly on 11th August, 2020 are published for information:—

SUBJECT:—**REPORT OF THE STANDING COMMITTEE ON NARCOTIC CONTROL ON THE CONTROL OF NARCOTIC SUBSTANCES (AMENDMENT) BILL, 2020**

I, Chairman of the Standing Committee on Narcotics Control have the honor to present this report on the Bill further to amend the Control of Narcotics Substances Act, 1997 (XXV of 1997), [The Control of Narcotics Substances (Amendment) Act, 2020] referred to the Committee on 27th July, 2020.

2. The Committee comprises the following:—

- | | |
|---------------------------------|-----------------|
| (1) Mr. Salahuddin Ayubi | <i>Chairman</i> |
| (2) Mr. Gul Dad Khan | <i>Member</i> |

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(3)	Mr. Muhammad Iqbal Khan	<i>Member</i>
(4)	Mr. Mansoor Hayat Khan	<i>Member</i>
(5)	Chaudhry Zulfiqar Ali Bhindar	<i>Member</i>
(6)	Mr. Muhammad Ameer Sultan	<i>Member</i>
(7)	Mr. Waheed Alam Khan	<i>Member</i>
(8)	Rana Mubashir Iqbal	<i>Member</i>
(9)	Mr. Ehsan-Ul-Haq Bajwa	<i>Member</i>
(10)	Mr. Abdul Majeed Khan	<i>Member</i>
(11)	Sardar Muhammad Khan Leghari	<i>Member</i>
(12)	Makhdoom Jameel-Uz-Zaman	<i>Member</i>
(13)	Ms. Nuzhat Pathan	<i>Member</i>
(14)	Mir Ghulam Ali Talpur	<i>Member</i>
(15)	Ms. Andleeb Abbas	<i>Member</i>
(16)	Mr. Ehsanullah Reki	<i>Member</i>
(17)	Ms. Uzma Riaz	<i>Member</i>
(18)	Ms. Shahida Akhtar Ali	<i>Member</i>
(19)	Ms. Nusrat Wahid	<i>Member</i>
(20)	Mr. Mohsin Dawar	<i>Member</i>
(21)	Minister for Narcotics Control	<i>Ex-officio Member</i>

3. The Committee considered the Bill as Introduced in the National Assembly placed at Annexure-A, in its meetings held on 28th July, 2020 and 6th August, 2020. The Committee recommends that the Bill as introduced may be passed by the National Assembly.

Sd/-
(TAHIR HUSSAIN)
Secretary.
Islamabad, the 6th August, 2020

Sd/-
(MUHAMMAD IQBAL KHAN)
Acting Chairman.

ANNEXURE-A

[AS REPORTED BY THE STANDING COMMITTEE]

A

BILL

Further to amend the Control of Narcotic Substances Act, 1997

WHEREAS it is expedient further to amend the Control of Narcotic Substances Act 1997 (XXV of 1997), for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. **Short title and commencement.**—(1) This Act shall be called the Control of Narcotic Substances (Amendment) Act, 2020.

(1) It shall come into force at once.

2. **Amendment of Section 12, Act XXV of 1997.**—In the Control of Narcotic Substances Act, 1997 (XXV of 1997), in Section 12, in clause (c) after the word “**declaration**”, the words “**or through any other means.**” shall be inserted.

STATEMENT OF OBJECTS AND REASONS

That Pakistan has been given final lifeline by Financial Action Task Force (FATF) to meet the deficiencies with regard to Money Laundering (ML) and Terrorists Financing highlighted by Asian Pacific Group (APG).

That *vide* para-41 of recommendation No.3 of Mutual Evaluation Report (MER) 2019 (Copy Enclosed), FATF has observed a minor deficiency in Section 12 of Control of Narcotics Substances (CNS) Act 1997 that it restricts the acts of concealment or disguise by making false declaration. It is highlighted that as per section 12 (c) of CNS Act 1997, the scope / applicability of the said section has been confined to “making false declaration with regard to ownership, source, location or true nature of assets”. Moreover, during the meeting held at Financial Monitoring Unit (FMU), it was intimated that legal regime of Pakistan with regard to ML and TF is largely compliant, however, in case the deficiencies are not met, it may result into negative impact upon the efforts undertaken by Pakistan to comply with the requirements / observations of FATF.

MUHAMMAD AZAM KHAN SWATI,
Minister for Narcotics Control.

Amendment of Section 12, Act XXV of 1997;

Dissenting Note:

The proposed Amendment of the addition of words “or through any other means” will create confusion and vagueness in the said provision. The purpose of the amendments is well addressed in Clause 12 (a) of the said act.

Sd/-

Mr. Mohsin Dawar,
MNA (NA-48).

Rana Mubashir Iqbal,
MNA (NA-134).

**REPORT OF THE STANDING COMMITTEE ON FINANCE,
REVENUE AND ECONOMIC AFFAIRS ON THE ANTI-MONEY
LAUNDERING (SECOND AMENDMENT) BILL, 2020**

I, the Chairman of Standing Committee on Finance, Revenue and Economic Affairs have the honor to present this report on the Bill further to amend the Anti-Money Laundering Act, 2010 (VII of 2010) [The Anti-Money Laundering (Second Amendment) Bill, 2020] [Government Bill], referred to the Committee on 27th July, 2020.

2. The Committee comprises the following:—

(1). Mr. Faiz Ullah	Chairman
(2). Mr. Jawad Hussain	Member
(3). Mr. Raza Nasrullah	Member
(4). Mr. Aamir Mehmood-Kiani	Member
(5). Makhdoom Syed Sami-ul-Hassan Gillani	Member
(6). Sardar Nasrullah Khan Dreshak	Member
(7). Mr. Jamil Ahmed Khan	Member
(8). Mr. Faheem Khan	Member
(9). Mr. Aftab Hussain Siddique	Member
(10). Dr. Ramesh Kumar Vankwani	Member
(11). Mr. Muhammad Israr Tareen	Member
(12). Mr. Ahsan Iqbal Chaudhary	Member
(13). Mr. Qaiser Ahmed Sheikh	Member
(14). Chaudhary Khalid Javed	Member
(15). Mr. Ali Pervaiz	Member
(16). Dr. Aisha Ghaus Pasha	Member
(17). Dr. Nafisa Shah	Member
(18). Syed Naveed Qamar	Member
(19). Ms. Hina Rabbani Khar	Member
(20). Mr. Abdul Wasay	Member
(21). Minister In-charge	Ex-officio Member

3. The Committee considered the Bill as introduced in the Assembly placed at **Annexure-‘A’**, in its meetings held on 28th July, 7th August, 10th August, 2020 and proposed the following amendments, therein:—

CLAUSE 2

In clause 2, in section 2, in sub-section (xii), in paragraph (b), the words “which shall not be less than rupees two million”, shall be added at the end.

CLAUSE 3

Clause 3, shall be substituted, namely:—

3. **Substitution of section 4, Act VII of 2010.**—In the said Act, for section 4, the following shall be substituted, namely:—

“4. **Punishment for money laundering.**—(1) Whoever commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall be upto ten years and shall also be liable to fine which may extend to twenty five million rupees and shall also be liable to forfeiture of property involved in money laundering or property of corresponding value.

(2) The aforesaid fine may extend upto one hundred million rupees in case of a legal person. Any director, officer or employee of such legal person who is also found guilty under this section shall also be punishable as provided under sub-section (1).”.

CLAUSE 6

In clause 6.—

(1) in the proposed new section 6A, in sub-section (2), in paragraph (b).—

(i) the expression “to prevent the offence of money laundering, predicate offence or financing of terrorism”, shall be added at the end.

(ii) in paragraph (j), between the words “other” and “law”, the word “applicable”, shall be inserted.

(2) In the proposed new section 6C, for paragraph (d), the following shall be substituted, namely:—

“(d) exercise any other relevant powers and perform any other relevant functions that may be otherwise granted in any other applicable law or that may be assigned by the Federal Government notification in the Official Gazette.”.

CLAUSE 8

In clause 8, in the proposed new section 7E, the word “obviously”, occurring in the last line, shall be omitted.

CLAUSE 11

clause 11, shall be omitted and the remaining clauses shall be re-numbered, accordingly.

4. The Committee recommended that the Bill, as reported by the Standing Committee placed at **Annexure-‘B’**, may be passed by the Assembly.

5. Mr. Qaiser Ahmed Sheikh, Chaudhary Khalid Javed, Mr. Ali Perviz, Dr. Aisha Ghaus Pasha, Syed Naveed Qamar and Dr. Nafisa Shah, MNAs showed their reservation on the Bill and they submitted note of dissent which is placed at **Annexure-‘C’**.

Sd/-
(TAHIR HUSSAIN)
Secretary.

Islamabad, the 10th August, 2020

Sd/-
(FAIZ ULLAH)
Chairman.

ANNEX-A

[AS INTRODUCED IN THE NATIONAL ASSEMBLY]

A

BILL

further to amend the Anti-Money-Laundering Act, 2010

WHEREAS it is expedient further to amend the Anti-Money Laundering Act, 2010, (Act VII of 2010) for the purposes hereinafter appearing;

1. **Short title and commencement.**—(1) This Act may be called the Anti-Money Laundering (Second Amendment) Act, 2020.

(2) It shall come into force at once.

2. **Substitution of section 2, Act VII of 2010.**—In the Anti-Money Laundering Act, 2010 (Act VII of 2010), hereinafter referred to as the said Act, for section 2, the following shall be substituted, namely:—

“2. **Definitions.**—In this Act, unless there is anything repugnant in the subject or context,—

(i) “AML/CFT” means Anti-Money Laundering and Countering Financing of Terrorism;

- (ii) “AML/CFT regulatory authority” means the regulator or SRB as defined under section 6A of this Act;
- (iii) “attachment” means prohibition of transfer, conversion, disposition or movement of property by an order issued under section 8;
- (iv) “beneficial owner” means,—
 - (i) natural person who ultimately owns or controls a customer and / or the natural person on whose behalf a transaction is being conducted; or
 - (ii) natural person who exercise ultimate effective control over a legal person or legal arrangement;
- (v) “business relationship” means professional or commercial relationship between a reporting entity and a customer to conduct transaction, activity or to provide service or product;
- (vi) “CDD” means Customer Due Diligence and the obligations set out in section 7A;
- (vii) “company” means any body corporate and includes a firm or other association of individuals;
- (viii) “Competent authorities” means the Regulators, Oversight Bodies for SRBs, the Financial Monitoring Unit and the Investigating or Prosecuting agencies as defined in this Act;
- (ix) “Corporate group” means a group that consists of a parent entity exercising control and/or management on branch or subsidiary that are subject to AML/CFT policies and procedures at the group level;
- (x) “Court” means the Court specified under section 20;
- (xi) “CTR” means report on currency transactions exceeding such amount as may be specified by the National Executive Committee by notification in the official Gazette;
- (xii) “Designated Non-Financial Businesses and Professions or DNFBP” mean the following persons:—

- (a) real estate agents, including housing authorities, builders, real estate developers and property dealers; when performing the prescribed activities in the prescribed circumstances and manner.
- (b) dealers in precious metals and precious stones, including jewelers and gem dealers, when they engage in any cash transaction with a customer equal to or above the applicable designated threshold as specified by the National Executive Committee by notification in the official Gazette;
- (c) lawyers, notaries, other legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities:-
 - (I) buying and selling of real estate;
 - (II) managing of client money, securities or other assets;
 - (III) management of bank, savings or securities accounts;
 - (V) organization of contributions for the creation, operation or management of companies; or
 - (VI) creation, operation or management of legal persons or arrangements, and buying and selling of business entities;
- (d) trust and company service providers, which may include any entity designated under sub-clause (c) of clause (xii) of section 2, when they prepare for or carry out transactions for a client concerning the following activities:
 - (I) acting as a formation agent of legal persons;
 - (II) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - (III) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

- (IV) acting as (or arranging for another person to act as) a trustee of a trust or performing the equivalent function for another form of legal arrangement;
- (V) acting as or arranging for another person to act as a nominee shareholder for another person; and
- (e) such other designated non-financial businesses and professions as may be notified by the Federal Government;
- (xiii) “Director General” means the Director General of FMU appointed under sub-section (3) of section 6;
- (xiv) “financial institution” includes any person carrying on any one or more of the following activities, namely:—
 - (a) acceptance of deposits and other repayable funds from the public;
 - (b) lending in whatsoever form;
 - (c) financial leasing;
 - (d) money or value transfer;
 - (e) issuing and managing means of payments including but not limited to credit and debit cards, cheques, traveller’s cheques, money orders, bank drafts and electronic money;
 - (i) financial guarantees and commitments; and
 - (g) trading in —
 - (i) money market instruments;
 - (ii) foreign exchange;
 - (iii) exchange, interest rate and index instruments;
 - (iv) transferable securities;
 - (v) commodity futures trading;

- (vi) participation in shares issues and the provision of services related to such issues;
 - (vii) individual and collective portfolio management;
 - (viii) safekeeping and administration of cash or liquid securities on behalf of other persons;
 - (ix) investing, administering or managing funds or money on behalf of other persons;
 - (x) insurance business transactions;
 - (xi) money and currency changing; and
 - (xii) carrying out business as intermediary;
- (xv) “FMU” means the Financial Monitoring Unit established under section 6;
- (xvi) “foreign serious offence” means an offence,—
- (a) against the law of a foreign State stated in a certificate issued by, or on behalf of, the government of that foreign State; and
 - (b) which, had it occurred in Pakistan, would have constituted a predicate offence;
- (xvii) “investigating officer” means the officer nominated or appointed under section 24;
- (xviii) “investigating or prosecuting agency” means the National Accountability Bureau (NAB), Federal Investigation Agency (FIA), Anti-Narcotics Force (ANF), Directorate General of (Intelligence and Investigation - Customs) Federal Board of Revenue, Directorate General (Intelligence and Investigation Inland Revenue) Federal Board of Revenue, Provincial Counter Terrorism Departments or any other law enforcement agency as may be notified by the Federal Government for the investigation or prosecution of an offence under this Act;
- (xix) “legal arrangements” means trusts, *waqfs* or other similar legal arrangements as may be defined in any other law;

- (xx) “legal person” means companies, associations, foundations, partnerships, societies and any other legal person as may be defined in any other law;
- (xxi) “National Executive Committee” means the National Executive Committee constituted under section 5;
- (xxii) “occasional transactions” means any transaction conducted by a reporting entity for a customer with whom the reporting entity does not have a business relationship;
- (xxiii) “offence of money laundering” has the meaning as defined in section 3;
- (xxiv) “oversight body for SRB” means a body appointed by the Federal Government by notification in the Official Gazette to monitor the compliance of an SRB with respect to the provisions of this Act;
- (xxv) “person” means any natural or legal person;
- (xxvi) “predicate offence” means an offence specified in Schedule-I to this Act;
- (xxvii) “prescribed” means prescribed by rules or regulations made under this Act;
- (xxviii) “proceeds of crime” means any property derived or obtained directly or indirectly by any person from the commission of a predicate offence or a foreign serious offence;
- (xxix) “proliferation financing” means the financing of proliferation of weapons of mass destruction;
- (xxx) “property” means property or assets of any description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets, including cash and monetary instruments, wherever located;
- (xxxi) “property involved in money laundering” means, regardless of who holds or has held the property, proceeds of crime, property derived or obtained directly or indirectly from the offence of money laundering and property used or intended to be used in commission of the offence of money laundering, a predicate offence or a foreign serious offence;

- (xxxii) “record” includes the records maintained in the form of books or stored in a computer or any electronic device, or such other form as may be prescribed;
- (xxxiii) “regulator” means a Regulator as mentioned in clause (1) of Schedule -IV of this Act;
- (xxxiv) “reporting entity” means DNFBPs and Financial Institutions and includes any other person designated as such by Federal Government by notification in the official Gazette;
- (xxxv) “risk” means the risk of money laundering or the risk of financing of terrorism;
- (xxxvi) “SBP” means State Bank of Pakistan established under the State Bank of Pakistan Act, 1956 (XXXIII of 1956);
- (xxxvii) “Schedule” means schedule to this Act;
- (xxxviii) “SECP” means Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (xxxviii) “SRB” means a Self-Regulatory body as mentioned in clause (2) of Schedule-IV of this Act;
- (xl) “STR” or “Suspicious Transaction Report” means the report on suspicious transaction as provided under section 7;
- (xli) “TFS” or “Targeted Financial Sanctions” means the freezing and prohibition obligations in relation to the property of the designated or proscribed persons under the United Nations (Security Council) Act 1948 or the Anti-terrorism Act, 1997 and any rules or regulations made there under; and
- (xlii) “transfer” means sale, lease, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.”.

3. **Amendment of section 4, Act VII of 2010.**—In the said Act, in section 4,—

- (a) for the words “to five”, the words “upto twenty five” shall be substituted; and

- (b) in the proviso, for the words “to five”, the words “upto one hundred” shall be substituted and for the word “company”, wherever occurring, the words “legal person” shall be substituted.

4. **Substitution of section 5, Act VII of 2010.**—In the said Act, for section 5, the following shall be substituted, namely :—

“5. **National Executive Committee** .—(1) Within thirty days of the commencement of this Act, the Federal Government shall, by notification in the official Gazette, constitute a committee to be known as the National Executive Committee which shall consist of the members as mentioned in Schedule-II of this Act.

(2) The National Executive Committee shall hold its meetings atleast twice a year and shall be responsible to perform the following functions, namely:—

- (a) make recommendations to the Federal Government for effective implementation of this Act and framing of national policy to combat money laundering and financing of terrorism;
- (b) make recommendations to the Federal Government for the determination of offences existing in Pakistan that may be considered to be predicate offences for the purposes of this Act;
- (c) make recommendations to the Federal Government on the application of counter-measures as called for by the Financial Action Task Force(FATF) to combat money laundering and financing of terrorism;
- (d) provide guidance and recommendations in framing of rules and regulations under this Act;
- (e) approve, review and oversee the implementation of a national strategy to fight money laundering and financing of terrorism;
- (f) seek reports from competent authorities as it may require, including an annual report containing overall analysis of the STRs and CTRs, statistics concerning the investigations and prosecutions conducted in relation to the offences of money laundering and the financing of terrorism in Pakistan, statistics of supervisory actions taken by the AML/CFT regulatory authorities according to clause (i) of sub-section (2) of section 6A

or by the oversight body for SRB according to Section 6C. In this behalf, Secretary of the National Executive Committee may call periodic reports from the AML/CFT regulatory authorities, Oversight body for SRB, investigating and prosecuting agencies in such manner as may be specified by him;

- (g) discuss any other issue of national importance relating to money laundering and financing of terrorism; and
- (h) undertake and perform such other functions as assigned to it by the Federal Government, relating to money laundering and financing of terrorism.

(3) The National Executive Committee may constitute one or more sub-committees to perform such functions as it may deem fit.

(4) The National Executive Committee may delegate or assign its functions to the General Committee or a sub-committee, if deems appropriate.

(5) The Federal Government shall, by notification in the Official Gazette, constitute a committee to be known as the General Committee which shall consist of the members as mentioned in Schedule-III of this Act.

(6) The General Committee shall assist the National Executive Committee for the purposes of this Act.

(7) The General Committee may invite any person to participate in the meeting as it deems necessary.

(8) The General Committee shall perform the following functions namely:—

- (a) develop a national strategy to fight money laundering and financing of terrorism;
- (b) issue necessary directions to the investigating or prosecuting agencies, AML/CFT regulatory authorities, FMU and any other authority appointed by the Federal Government involved in the implementation and administration of this Act, including measures for development and performance review of such agencies and authorities;

- (c) seek reports from the competent authorities as it may require, including an annual report containing overall analysis of the STRs and CTRs, statistics concerning the investigations and prosecutions conducted in relation to the offences of money laundering and the financing of terrorism in Pakistan, statistics of supervisory actions taken by the AML/CFT regulatory authorities according to clause (i) of sub-section (2) of section 6A or by the oversight body for SRB according to Section 6C. In this behalf, Secretary of the General Committee may call periodic reports from the AML/CFT regulatory authorities, Oversight body for SRB, investigating and prosecuting agencies in such manner as may be specified by him;
- (d) approve FMU's budgetary proposals for achieving the objects of this Act;
- (e) approve FMU's staffing requirements, pay, allowances, privileges and compensation packages and other matters incidental thereto;
- (f) provide necessary assistance to the National Executive Committee in carrying out its functions and duties under this Act;
- (g) discuss any other issue of national importance relating to money laundering and terrorist financing; and
- (h) undertake and perform such other functions as assigned or delegated to it by the National Executive Committee.

(9) The General Committee may constitute one or more sub-committees to perform such functions as it may deem fit.”.

5. **Substitution of section 6, Act VII of 2010.**— In the said Act, for section 6, the following shall be substituted, namely:—

“6. Financial Monitoring Unit—(1) The Federal Government shall, by notification in the official Gazette, establish a Financial Monitoring Unit which shall be housed in SBP or at any other place in Pakistan.

(2) The FMU shall have independent decision making authority on day-to-day matters falling within its area of responsibility.

(3) The Federal Government in consultation with SBP shall appoint a Director General who shall be a financial sector specialist to head FMU. He shall exercise all powers and functions of the FMU subject to the administrative oversight of the General Committee.

(4) The FMU shall have the following powers and the functions, namely:

- (a) to receive STRs and CTRs from reporting entities as may be necessary to accomplish the objectives of this Act;
- (b) to analyse the STRs and CTRs and in that respect the FMU may call for record and information from any agency or person in Pakistan related to the transaction in question. All such agencies or persons shall be required to promptly provide the requested record and information;
- (c) to disseminate on a confidential basis, after analyzing the STRs, and CTRs and other record, necessary information or material to the concerned investigating or prosecuting agencies for enquiry or other action under this Act or any other applicable law;
- (d) to create and maintain a data base of all STRs and CTRs, related information and such other materials as the Director General determines are relevant to the work of the FMU and in that respect, the FMU is authorized to establish necessary analytic software and computer equipment to effectively search the database, sort and retrieve information and perform real time linkages with databases of other agencies both in and outside Pakistan as may be required from time to time;
- (e) to cooperate with financial intelligence units of other countries and to make reciprocal arrangements after due administrative process to share, request and receive information relating to money laundering, predicate offences and financing of terrorism and any other information that may be necessary to accomplish the objectives of this Act;
- (f) to represent Pakistan at all international and regional organizations and groupings of financial intelligence units and other international groups and forums which address the offence of money laundering, financing of terrorism and other related matters;

- (g) to request the investigating or prosecuting agencies any feedback regarding the disseminations made under sub-clause (c) in the form of periodic reports or statistics concerning the investigations and prosecutions of money laundering and financing of terrorism in Pakistan;
- (h) to frame regulations in consultation with the AML/CFT regulatory authorities for ensuring receipt of STRs and CTRs from reporting entities with the approval of the National Executive Committee;
- (i) to enter into arrangements with domestic agencies, authorities, or any reporting entity or any of its officers as may be necessary for getting facilitation in implementation of the provisions of this Act, or the rules or regulations made hereunder; and
- (j) to perform all such functions and exercise all such powers as are necessary for, or ancillary to, for the attainment of the objectives of this Act.

(5) On considering STR or CTR, the FMU may, if deems necessary, convey matters involving regulatory or administrative action to the concerned regulatory or administrative body for appropriate action.”.

(6) Subject to the regulations sanctioned by the National Executive Committee in this behalf, the Director General may, if there appear to be reasonable grounds to believe that a property is involved in money laundering, order freezing of such property, for a maximum period of fifteen days, in any manner that he may deem fit in the circumstances.”.

6. **Insertion of new sections, Act VII of 2010.**—In the said Act, after section 6, substituted as aforesaid, the following new sections shall be inserted, namely:—

“6A AML/CFT regulatory authority.—(1) AML/ CFT regulatory authority means the Regulators and SRBs as specified in Schedule-IV. They shall exercise the powers and perform the functions as set out in this Act and as prescribed thereunder.

(2) AML/CFT regulatory authority shall exercise the following powers and functions with respect to its reporting entities, namely:—

- (a) licensing or registration of reporting entities;

- (b) imposing any conditions to conduct any activities by reporting entities;
- (c) issuing regulations, directions and guidelines with respect to sections 7A to 7H of this Act;
- (d) issuing regulations, directions and guidelines with respect to financing of proliferation obligations;
- (e) providing feedback to reporting entities for the purpose of compliance with the requirements of sections 7A to 7H of this Act and as prescribed there under;
- (f) monitoring and supervising, including conducting inspections, for the purpose of determining compliance with the requirements of sections 7A to 7H of this Act and any rules or regulations made there under and with the orders or regulations made there under that impose TFS obligations;
- (g) compelling production of information relevant to monitoring compliance with the requirements of sections 7A to 7H of this Act and any orders, rules or regulations made there under that impose TFS obligations;
- (h) impose sanctions, including monetary and administrative penalties to the extent and in the manner prescribed, upon their respective reporting entity, including its directors and senior management and officers, who violates any requirement in section 7A to 7H and any rules or regulations made there under or those who fail to comply with the TFS regulations. Any person aggrieved by the imposition of sanctions under this clause may prefer an appeal in such manner and within such period to such authority as may be prescribed;
- (i) maintaining statistics of the actions performed in respect of the functions and powers conferred by this Act, in order to report to the National Executive Committee and the General Committee as required; and
- (j) exercising any other such powers and performing any other such functions that may be otherwise granted in any other law.

6B. International cooperation by regulators.—The regulators as specified in clause (1) Schedule-IV of this Act shall

co-operate with their foreign counterparts and shall make reciprocal arrangements to share, request and receive information relating to the requirements of this Act and any regulations made there under.

6C. Oversight Body for SRBs.—The Federal Government shall by notification in the Official Gazette appoint an Oversight Body for the SRBs mentioned in clause (2) of Schedule IV which shall exercise and perform the following powers and functions with respect to their respective SRB, namely:—

- (a) prescribe regulations for the SRB with respect to the provisions of this Act;
- (b) monitor and oversee the SRB in accordance with the provisions of this Act;
- (c) impose sanctions to the extent and in the manner prescribed, upon their respective SRB who fails to comply with any provision of this Act and any rules or regulations made under this; and
- (d) exercise any other powers and perform any functions that may be assigned by the Federal Government notification in the Official Gazette.”.

7. **Amendment of section 7, Act VII of 2010.**—In the said Act, in section 7,—

- (a) for the words “Suspicious Transaction Reports” wherever occurring, the expression “STRs” shall be substituted;
- (b) in sub-section (1), in clause (b), for the word “section”, the word “Act” shall be substituted;
- (c) in sub-section (2), after the word “body”, occurring for the first time, the expression “oversight body for SRB, AML/CFT” shall be inserted; and
- (d) omission of the in sub-section (7).

8. **Insertion of new sections, Act VII of 2010.**— In the said Act, after section 7, amended as aforesaid, the following new sections shall be inserted, namely:—

“7A Conducting CDD.—(1) Every reporting entity shall conduct CDD in the prescribed manner and in accordance with provisions of this Act and as prescribed thereunder in the following matters, namely:—

- (a) entering into a business relationship;
 - (b) conducting an occasional transaction above the prescribed threshold;
 - (c) where there is a suspicion of money laundering or terrorist financing; or
 - (d) where there are doubts about the veracity or adequacy of previously obtained data.
- (2) Every reporting entity shall—
- (a) identify the customer and verify the customer’s identity on the basis of documents, data or information obtained from reliable and independent sources;
 - (b) identify the beneficial owner and take reasonable measures to verify the beneficial owner’s identity on the basis of documents, data or information obtained from reliable sources and be satisfied that it knows who the beneficial owner is;
 - (c) understand and, as appropriate, obtain information on the purpose and intended nature of the business relationship; and
 - (d) monitor the business relationship on an ongoing basis.

7B. Reliance on third parties.—A reporting entity may rely on third party to perform CDD in the prescribed manner.

7C. Record keeping.—Every reporting entity shall maintain a record of all transactions for a period of at least five years following the completion of the transaction, and records of account files, business correspondence, documents, of all records obtained through CDD and the results of any analysis undertaken for a period of at least five years following the termination of the business relationship.

7D. Inability to complete CDD and tipping off.—(1) Where a reporting entity is unable to complete CDD requirements, it—

- (a) shall not open the account, commence business relations or perform the transaction; or shall terminate the business relationship if any ; and
- (b) shall consider filing a Suspicious Transaction Report in relation to the customer.

(2) Where a reporting entity forms a suspicion of money laundering or terrorist financing, and reasonably believes that performing the CDD process will tip-off the customer, the reporting entity shall not pursue the CDD process and shall file a STR.

7E. Anonymous business relationships and transactions.—No reporting entity shall enter into a business relationship or conduct any transaction with a customer who is anonymous or provides an obviously fictitious name.

7F. Risk understanding.—Every reporting entity shall take appropriate steps to identify, assess and understand the risks to which its business is subjected to, in accordance with this Act and as prescribed.

7G. Compliance program.—Every reporting entity shall implement compliance management arrangements, including the appointment of a compliance officer at a management level and training programs, having regard to the money laundering and terrorism financing (ML/TF) risks and the size of the business during the course of their activities subject to this Act and as prescribed.

7H. Policies and procedures.—Every reporting entity shall implement policies and procedures to ensure their compliance with the provisions on this Act and orders rules or regulations made there under that impose TFS obligations upon reporting entities.

7I. Sanctions for Reporting Entities.—If any reporting entity or natural person contravenes any of the provisions of sections 7A to 7H, it may be subjected to sanctions, as mentioned under clause (h) of section 6A of this Act and as prescribed.

9. **Substitution of section 12, Act VII of 2010.—**In the said Act, for section 12, the following shall be substituted,—

“12. No civil or criminal proceeding against reporting entities in certain cases.—Save as otherwise provided in

section 7, the reporting entities and their officers including but not limited to directors, chief executive, chief financial officer, employees, agents of the reporting entity or other authorized officers of a reporting entity shall not be liable to any civil, criminal or disciplinary proceedings against them for furnishing information required under this Act or the rules or regulations made thereunder.”.

10. **Omission of section 16, Act VII of 2010.**—In the said Act, section 16 shall be omitted.

11. **Amendment of section 20, Act No. VII of 2010.**—In the said Act, in section 20, in sub-section (1), in clause (a), after the word “trying”, the words “or competent to try” shall be inserted.

12. **Amendment of section 21, Act No. VII of 2010.**—In the said Act, in section 21,—

- (a) in the marginal heading, for the word “non-cognizable”, the word “cognizable” shall be substituted;
- (b) in sub-section (1), in clause (a), for the words “non-cognizable”, the word “cognizable” shall be substituted;
- (c) in sub-section (2), in the proviso, for the words “financial institution” the words “reporting entity”, and for the words “regulatory authority” the expression “AML / CFT regulatory authority” shall be substituted; and
- (d) in sub-section (3) after the expression “FMU”, the words “or investigating or prosecuting agency” shall be added.

13. **Substitution of section 25, Act VII of 2010.**—In the said Act, for section 25, the following shall be substituted, namely:-

“25. Assistance to authorities.—(1) Notwithstanding the provisions of any other law, the officers of the Federal Government, Provincial Government, local authorities and reporting entities shall provide assistance including but not limited to production of records, documents and information reasonably required by the investigating or prosecuting agency or FMU for the purposes of money laundering, predicate offences and financing of terrorism proceedings and investigations in accordance with the provisions this Act.

(2) Whoever willfully fails or refuses to provide the required assistance under sub-section (1) shall be guilty of misconduct and

shall be proceeded against by its respective department or organization and a report of such proceedings shall be submitted within reasonable time to the concerned investigating or prosecuting agency or FMU, as the case may be and shall be punished in the case of a natural person, with an imprisonment for a term which may extend up to five years, a fine which may extend to rupees one million or both, or in the case of a legal person, with a fine which may extend to rupees ten million.”.

14. **Amendment of section 30, Act VII of 2010.**—In the said Act, in section 30, in sub-section (4), for the words “bank or financial institution”, the words “reporting entity” shall be substituted.

15. **Amendment of section 33, Act VII of 2010.**—In the said Act, in section 33,—

- (a) in the marginal heading, for the word “Suspicious Transaction Report”, the expression “STR” shall be substituted;
- (b) for the words “Suspicious Transaction Report”, the expression “STR” shall be substituted; and
- (c) in sub-section (2), for the words “regulatory authority”, the expressions “AML / CFT regulatory authority” shall be substituted.

16. **Amendment of section 34, Act VII of 2010.**—In the said Act, in section 34,—

- (a) for sub-section (1) the following shall be substituted, namely:—

“(1) The directors, officers, employees and agents of any reporting entity or intermediary which report a STR or CTR pursuant to this law or any other authority, are prohibited from disclosing, directly or indirectly, to any person that the transaction has been reported unless there are disclosure agreements for corporate groups in accordance to regulations made hereunder.”; and

- (b) in sub-section (3) for the words and comma “financial institutions, non-financial business or profession”, the word “reporting entities” shall be substituted.

17. **Substitution of Section 37, Act VII of 2010.**—In the said Act, for section 37, the following shall be substituted, namely:—

“37. **Offences by legal persons.**—(1) Where a legal person commits an offence under this Act, every person who at the time when the offence was committed, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any natural person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything in sub-section (1) where an offence under this Act is committed by a legal person and it is proved that the contravention has taken place with the consent, connivance or knowledge of any director, manager, secretary or other officer of any legal person, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section, “director” in relation to a firm, means a partner in the firm.”.

18. **Amendment to Schedule of the Act VII of 2010.**—In the said Act, in the existing Schedule, for heading “THE SCHEDULE (*see* section 2(w))”, the expression “THE SCHEDULE-I (*see* section 2 (xxxvii)) shall be substituted.

19. **Insertion of new of Schedules, Act VII of 2010.**—In the said Act, after Schedule-I, re-numbered as aforesaid, the following new Schedules shall be added, namely:—

“THE SCHEDULE-II
[*see* section 5(1)]

Members of National Executive Committee

1. The National Executive Committee shall comprise the following members:—

- | | |
|--|-----------------|
| (a) Minister for Finance or Advisor to the Prime Minister on Finance | <i>Chairman</i> |
| (b) Minister for Foreign Affairs | <i>Member</i> |
| (c) Minister for Law and Justice | <i>Member</i> |

- | | |
|---|--------------------------|
| (d) Minister for Interior | <i>Member</i> |
| (e) Minister for Economic Affairs Division | <i>Member</i> |
| (f) Governor SBP | <i>Member</i> |
| (g) Chairman SECP | <i>Member</i> |
| (h) Director General, Military Operations | <i>Member</i> |
| (i) Director General (C), ISI | <i>Member</i> |
| (j) Director General, FMU | <i>Member/ Secretary</i> |
| (k) Director General FATF Cell | <i>Member</i> |
| (l) any other member to be nominated by the Federal Government. | |

2. The Director General FMU shall act as Secretary of the National Executive Committee.

THE SCHEDULE-III

[see section 5(5)]

Members of General Committee

1. The General Committee shall comprise the following members:—

- | | |
|--|-----------------|
| (a) Secretary Finance | <i>Chairman</i> |
| (b) Secretary Interior | <i>Member</i> |
| (c) Secretary Foreign Affairs | <i>Member</i> |
| (d) Secretary Law | <i>Member</i> |
| (e) Chairman National Accountability Bureau | <i>Member</i> |
| (f) Chairman Federal Board of Revenue | <i>Member</i> |
| (g) Director General, Federal Investigation Agency | <i>Member</i> |
| (h) Director General, Anti-Narcotics Force | <i>Member</i> |
| (i) Deputy Governor SBP | <i>Member</i> |
| (j) Commissioner SECP | <i>Member</i> |

- | | | |
|-----|---|--------------------------|
| (k) | Director General, FMU | <i>Member/ Secretary</i> |
| (l) | Director General, Military Operations | <i>Member</i> |
| (m) | Director General (C), ISI | <i>Member</i> |
| (n) | Director General FATF Cell | <i>Member</i> |
| (o) | any other Member to be nominated by Federal Government. | |

2. The Director General FMU shall also act as Secretary of the General Committee.

THE SCHEDULE-IV
[see section 6A(1)]

AML/CFT Regulatory Authority

1. The following Regulators are AML/CFT regulatory authorities for the purposes of this Act:

- (i) SBP for any reporting entity licensed or regulated under any law administered by SBP;
- (ii) SECP for any reporting entity licensed or regulated by SECP under any law administered by SECP; unless that entity is licensed by any other AML/CFT regulatory authority;
- (iii) Federal Board of Revenue for Real Estate Agent, jewelers and for dealers in Precious Metals and Precious Stones Sectors. FBR shall also be a AML/CFT regulatory authority for Accountants that are not the members of ICAP and ICMAP;
- (iv) National Savings (AML and CFT) Supervisory Board for National Savings Schemes;
- (v) Pakistan Post (AML and CFT) Supervisory Board for Pakistan Post; and
- (vi) Any other such regulatory authority as may be notified by the Federal Government notification in the Official Gazette.

2. The following SRBs are AML/CFT regulatory authorities for the purposes of this Act:

- (i) the Institute of Chartered Accounts of Pakistan established under the Chartered Accountants Ordinance, 1961 (Act X of 1961) for their respective members;
- (ii) the Institute of Cost and Management Accountants of Pakistan (ICMAP) established under the Cost and Management Accountants Act, 1966 (Act XIV of 1966) for their respective members;
- (iii) the Pakistan Bar Council established under the Legal Practitioners and Bar Councils Act, 1973 (Act XXXV of 1973); for lawyers and other independent legal professionals that are enrolled under the Pakistan Bar Council or Provincial Bar Councils; and
- (iv) Any other SRB as may be notified by the Federal Government in the Official Gazette.”.

STATEMENT OF OBJECTS AND REASONS

In order to bring further improvements in the Anti-Money Laundering Act, 2010 (AML Act) and in line with the recommendations of Asia Pacific Group’s Mutual Evaluation Report, 2019 for Pakistan and suggestions of Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) stakeholders, amendments in the AML Act, 2010 are being proposed.

These amendments are aimed at streamlining the existing AML law in line with international standards prescribed by Financial Action Task Force (FATE) and will reflect Government’s firm resolve to strengthen its Anti-Money Laundering regime. These amendments would identify AML/CFT regulatory authorities for Designated Non-Financial Businesses and Professions (DNFBP). Customer Due Diligence process has been explained in detail in the proposed amendments. Record keeping requirements have been clearly explained to meet FATF requirements. As required in the Mutual Evaluation Report, dissuasive sanctions are also proposed in the proposed amendments. With the adoption of these amendments Pakistan would meet the criteria of technical compliance wherever amendments in the AML Act, 2010 are required.

DR. ABDUL HAFEEZ SHAIKH,
*Adviser to Prime Minister
on Finance and Revenue.*

ANNEX-B

[AS REPORTED BY THE STANDING COMMITTEE]

A

BILL

further to amend the Anti-Money Laundering Act, 2010

WHEREAS it is expedient further to amend the Anti-Money Laundering Act, 2010, (Act VII of 2010) for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. **Short title and commencement.**—(1) This Act may be called the Anti-Money Laundering (Second Amendment) Act, 2020.

(2) It shall come into force at once.

2. **Substitution of section 2, Act VII of 2010.**— In the Anti-Money Laundering Act, 2010 (Act VII of 2010), hereinafter referred to as the said Act, for section 2, the following shall be substituted, namely:—

“2. **Definitions.**—In this Act, unless there is anything repugnant in the subject or context,—

- (i) “AML/CFT” means Anti-Money Laundering and Countering Financing of Terrorism;
- (ii) “AML/CFT regulatory authority” means the regulator or SRB as defined under section 6A of this Act;
- (iii) “attachment” means prohibition of transfer, conversion, disposition or movement of property by an order issued under section 8;
- (iv) “beneficial owner” means,—
 - (i) natural person who ultimately owns or controls a customer and / or the natural person on whose behalf a transaction is being conducted; or

- (ii) natural person who exercise ultimate effective control over a legal person or legal arrangement;
- (v) “business relationship” means professional or commercial relationship between a reporting entity and a customer to conduct transaction, activity or to provide service or product;
- (vi) “CDD” means Customer Due Diligence and the obligations set out in section 7A;
- (vii) “company” means any body corporate and includes a firm or other association of individuals;
- (viii) “Competent authorities” means the Regulators, Oversight Bodies for SRBs, the Financial Monitoring Unit and the Investigating or Prosecuting agencies as defined in this Act;
- (ix) “Corporate group” means a group that consists of a parent entity exercising control and/or management on branch or subsidiary that are subject to AML/CFT policies and procedures at the group level;
- (x) “Court” means the Court specified under section 20;
- (xi) “CTR” means report on currency transactions exceeding such amount as may be specified by the National Executive Committee by notification in the official Gazette;
- (xii) “Designated Non-Financial Businesses and Professions or DNFBP” mean the following persons:-
 - (a) real estate agents, including housing authorities, builders, real estate developers and property dealers; when performing the prescribed activities in the prescribed circumstances and manner.
 - (b) dealers in precious metals and precious stones, including jewelers and gem dealers, when they engage in any cash transaction with a customer equal to or above the applicable designated threshold as specified by the National Executive Committee by notification in the official Gazette, which shall not be less than rupees two million;

- (c) lawyers, notaries, other legal professionals and accountants when they prepare for or carry, out transactions for their client concerning the following activities:—
 - (I) buying and selling of real estate;
 - (II) managing of client money, securities or other assets;
 - (III) management of bank, savings or securities accounts;
 - (V) organization of contributions for the creation, operation or management of companies; or
 - (VI) creation, operation or management of legal persons or arrangements, and buying and selling of business entities;
- (d) trust and company service providers, which may include any entity designated under sub-clause (c) of clause (xii) of section 2, when they prepare for or carry out transactions for a client concerning the following activities:
 - (I) acting as a formation agent of legal persons;
 - (II) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - (III) providing a registered office, business address or accommodation, correspondence administrative address for a company, partnership or any other legal person arrangement;
 - (IV) acting as (or arranging for another person to act as) a trustee of a trust or performing the equivalent function for another form of legal arrangement;
 - (V) acting as or arranging for another person to act as a nominee shareholder for another person; and
- (e) such other designated non-financial businesses and professions as may be notified by the Federal Government;

- (xiii) “Director General” means the Director General of FMU appointed under sub-section (3) of section 6;
- (xiv) “financial institution” includes any person carrying on any one or more of the following activities, namely:—
 - (a) acceptance of deposits and other repayable funds from the public;
 - (b) lending in whatsoever form;
 - (c) financial leasing;
 - (d) money or value transfer;
 - (e) issuing and managing means of payments including but not limited to credit and debit cards, cheques, traveller’s cheques, money orders, bank drafts and electronic money;
 - (f) financial guarantees and commitments; and
 - (g) trading in—
 - (i) money market instruments;
 - (ii) foreign exchange;
 - (iii) exchange, interest rate and index instruments;
 - (iv) transferable securities;
 - (v) commodity futures trading;
 - (vi) participation in shares issues and the provision of services related to such issues;
 - (vii) individual and collective portfolio management;
 - (viii) safekeeping and administration of cash or liquid securities on behalf of other persons;
 - (ix) investing, administering or managing funds, or money on behalf of other persons;

- (x) insurance business transactions;
- (xi) money and currency changing; and
- (xii) carrying out business as intermediary;
- (xv) “FMU” means the Financial Monitoring Unit established under section 6;
- (xvi) “foreign serious offence” means an offence,—
 - (a) against the law of a foreign State stated in a certificate issued by, or on behalf of, the government of that foreign State; and
 - (b) which, had it occurred in Pakistan, would have constituted a predicate offence;
- (xvii) “investigating officer” means the officer nominated appointed under section 24;
- (xviii) “investigating or prosecuting agency” means the National Accountability Bureau (NAB), Federal Investigation Agency (FIA), Anti-Narcotics Force (ANF), Directorate General of (Intelligence and Investigation - Customs) Federal Board of Revenue, Directorate General (Intelligence and Investigation Inland Revenue) Federal Board of Revenue, Provincial Counter Terrorism Departments or any other law enforcement agency as may be notified by the Federal Government for the investigation or prosecution of an offence under this Act;
- (xix) “legal arrangements” means trusts, *waqfs* or other similar legal arrangements as may be defined in any other law;
- (xx) “legal person” means companies, associations, foundations, partnerships, societies and any other legal person as may be defined in any other law;
- (xxi) “National Executive Committee” means the National Executive Committee constituted under section 5;
- (xxii) “occasional transactions” means any transaction conducted by a reporting entity for a customer with whom the reporting entity does not have a business relationship;

- (xxiii) “offence of money laundering” has the meaning as defined in section 3;
- (xxiv) “Oversight body for SRB” means a body appointed by the Federal Government by notification in the Official Gazette to monitor the compliance of an SRB with respect to the provisions of this Act;
- (xxv) “person” means any natural or legal person;
- (xxvi) “predicate offence” means an offence specified in Schedule-I to this Act;
- (xxvii) “prescribed” means prescribed by rules or regulations made under this Act;
- (xxviii) “proceeds of crime” means any property derived or obtained directly or indirectly by any person from the commission of a predicate offence or a foreign serious offence;
- (xxix) “proliferation financing” means the financing of proliferation of weapons of mass destruction;
- (xxx) “property” means property or assets of any description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets, including cash and monetary instruments, wherever located;
- (xxxi) “property involved in money laundering” means, regardless of who holds or has held the property, proceeds of crime, property derived or obtained directly or indirectly from the offence of money laundering and property used or intended to be used in commission of the offence of money laundering, a predicate offence or a foreign serious offence;
- (xxxii) “record” includes the records maintained in the form of books or stored in a computer or any electronic device, or such other form as may be prescribed;
- (xxxiii) “regulator” means a Regulator as mentioned in clause (1) of Schedule -IV of this Act;

- (xxxiv) “reporting entity” means DNFBPs and Financial Institutions and includes any other person designated as such by Federal Government by notification in the official Gazette;
- (xxxv) “risk” means the risk of money laundering or the risk of financing of terrorism;
- (xxxvi) “SBP” means State Bank of Pakistan established under the State Bank of Pakistan Act, 1956 (XXXIII of 1956);
- (xxxvii) “Schedule” means schedule to this Act;
- (xxxviii) “SECP” means Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (xxxix) “SRB” means a Self-Regulatory body as mentioned in clause (2) of Schedule-IV of this Act;
- (xl) “STR” or “Suspicious Transaction Report” means the report on suspicious transaction as provided under section 7;
- (xli) “TFS” or “Targeted Financial Sanctions” means the freezing and prohibition obligations in relation to the property of the designated or proscribed persons under the United Nations (Security Council) Act 1948 or the Anti-terrorism Act, 1997 and any rules or regulations made thereunder; and
- (xlii) “transfer” means sale, lease, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.”.

3. **Substitution of section 4, Act VII of 2010.**—In the said Act, for section 4, the following shall be substituted, namely:—

“4. **Punishment for money laundering.**—(1) Whoever commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall be upto ten years and shall also be liable to fine which may extend to twenty five million rupees and shall also be liable to forfeiture of property involved in money laundering or property of corresponding value.

(2) The aforesaid fine may extend upto one hundred million rupees in case of a legal person. Any director, officer or employee of such legal person who is also found guilty under this section shall also be punishable as provided under sub-section (1).”.

4. **Substitution of section 5, Act VII of 2010.**—In the said Act, for section 5, the following shall be substituted, namely:—

“5. **National Executive Committee .**—(1) Within thirty days of the commencement of this Act, the Federal Government shall, by notification in the official Gazette, constitute a committee to be known as the National Executive Committee which shall consist of the members as mentioned in Schedule-II of this Act.

(2) The National Executive Committee shall hold its meetings atleast twice a year and shall be responsible to perform the following functions, namely:—

- (a) make recommendations to the Federal Government for effective implementation of this Act and framing of national policy to combat money laundering and financing of terrorism;
- (b) make recommendations to the Federal Government for the determination of offences existing in Pakistan that may be considered to be predicate offences for the purposes of this Act;
- (c) make recommendations to the Federal Government on the application of countermeasures as called for by the Financial Action Task Force (FATF) to combat money laundering and financing of terrorism;
- (d) provide guidance and recommendations in framing of rules and regulations under this Act;
- (e) approve, review and oversee the implementation of a national strategy to fight money laundering and financing of terrorism;
- (f) seek reports from competent authorities as it may require, including an annual report containing overall analysis of the STRs and CTRs, statistics concerning the investigations and prosecutions conducted in relation to the offences of money laundering and the financing of terrorism in Pakistan, statistics of supervisory actions taken by the AML/CFT regulatory authorities according to clause (i) of sub-section (2) of section 6A or by the oversight body for SRB according to

Section 6C. In this behalf, Secretary of the National Executive Committee may call periodic reports from the AML/ CFT regulatory authorities, Oversight body for SRB, investigating and prosecuting agencies in such manner as may be specified by him;

- (g) discuss any other issue of national importance relating to money laundering and financing of terrorism; and
 - (h) undertake and perform such other functions as assigned to it by the Federal Government, relating to money laundering and financing of terrorism.
- (3) The National Executive Committee may constitute one or more sub-committees to perform such functions as it may deem fit.
- (4) The National Executive Committee may delegate or assign its functions to the General Committee or a sub-committee, if deems appropriate.
- (5) The Federal Government shall, by notification in the Official Gazette, constitute a committee to be known as the General Committee which shall consist of the members as mentioned in Schedule-III of this Act.
- (6) The General Committee shall assist the National Executive Committee for the purposes of this Act.
- (7) The General Committee may invite any person to participate in the meeting as it deems necessary.
- (8) The General Committee shall perform the following functions namely:—
- (a) develop a national strategy to fight money laundering and financing of terrorism;
 - (b) issue necessary directions to the investigating or prosecuting agencies, AML/CFT regulatory authorities, FMU and any other authority appointed by the Federal Government involved in the implementation and administration of this Act, including measures for development and performance review of such agencies and authorities;
 - (c) seek reports from the competent authorities as it may require, including an annual report containing overall analysis of the STRs and CTRs, statistics concerning the investigations and prosecutions conducted in relation to the offences of money laundering and the financing of

terrorism in Pakistan, statistics of supervisory actions taken by the AML/CFT regulatory authorities according to clause (i) of sub-section (2) of section 6A or by the oversight body for SRB according to Section 6C. In this behalf, Secretary of the General Committee may call periodic reports from the AML/CFT regulatory authorities, Oversight body for SRB, investigating and prosecuting agencies in such manner as may be specified by him;

- (d) approve FMU's budgetary proposals for achieving the objects of this Act;
 - (e) approve FMU's staffing requirements, pay, allowances, privileges and compensation packages and other matters incidental thereto;
 - (f) provide necessary assistance to the National Executive Committee in carrying out its functions and duties under this Act;
 - (g) discuss any other issue of national importance relating to money laundering and terrorist financing; and
 - (h) undertake and perform such other functions as assigned or delegated to it by the National Executive Committee.
- (9) The General Committee may constitute one or more sub-committees to perform such functions as it may deem fit.”.

5. **Substitution of section 6, Act VII of 2010.**—In the said Act, for section 6, the following shall be substituted, namely:-

“6. Financial Monitoring Unit.—(1) The Federal Government shall, by notification in the official Gazette, establish a Financial Monitoring Unit which shall be housed in SBP or at any other place in Pakistan.

(2) The FMU shall have independent decision making authority on day-to-day matters falling within its area of responsibility.

(3) The Federal Government in consultation with SBP shall appoint a Director General who shall be a financial sector specialist to head FMU. He shall exercise all powers and functions of the FMU subject to the administrative oversight of the General Committee.

(4) The FMU shall have the following powers and the functions, namely:—

- (a) to receive STRs and CTRs from reporting entities as may be necessary to accomplish the objectives of this Act;
- (b) to analyse the STRs and CTRs and in that respect the FMU may call for record and information from any agency or person in Pakistan related to the transaction in question. All such agencies or persons shall be required to promptly provide the requested record and information;
- (c) to disseminate on a confidential basis, after analyzing the STRs, and CTRs and other record, necessary information or material to the concerned investigating or prosecuting agencies for enquiry or other action under this Act or any other applicable law;
- (d) to create and maintain a data base of all STRs and CTRs, related information and such other materials as the Director General determines are relevant to the work of the FMU and in that respect, the FMU is authorized to establish necessary analytic software and computer equipment to effectively search the database, sort and retrieve information and perform real time linkages with databases of other agencies both in and outside Pakistan. as may be required from time to time;
- (e) to cooperate with financial intelligence units of other countries and to make reciprocal arrangements after due administrative process to share, request and receive information relating to money laundering, predicate offences and financing of terrorism and any other information that may be necessary to accomplish the objectives of this Act ;
- (f) to represent Pakistan at all international and regional organizations and groupings of financial intelligence units and other international groups and forums which address the offence of money laundering, financing of terrorism and other related matters;
- (g) to request the investigating or prosecuting agencies any feedback regarding the disseminations made under sub-clause (c) in the form of periodic reports or statistics concerning the investigations and prosecutions of money laundering and financing of terrorism in Pakistan;

- (h) to frame regulations in consultation with the AML/CFT regulatory authorities for ensuring receipt of STRs and CTRs from reporting entities with the approval of the National Executive Committee;
- (i) to enter into arrangements with domestic agencies, authorities, or any reporting entity or any of its officers as may be necessary for getting facilitation in implementation of the provisions of this Act, or the rules or regulations made hereunder; and
- (j) to perform all such functions and exercise all such powers as are necessary for, or ancillary to, for the attainment of the objectives of this Act.

(5) On considering STR or CTR, the FMU may, if deems necessary, convey matters involving regulatory or administrative action to the concerned regulatory or administrative body for appropriate action.

(6) Subject to the regulations sanctioned by the National Executive Committee in this behalf, the Director General may, if there appear to be reasonable grounds to believe that a property is involved in money laundering, order freezing of such property, for a maximum period of fifteen days, in any manner that he may deem fit in the circumstances.”.

6. **Insertion of new sections, Act VII of 2010.**— In the said Act, after section 6, substituted as aforesaid, the following new sections shall be inserted, namely:—

“6A AML/CFT regulatory authority.—(1) AML/CFT regulatory authority means the Regulators and SRBs as specified in Schedule-IV. They shall exercise the powers and perform the functions as set out in this Act and as prescribed thereunder.

(2) AML/CFT regulatory authority shall exercise the following powers and functions with respect to its reporting entities, namely:—

- (a) licensing or registration of reporting entities;
- (b) imposing any conditions to conduct any activities by reporting entities to prevent the offence of money laundering, predicate offence or financing of terrorism;
- (c) issuing regulations, directions and guidelines with respect to sections 7A to 7H of this Act;

- (d) issuing regulations, directions and guidelines with respect to financing of proliferation obligations;
- (e) providing feedback to reporting entities for the purpose of compliance with the requirements of sections 7A to 7H of this Act and as prescribed thereunder;
- (f) monitoring and supervising, including conducting inspections, for the purpose of determining compliance with the requirements of sections 7A to 7H of this Act and any rules or regulations made thereunder and with the orders or regulations made thereunder that impose TFS obligations;
- (g) compelling production of information relevant to monitoring compliance with the requirements of sections 7A to 7H of this Act and any orders, rules or regulations made thereunder that impose TFS obligations;
- (h) impose sanctions, including monetary and administrative penalties to the extent and in the manner prescribed, upon their respective reporting entity, including its directors and senior management and officers, who violates any requirement in section 7A to 7H and any rules or regulations made thereunder or those who fail to comply with the TFS regulations. Any person aggrieved by the imposition of sanctions under this clause may prefer an appeal in such manner and within such period to such authority as may be prescribed;
- (i) maintaining statistics of the actions performed in respect of the functions and powers conferred by, this Act, in order to report to the National Executive Committee and the General Committee as required; and
- (j) exercising any other such powers and performing any other such functions that may be otherwise granted in any other applicable law.

6B. International cooperation by regulators.—The regulators as specified in clause (1) Schedule-IV of this Act shall co-operate with their foreign counterparts and shall make reciprocal arrangements to share, request and receive information relating to the requirements of this Act and any regulations made thereunder.

6C. Oversight Body for SRBs.—The Federal Government shall by notification in the Official Gazette appoint an Oversight Body for the SRBs mentioned in clause (2) of Schedule-IV which shall

exercise and perform the following powers and functions with respect to their respective SRB, namely:—

- (a) prescribe regulations for the SRB with respect to the provisions of this Act;
- (b) monitor and oversee the SRB in accordance with the provisions of this Act;
- (c) impose sanctions to the extent and in the manner prescribed, upon their respective SRB who fails to comply with any provision of this Act and any rules or regulations made under this; and
- (d) exercise any other relevant powers and perform any other relevant functions that may be otherwise granted in any other applicable law or that may be assigned by the Federal Government notification in the Official Gazette.”.

7. **Amendment of section 7, Act VII of 2010.**—In the said Act, in section 7,—

- (a) for the words “Suspicious Transaction Reports” wherever occurring, the expression “STRs” shall be substituted;
- (b) in sub-section (1), in clause (b), for the word “section”, the word “Act” shall be substituted;
- (c) in sub-section (2), after the word “body”, occurring for the first time, the expression “oversight body for SRB, AML/CFT” shall be inserted; and
- (d) omission of the in sub-section (7).

8. **Insertion of new sections, Act VII of 2010.**—In the said Act, after section 7, amended as aforesaid, the following new sections shall be inserted, namely:—

“7A. Conducting CDD.—(1) Every reporting entity shall conduct CDD in the prescribed manner and in accordance with provisions of this Act and as prescribed thereunder in the following matters, namely:—

- (a) entering into a business relationship;

- (b) conducting an occasional transaction above the prescribed threshold;
 - (c) where there is a suspicion of money laundering or terrorist financing;
or
 - (d) where there are doubts about the veracity or adequacy of previously obtained data.
- (2) Every reporting entity shall—
- (a) identify the customer and verify the customer’s identity on the basis of documents, data or information obtained from reliable and independent sources;
 - (b) identify the beneficial owner and take reasonable measures to verify the beneficial owner’s identity on the basis of documents, data or information obtained from reliable sources and be satisfied that it knows who the beneficial owner is;
 - (c) understand and, as appropriate, obtain information on the purpose and intended nature of the business relationship; and
 - (d) monitor the business relationship on an ongoing basis.

7B. Reliance on third parties.—A reporting entity may rely on third party to perform CDD in the prescribed manner.

7C. Record keeping.— Every reporting entity shall maintain a record of all transactions for a period of at least five years following the completion of the transaction, and records of account files, business correspondence, documents, of all records obtained through CDD and the results of any analysis undertaken for a period of at least five years following the termination of the business relationship.

7D. Inability to complete CDD and tipping off.—(1) Where a reporting entity is unable to complete CDD requirements, it—

- (a) shall not open the account, commence business relations or perform the transaction; or shall terminate the business relationship if any ; and
- (b) shall consider filing a Suspicious Transaction Report in relation to the customer.

(2) Where a reporting entity forms a suspicion of money laundering or terrorist financing, and reasonably believes that performing the CDD process will tip-off the customer, the reporting entity shall not pursue the CDD process and shall file a STR.

7E. Anonymous business relationships and transactions.— No reporting entity shall enter into a business relationship or conduct any transaction with a customer who is anonymous or provides a fictitious name.

7F. Risk understanding.— Every reporting entity shall take appropriate steps to identify, assess and understand the risks to which its business is subjected to, in accordance with this Act and as prescribed.

7G. Compliance program.— Every reporting entity shall implement compliance management arrangements, including the appointment of a compliance officer at a management level and training programs, having regard to the money laundering and terrorism financing (ML/TF) risks and the size of the business during the course of their activities -subject to this Act and as prescribed.

7H. Policies and procedures.— Every reporting entity shall implement policies and procedures to ensure their compliance with the provisions of this Act and orders, rules or regulations made thereunder that impose TFS obligations upon reporting entities.

7I. Sanctions for Reporting Entities.— If any reporting entity or natural person contravenes any of the provisions of sections 7A to 7H, it may be subjected to sanctions, as mentioned under clause (h) of section 6A of this Act and as prescribed.

9. **Substitution of section 12, Act VII of 2010.—**In the said Act, for section 12, the following shall be substituted.

“12. No civil or criminal proceeding against reporting entities in certain cases.—Save as otherwise provided in section 7, the reporting entities and their officers including but not limited to directors, chief executive, chief financial officer, employees, agents of the reporting entity or other authorized officers of a reporting entity shall not be liable to any civil, criminal or disciplinary proceedings against them for furnishing information required under this Act or the rules or regulations made thereunder.”.

10. **Omission of section 16, Act VII of 2010.**—In the said Act, section 16 shall be omitted.

11. **Amendment of section 21, Act No. VII of 2010.**—In the said Act, in section 21,—

- (a) in the marginal heading, for the word “non-cognizable”, the word “cognizable” shall be substituted;
- (b) in sub-section (1), in clause (a), for the words “non-cognizable”, the word “cognizable” shall be substituted;
- (c) in sub-section (2), in the proviso, for the words “financial institution” the words “reporting entity”, and for the words “regulatory authority” the expression “AML / CFT regulatory authority” shall be substituted; and
- (d) in sub-section (3) after the expression “FMU”, the words “or investigating or prosecuting agency” shall be added.

12. **Substitution of section 25, Act VII of 2010.**—In the said Act, for section 25, the following shall be substituted, namely:-

“25. Assistance to authorities.—(1) Notwithstanding the provisions of any other law, the officers of the Federal Government, Provincial Government, local authorities and reporting entities shall provide assistance including but not limited to production of records, documents and information reasonably required by the investigating or prosecuting agency or FMU for the purposes of money laundering, predicate offences and financing of terrorism proceedings and investigations in accordance with the provisions this Act.

(2) Whoever willfully fails or refuses to provide the required assistance under sub-section (1) shall be guilty of misconduct and shall be proceeded against by its respective department or organization and a report of such proceedings shall be submitted within reasonable time to the concerned investigating or prosecuting agency or FMU, as the case may be and shall be punished in the case of a natural person, with an imprisonment for a term which may extend up to five years, a fine which may extend to rupees one million or both, or in the case of a legal person, with a fine which may extend to rupees ten million.”.

13. **Amendment of section 30, Act VII of 2010.**—In the said Act, in section 30, in sub-section (4), for the words “bank or financial institution”, the words “reporting entity” shall be substituted.

14. **Amendment of section 33, Act VII of 2010.**—In the said Act, in section 33,—

- (a) in the marginal heading, for the word “Suspicious Transaction Report”, the expression “STR” shall be substituted;
- (b) for the words “Suspicious Transaction Report”, the expression “STR” shall be substituted; and
- (c) in sub-section (2), for the words “regulatory authority”, the expressions “AML / CFT regulatory authority” shall be substituted.

15. **Amendment of section 34, Act VII of 2010.**—In the said Act, in section 34,—

- (a) for sub-section (1) the following shall be substituted, namely:—

“(1) The directors, officers, employees and agents of any reporting entity or intermediary which report a STR or CTR pursuant to this law or any other authority, are prohibited from disclosing, directly or indirectly, to any person that the transaction has been reported unless there are disclosure agreements for corporate groups in accordance to regulations made hereunder.”; and

- (b) in sub-section (3) for the words and comma “financial institutions, non-financial business or profession”, the word “reporting entities” shall be substituted.

16. **Substitution of Section 37, Act VII of 2010.**—In the said Act, for section 37, the following shall be substituted, namely:-

“37. Offences by legal persons.—(1) Where a legal person commits an offence under this Act, every person who at the time when the offence was committed, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any natural person liable to punishment if he proves that the

contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything in sub-section (1) where an offence under this Act is committed by a legal person and it is proved that the contravention has taken place with the consent, connivance or knowledge of any director, manager, secretary or other officer of any legal person, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section, “director” in relation to a firm, means a partner in the firm.”.

17. **Amendment to Schedule of the Act VII of 2010.**—In the said Act, in the existing Schedule, for heading “THE SCHEDULE (*see* section 2(w))”, the expression “THE SCHEDULE-I (*see* section 2 (xxvi)) shall be substituted.

18. **Insertion of new of Schedules, Act VII of 2010.**—In the said Act, after Schedule-1, re-numbered as aforesaid, the following new Schedules shall be added, namely:—

“THE SCHEDULE-II

[*see* section 5(1)]

Members of National Executive Committee

1. The National Executive Committee shall comprise the following members:

- | | |
|--|-----------------|
| (a) Minister for Finance or Advisor to the Prime Minister on Finance | <i>Chairman</i> |
| (b) Minister for Foreign Affairs | <i>Member</i> |
| (c) Minister for Law and Justice | <i>Member</i> |
| (d) Minister for Interior | <i>Member</i> |
| (e) Minister for Economic Affairs Division | <i>Member</i> |
| (f) Governor SBP | <i>Member</i> |

- (g) Chairman SECP *Member*
- (h) Director General, Military Operations *Member*
- (i) Director General (C), ISI *Member*
- (j) Director General, FMU *Member/ Secretary*
- (k) *Director General FATF Cell* *Member*
- (l) any other member to be nominated by the Federal Government.

2. The Director General FMU shall act as Secretary of the National Executive Committee.

THE SCHEDULE-III

[see section 5(5)]

Members of General Committee

1. The General Committee shall comprise the following members:—

- (a) Secretary Finance *Chairman*
- (b) Secretary Interior *Member*
- (c) Secretary Foreign Affairs *Member*
- (d) Secretary Law *Member*
- (e) Chairman National Accountability Bureau *Member*
- (f) Chairman Federal Board of Revenue *Member*
- (g) Director General, Federal Investigation Agency *Member*
- (h) Director General, Anti-Narcotics Force *Member*
- (i) Deputy Governor SBP *Member*
- (j) Commissioner SECP *Member*
- (k) Director General, FMU *Member/ Secretary*

- (l) Director General, Military Operations *Member*
- (m) Director General (C), ISI *Member*
- (n) Director General FATF Cell *Member*
- (o) any other Member to be nominated by Federal Government.

2. The Director General FMU shall also act as Secretary of the General Committee.

THE SCHEDULE-IV

[see section 6A(1)]

AML/CFT Regulatory Authority

1. The following Regulators are AML/CFT regulatory authorities for the purposes of this Act:

- (i) SBP for any reporting entity licensed or regulated under any law administered by SBP;
- (ii) SECP for any reporting entity licensed or regulated by SECP under any law administered by SECP; unless that entity is licensed by any other AML/CFT regulatory authority;
- (iii) (iii) Federal Board of Revenue for Real Estate Agent, jewelers and for dealers in Precious Metals and Precious Stones Sectors. FBR shall also be a AML/CFT regulatory authority for Accountants that are not the members of ICAP and ICMAP;
- (iv) National Savings (AML and CFT) Supervisory Board for National Savings Schemes;
- (v) Pakistan Post (AML and CFT) Supervisory Board for Pakistan Post; and
- (vi) Any other such regulatory authority as may be notified by the Federal Government notification in the Official Gazette.

2. The following SRBs are AML/CFT regulatory authorities for the purposes of this Act:

- (i) the Institute of Chartered Accounts of Pakistan established under the Chartered Accountants Ordinance, 1961 (Act X of 1961) for their respective members;
- (ii) the Institute of Cost and Management Accountants of Pakistan (ICMAP) established under the Cost and Management Accountants Act, 1966 (Act XIV of 1966) for their respective members;
- (iii) the Pakistan Bar Council established under the Legal Practitioners and Bar Councils Act, 1973 (Act XXXV of 1973); for lawyers and other independent legal professionals that are enrolled under the Pakistan Bar Council or Provincial Bar Councils; and
- (iv) Any other SRB as may be notified by the Federal Government in the Official Gazette.”.

ANNEX-C

Date: August 10, 2020

—————
NOTE OF DISSENT

Anti-Money Laundering (Second Amendment) Bill, 2020

The above-mentioned bill is in contradiction with fundamental human rights which are enshrined in the Constitution of the Islamic Republic of Pakistan, 1973, and various conventions on international human rights. The said bill is in conflict with:

- (1) Article 18 that deals with “Freedom of trade of trade business and profession”
- (2) Article 14 that deals with “Inviolability of dignity of man etc.” and
- (3) Article 8 that deals with “Laws inconsistent with or in derogation with the fundamental rights to be void”.

The bill empowers the executive with overriding powers that will intervene with the privacy of a person doing any lawful business. Moreover, it will expose professionals, providing services to the said businesses, in breach of their fiduciary duties of retaining the confidential information about the businesses of their clients, which is in violation their conduct as service providers.

There are many stakeholders, organizations and associations, who should be taken on board before the passage of this bill as it mandates provision of private

confidential information to the executive and this information will enter the public domain.

This bill has no mechanism of check and balance of executive powers by the legislature or judiciary which is of prime importance and should be a pre-condition before mandating access to proprietary information.

Parliamentary oversight of actions where the rights of the citizens may be seriously affected is of prime importance; this bill has no provisions for such oversight.

The Government has been unable to provide clarity on which parts of the bill are mandated by FATF provisions, and which parts are in excess of these requirements.

In particular, this bill has the following specific flaws:

1. Defects in Sections 2, Definitions, rendering ambiguity to parts of the bill.
2. Exposing officials holding positions critical to national security in the composition of the National Executive Committee and General Committee in Section 5 read with Schedule-II and Schedule-III.
3. Placing an extraordinary burden of record keeping and reporting on businesses as per various Sections of the bill which will greatly reduce the ease of doing business in Pakistan and add to the cost of doing business pushing businesses towards the black economy.
4. Changing the environment of doing business, adversely affecting economic activity with its concomitant implications on employment and poverty.
5. Exposure of businessmen and professionals to extraordinary financial and imprisonment penalties in various Sections of the bill based on vague descriptions of acts of omission or commission.
6. Inclusion of professional bodies, associations and council, as per Schedule-IV (2) into the regulatory oversight mechanism which is a violation of the charter of these organizations.
7. Exposure of individuals to excessive powers and conditions of detention as per Section 21.

In view of the aforementioned Constitutional violations, breach of International Conventions on Fundamental Human Rights, and fundamental flaws in the Bill, I hereby submit my Note of Dissent to the approval of this Bill.

Sd/-

1. Mr. Qaiser Ahmed Sheikh
2. Chaudhary Khalid Javed
3. Mr. Ali Perviz
4. Dr. Aisha Ghaus Pasha
5. Syed Naveed Qamar
6. Dr. Nafisa Shah

Members National Assembly

REPORT OF THE STANDING COMMITTEE ON INTERIOR ON THE ISLAMABAD CAPITAL TERRITORY *WAQF* PROPERTIES BILL, 2020

I, Chairman of the Standing Committee on Interior have the honour to present this report on the Bill for the proper management and administration of *Waqf* properties [The Islamabad Capital Territory *Waqf* Properties Bill, 2020] (Government Bill), referred to the Committee on 27th July, 2020.

2. The Committee comprises the following:

- | | | |
|------|--------------------------------------|-----------------|
| (1) | Raja Khurram Shahzad Nawaz | <i>Chairman</i> |
| (2) | Mr. Sher Akbar Khan | <i>Member</i> |
| (3) | Mehar Ghulam Muhammad Lali | <i>Member</i> |
| (4) | Mr. Raza Nasrullah | <i>Member</i> |
| (5) | Khawaja Sheraz Mehmood | <i>Member</i> |
| (6) | Mr. Rahat Aman Ullah Bhatti | <i>Member</i> |
| (7) | Malik Karamat Ali Khokhar | <i>Member</i> |
| (8) | Sardar Talib Hassan Nakai | <i>Member</i> |
| (9) | Ms. Nafeesa Inayatullah Khan Khattak | <i>Member</i> |
| (10) | Mr. Muhammad Akhtar Mengal | <i>Member</i> |
| (11) | Nawabzada Shazain Bugti | <i>Member</i> |
| (12) | Malik Sohail Khan | <i>Member</i> |
| (13) | Mr. Mohammad Pervaiz Malik | <i>Member</i> |

(14)	Mr. Nadeem Abbas	<i>Member</i>
(15)	Ms. Maryam Aurangzaib	<i>Member</i>
(16)	Syed Agha Rafiullah	<i>Member</i>
(17)	Nawab Muhammad Yousuf Talpur	<i>Member</i>
(18)	Mr. Abdul Qadir Patel	<i>Member</i>
(19)	Mr. Asmatullah	<i>Member</i>
(20)	Mr. Ijaz Ahmad Shah, Minister for Interior	<i>Ex-officio Member</i>

3. The Committee considered the Bill as introduced in the National Assembly placed at **Annex-A**, in its meetings held on 28-7-2020, 29-7-2020, 7-8-2020 and 10-8-2020 and proposed the following amendments, therein:—

Clause 1

In clause 1, in sub-clause (2), after the word, ‘territory’ the word, “Islamabad”, shall be added.

Clause 2

In clause 2.—

- (i) the entire paragraphs shall be re-arranged alphabetically and re-marked accordingly;
- (ii) In re-marked paragraph (e), the expression, “the oversight bodies far SRBs”, shall be omitted.

Caluse-3

In caluse-3.—

- (i) for sub-clause (2), the following shall be substituted, namely:—

“(2) No person shall be appointed as chief administrator unless he is a Muslim and serving Government servant of BS-19.”;
- (ii) in sub-clause (3), for the words, “corporate body”, the word, “Corporation”, shall be substituted.

Clause 6

In clause 6, in sub-clause (1), for the word, “them”, the word, “him” shall be substituted.

Clause 8

In clause 8.—

- (a) In sub-clause (1), after the expression, “contained in”, the expression, “section 22 of Religious Endowments Act, 1863 (XX of 1860)”, shall be inserted.
- (b) in proviso, for the expression, “or person”, the expression, “and on such terms and conditions as may be agreed upon between such person” shall be substituted.
- (c) in the proviso, for the full stop at the end a colon shall be substituted and thereafter, the following new proviso shall be inserted, namely:—

“Provided further that the notification shall be served upon the management or the mutawalli and also affixed on some prominent part of the property which is sought to be taken over.”

(6) Clause 9

In clause-9, in sub-clause (1), after the word, “entity”, the expression “as defined in the Anti-Money Laundering Act, 2010 (VII of 2010)” shall be inserted.

(7) Clause 13

In clause, 13, in paragraph (b), the proviso shall be omitted.

(8) Clause 14

In clause-14, the expression, “without notice to the chief administrator”, appearing after the expression, “section 8”, shall be omitted.

(9) Clause 15

In clause-15, the word, “Islamabad” shall be omitted.

(10) Clause 16

In clause-16, for sub-clause (1) the following shall be substituted, namely:—

“(1) The chief administrator shall in respect of a waqf property regarding which a notification under section 8, has been issued and the gross annual income from which exceeds one hundred thousand rupees and on other cases may settle a scheme for the administration and development of such waqaf property.”

(11) Clause 17

In clause 17, in sub-clause (3), before the word, “Government” the word, “Federal”, shall be inserted.

(12) Clause 19

In clause 19, for sub-clause (3), the following shall be substituted, namely:—

“(3) At the end of each financial year the accounts maintained by the chief administrator shall be audited by such authority as may be prescribed by the Chief, Commissioner, ICT and the audit report with the comments of the Chief Commissioner, ICT shall be laid before Federal Government.”

(13) Clause 22

In clause 22.—

- (i) In sub-clause (1), the word, “any” shall be omitted.
- (ii) In sub-clause (2), for the expression, “prescribed”, appearing at the end, the expression, “specified in the Anti-Money Laundering Act, 2010 (VII of 2010)” shall be substituted.

(14) Clause 26

Clause 26, shall be omitted and the remaining clauses shall be renumbered accordingly.

(15) Clause 22

In re-numbered clause 26, in paragraph (b), after the word, “fine”, the expression, “upto twenty five million”, shall be inserted.

(16) Clause 29

In renumbered clause 28, for the word, “the”, appearing at the start, the expression, “Subject to the approval by the Federal Government, the”, shall be substituted.

4. The Committee recommends that the Bill as reported by the Standing Committee placed at **(Annex-B)** may be passed by the National Assembly.

(TAHIR HUSSAIN)
Secretary.

(RAJA KHURRAM SHAHZAD NAWAZ)
Chairman.

Islamabad 10th August, 2020

ANNEX-A

[AS INTRODUCED IN THE NATIONAL ASSEMBLY]

A

BILL

for the proper management and administration of waqf properties

WHEREAS it is expedient to provide for the proper management, supervision and administration of *waqf* properties in the territorial limits of the Islamabad Capital Territory, Islamabad; and for matters ancillary thereto.

It is hereby enacted as follows:—

1. **Short title, extent and commencement.**—(1) This Act shall be called the Islamabad Capital Territory *Waqf* Properties Act, 2020.

(2) It extends to the Islamabad Capital Territory.

(3) It shall come into force at once.

2. **Definitions.**—In this Ordinance unless there is anything repugnant in the subject or context,—

(a) “administrator” means and administrator of *auqaf* appointed under section 4;

(b) “beneficiary” means any person who gets benefits from the *waqf*

property or whose name is listed in the *waqf* document as benefiting from the *waqf* property;

“Competent authorities” means the ‘regulators’, the ‘oversight bodies for SRBs’ the “investigating or prosecuting agency” and the “Financial Monitoring Unit” as specified in the Anti-Money Laundering Act 2010;

- (c) “chief administrator” means the chief administrator of *auqaf* appointed under section 3; “beneficial owner” means a natural person who ultimately owns or controls a *waqf*, whether directly or indirectly or exercises effective control of that *waqf* through other means as prescribed;
- (d) “district courts” means the district judiciary sub-ordinate to Islamabad High Court;
- (e) “High Court” means the Islamabad High Court, Islamabad;
- (f) “investigation or prosecuting agency” means the “investigating or prosecuting agency” as specified in the Anti-Money Laundering Act 2010 (VII of 2010);
- (g) “legal person” means any person or entity other than a natural person, that can do the things that any person can usually do in law, such as entering into contracts, sue or can be sued, own property, and so on;
- (h) “natural person” means an individual;
- (i) “person” means a natural person or a legal person;
- (j) “prescribed” means prescribed by rules made under this Ordinance;

“*waqf* property” means property of any kind permanently dedicated by a person professing Islam for any purpose recognized by Islam as religious pious or charitable, but does not include property of any *waqf* such as is described in section 3 of the Mussalman *Waqf* Validating Act, 1913 (VI of 1913), under which any benefit is for the time being claimable for himself by the person by whom the *waqf* was created or by any member of his family or descendants:

Explanation 1.—if a property has been used from time immemorial for any purpose recognized by Islam as religious, pious or charitable, then in spite of there being no evidence of express dedication, such property shall be deemed to be a *waqf* property.

Explanation 2.—Property allotted in lieu of or in exchange of *waqf* property left in India shall be deemed to be *waqf* property.

Explanation 3.—Property of any kind acquired with the sale proceeds or in exchange of or from the income arising out of *waqf* property or from subscription raised for any purpose recognized by Islam as religious, pious or charitable, shall be deemed to be *waqf* property.

Explanation 4.—The income from boxes placed at shrines and offerings, subscriptions or articles of any kind, description or use presented to a shrine or to any person at the premises of a shrine shall be deemed to be a *waqf* property.

Explanation 5.—Property permanently dedicated for the purposes of a Mosque, Takia, Khankah, Dargah or other shrines shall be deemed to be a *waqf* property.

Explanation 6.—Relief of the poor and the orphans, education, workshop, medical relief, maintenance of shrines and the advancement of any other object of charitable, religious or pious nature or of general public utility shall be deemed to be charitable purposes.

- (k) “reporting entity” means any person as defined in the Anti-Money Laundering Act, 2010;
- (l) “*waqf*” means any person who dedicate the *waqf* property; and
- (m) “*waqf* manager” means any person or persons who are in charge of the day-to-day management and operations of the *Waqf* property.

3. **Appointment of chief administrator of auqaf.**—(1)The Chief Commissioner, ICT shall appoint a Chief Administrator *Auqaf* for the Islamabad Capital Territory (ICT) and may by order, vest in him and the *waqf* properties situated in the territorial limits of ICT including all rights, assets, debts, liabilities and obligations relating thereto.

(2) No person shall be appointed as chief administrator unless he is a Muslim and possesses such qualifications as may be prescribed by the Federal Government.

(3) The chief administrator shall be a corporate body sole by the name of the chief administrator of auqaf, ICT and shall have perpetual succession and an official seal and may sue and can be sued in his corporate name.

(4) The chief administrator shall perform his duties subject to administrative control of the Federal Government.

4. Appointment of administrator and deputy administrators.—(1) The Chief Commissioner, ICT may appoint administrator and deputy administrators for *waqf* properties as may be specified in the notification to assist the chief administrator and any administrator or deputy administrators so appointed shall subject to the general or special orders of the chief administrator, be competent to discharge such duties and exercise such powers of the chief administrator as may be assigned to him and when discharging such duties or exercising such powers shall have the same privileges and be subject to the same liabilities as the chief administrator.

(2) The administrator or deputy administrator appointed under sub-section (1) shall be under the Administrative control of the Chief Administrator.

5. General appointments.—(1) The chief administrator with the previous sanction of Chief Commissioner, ICT may, from time to time, determine the number, designation and grade of the officers and servants whom he considers necessary to employ for the purposes of this Ordinance and the amount and nature of salary, fees and allowances to be paid to each such officer and servant.

(2) All persons employed for the purposes of this Ordinance shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (XLV of 1860).

6. Registration of *waqf* property.—(1) Any *waqf* manager, whether a creator of the *waqf* or otherwise, or any authorized representative nominated by them, shall register such *waqf* property with the chief administrator in the prescribed circumstances and manner.

(2) The information to be contained in the registration of any *waqf* shall be prescribed.

(3) Any *waqf* property not registered with the chief administrator as required under sub-section (1) shall be deemed to have been notified under section 7.

(4) The district collector, ICT being custodian of land record and the supervisory officer of the registration branch where all deeds, agreements and documents are registered under Registration Act 1908 (XVI of 1908), shall furnish,

in the prescribed circumstances and manner, a consolidated annual report of all *waqf* properties recorded as waqf during the year, in respect of revenue limits of ICT to the chief administrator for information and further necessary action, or as deemed appropriate by the chief administrator, under the provisions of law for the time being enforced.

(5) Any change in the *waqf* property information shall be updated by the *waqf* manager to the district collector, ICT in a timely manner as prescribed.

7. **Waqf manager to obtain and hold information.**—(1) Any *Waqf* manager shall also obtain and hold the information as required under sub-section (2) of section 6, and shall ensure that the information is updated in a timely manner as prescribed.

(2) Any *waqf* manager shall provide, upon request, any of the information held in accordance with sub-section (1) to the chief administrator in a timely manner as prescribed.

8. **Take over waqf property.**—(1) Notwithstanding anything to be contrary contained in or any other law for the time being in force or in any custom or usage or in any decree, judgment or order of any court or any other authority or in any proceedings pending before any court or any other authority, the chief administrator may, by notification, take over and assume the administration, control, management and maintenance of *waqf* property:

Provided that during the life time of a *waqif*, the chief administrator shall not take over and assume the administrative control, management and maintenance of such *waqf* property, except with the consent of such person or persons and the chief administrator.

Explanation.—For the purpose of this section, “control” and “management” shall include control over the performance and management of religious, spiritual cultural and other services and ceremonies or Rasoomat at or in a *waqf* property.

(2) No person shall perform services or ceremonies referred to in sub-section (1) except with the prior permission of the chief administrator and in accordance with such direction as may be given by him.

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

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

9. **Provision of miscellaneous information.**—(1) Prior to entering into a business relationship or carrying out an occasional transaction with a reporting entity, any *waqf* manager, whether a creator of the *waqf* or otherwise, shall disclose their status as such to the reporting entity.

(2) With respect to any *waqf* in existence, at the time this provision comes into force, any *waqf* manager, whether a creator of the *waqf* or otherwise, shall disclose his status as such to any reporting entity with which they have a business relationship.

10. **Eviction of persons wrongfully in possession of *waqf* properties.**— Any unauthorized person entering upon occupation of any immovable *waqf* property or using or occupying any such property to the use or occupation whereof by reason of any provisions of this Ordinance or any rule made there under, he is not entitled or has ceased to be entitled may, after being provided a reasonable opportunity of showing cause against such action be summarily evicted from such *waqf* property by the administrator, with the use of such force as may be necessary and any crop raised in such property shall be liable to forfeiture and any building or other construction erected thereon shall also, if not removed by such un-authorized person, after services on him of a notice by the administrator requiring him to remove such building or construction within a period of not less than thirty days of the service on him of such notice, be liable to summary removal after the expiry of the period specified in the notice.

11. **Terminate of tenancy.**—(1) If the administrator is satisfied that lessee or tenant of any immovable *waqf* property has committed a breach of the conditions of the lease or tenancy, the administrator may, after giving such lessee or tenant an opportunity of hearing, order the termination of lease or resumption of tenancy:

Provided that if the breach is capable of rectification, the administrator shall not order the termination of the lease or resumption of the tenancy unless he has issued a written notice requiring the lessee or tenant to rectify the breach within a reasonable time, not being less than thirty days or more than sixty days, to be stated in the notice and the lessee or tenant has failed to comply with such notice.

(2) Where an order terminating the lease or resuming the tenancy has been passed under the provisions of sub-section (1), the administrator may forthwith re-enter upon the *waqf* property and resume possession of it, subject to the payment

of compensation to be fixed by the administrator for un-cut and un-gathered crops or for the improvements, if any, that may have been made by the lessee or tenant under the terms of the lease or tenancy or with the permission of the chief administrator:

12. **Appeal.**—(1) Any person evicted under the provisions of section 10 or aggrieved by an order of termination of lease or resumption of tenancy made under section 11, may, within sixty days of such eviction or within thirty days of the order of termination of the lease or resumption of tenancy, prefer an appeal to the chief administrator and the chief administrator, after giving such person an opportunity of hearing, shall confirm, modify or vacate the order made by the administrator under section 10 or 11.

(2) If there is no appeal preferred against an order of eviction made under section 10 or an order of termination of lease or resumption of tenancy made under section 11, the eviction, termination of lease or resumption of tenancy, as the case may be, shall attain finality, and when there an appeal has been preferred, the decision of the chief administrator in appeal shall be considered final.

13. **Appeal to High Court.**—(1) Any person claiming any interest, in any *waqf* property in respect of which a notification has been issued under section 8 may, within thirty days of the publication of such notification in the official Gazette may file an appeal in the Islamabad High Court for a declaration—

- (a) that the property is not *waqf* property; or
- (b) that the property is *waqf* property within the limits stated in the petition:

Provided that, notwithstanding anything contained in any law for the time being in force, or in any custom or usage, or in any decree, judgment, or order of any court or other authority, or in any proceeding pending before any court of other authority no such petition shall lie in respect of any interest in the income, offerings, subscription or articles, referred to in Explanation 4 to clause (e) of section 2, or the services or ceremonies mentioned in section 8.

14. **No temporary injunction or order without prior notice.**— Notwithstanding anything to the contrary contained in any other enactment for the time being in force, the district court or the High Court shall not, pending disposal of a petition filed under section 13 shall not issue temporary injunction or an order restraining the chief administrator from taking over or assuming the administration, control, management and maintenance of property in respect of which a notification has been issued under section 8 without notice to the chief administrator.

15. **Decision of the High Court shall be final.**—If no appeal is preferred within thirty days, the decision of the Islamabad High Court, or when there is an appeal, the decision in appeal shall be final.

16. **Scheme for the administration of waqf property.**—(1) The chief administrator in respect of the waqf property about which a notification under section 8 has been issued and the gross annual income from which exceeds five thousand rupees and on other cases, may settle a scheme for the administration and development of such *waqf* property.

(2) in the settlement of a scheme the chief administrator shall give effect to such wishes of the *waqif* as can be ascertained, and to which effect can be reasonably given.

17. **Sale process of waqf property.**— (1) The Chief Commissioner, ICT may, where it is satisfied that circumstances exists, sell or otherwise dispose of any *waqf* property in order—

- (a) to secure maximum economic benefits out of such property and to avoid loss or damage to such property; or
- (b) to serve the best public interest and public purpose for which such property was dedicated; or
- (c) to give effect to such wishes of the person dedicating the property as can be ascertained; or
- (d) to enable the property to be used in the absence of evidence of express dedication, for the purpose for which it has been used or for any purpose recognized by Islam as religious, pious or charitable; or
- (e) to provide maintenance to those who, on account of un-employment, sickness, infirmity or old age are unable to maintain themselves; or
- (f) to provide education, medical aid, housing, public facilities and services such as roads, sewerage, gas and electric power; or
- (g) to prevent danger to life, property or public health.

(2) The Chief Commissioner, ICT may permit the chief administrator to invest the proceeds in accordance with its directions.

(3) For carrying out the purpose mentioned in sub-section (1) and (2), the Chief Commissioner, ICT shall seek permission from the Government.

18. **Use of *waqf* property and application of income therefrom.**—Subject to the provision of this Ordinance, a *waqf* property shall be used for the purpose for which it was dedicated or has been used or for any purpose recognized by Islam as religious, pious or charitable, as the chief administrator may deem fit.

19. **Accounts.**—(1) The chief administrator shall maintain a complete record of all properties under his control and management, and shall keep accounts of income and expenditure of such properties including expenditure on the chief administrator and his establishment, in such manner as may be prescribed.

(2) all moneys received or realized by the chief administrator in respect of properties under his control and management shall form and be credited to a fund to be called *auqaf* fund which shall be under the control of and operated upon by the chief administrator subject to general supervision of Federal Government, and shall be kept in such custody as may be prescribed.

(3) At the end of each financial year the accounts maintained by the chief administrator shall be audited by such authority as may be prescribed and the audit report with the comments of the chief administrator shall be laid before Federal Government for its scrutiny.

(4) The Chief Commissioner, ICT after giving its comments shall submit the audit report for the scrutiny of Government.

20. **Rents and lease moneys in respect of *waqf* property.**—Any sum due as rent or lease money in respect of *waqf* property, the administration whereof has been taken over and assumed by the chief administrator if not paid within thirty days of its having become due, may be recovered as arrears of land revenue.

21. **Power of chief administrator to issue instructions.**—(1) The chief administrator may require any *waqf* manager the administration whereof has not been taken over or assumed by him under section 8 to furnish him with any return statement, statistics or other information regarding such *waqf* property or a copy of any document relating to such property and such person shall comply with such order or direction without any delay.

(2) The chief administrator may issue to *waqf* manager, the administration whereof has not been taken over or assumed by the chief administrator under section 8, such instructions or directions for the proper administration, control, management and maintenance of such *waqf* property as he may deem necessary including directions prohibiting delivery of sermons, khutbas or lectures which may contain any matter prejudicial to the sovereignty and integrity of Pakistan or calculated to arouse feelings of hatred or dis-affection amongst various religious sects or groups in the country and directions prohibiting such person from indulging in party politics through sermons or lectures and the *waqf* manager shall comply with such instructions and directions.

(3) The chief administrator shall require any *waqf* manager of *waqf* property registered under section 7 or of any *waqf* property administered by the chief administrator under section 8 to follow the all or any of the instructions given below in order to prevent the money laundering and terrorist financing:—

- (a) the person properly entered into lease deed shall deposit the lease/rent amount online through his bank account to the designated account of the Chief Administrator or Administrator, while the *Waqf* Manager shall provide a computerized bill to the leaseholder;
- (b) after execution of proper lease deed with the successful bidder or occupant of a *waqf* property by chief administrator, the same shall be displayed on official website for information and awareness of the general public or any authority;
- (c) the lease holder at the time of execution of agreement shall provide an affidavit to the effect that the property allotted to him and income there-from shall not be used for any illegal purposes including but not limited to money laundering or terrorist financing. The lease holder shall annually submit verified bank account statement showing details of credited and debited amount to the chief administrator.
- (d) to preserve complete record of the *Waqf* Property including auditable accounts statement, number of employees or advisors or investors or manager or accountants and their complete bio-data etc. for the last five years.

22. **Provision of information to competent authorities.**—(1) The chief administrator shall provide prescribed information about the *waqf* to any competent authority in the prescribed manner and circumstances.

(2) the *waqf* manager shall provide to competent authorities, for domestic and international cooperation purposes at any time in the manner prescribed, any information regarding the *waqf* property, including but not limited to beneficial ownership of *waqf* property, the residences of the staff who have control over the *waqf* properties, any assets held or managed by a reporting entity in relation to *waqf* property or any other information relating to the *waqf* as prescribed.

23. **Provision of information to reporting entities.**—(1) The chief administrator shall provide and upon request, to the reporting entity information about the beneficial ownership and assets of the *waqf* in the prescribed circumstances and manner.

(2) The reporting entity may, also obtain the information from the *waqf* manager about the beneficial owner, details of *waqf* assets, residential addresses of *waqf* manager and details of beneficiaries in the prescribed circumstances and manner.

24. **Bar of jurisdiction.**—Save as expressly provided in this Ordinance, no civil or revenue court or any other authority, shall have jurisdiction—

- (a) to question the legality of anything done under this Ordinance by or at the instance of the Chief Administrator; or
- (b) in respect of any matter which the Chief Administrator is empowered by or under this Ordinance to determine or settle; or
- (c) to grant an injunction or other order in relation to any proceeding before the Chief Administrator under this Ordinance or anything done intended to be done by or at the instance of the Chief Administrator under this Ordinance.

25. **Over ride effect.**—Every order made and every action taken under this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any document, decree or order of any Court, deed, enactment or any instrument having effect by virtue of any such enactment other than this Ordinance.

26. **Protection of action taken in good faith.**—No suit, prosecution or other legal proceedings shall be instituted against any person for anything which is in good faith done or intended to be done under this Ordinance or the rules made thereunder.

27. **Offences.**—(1) Whoever obstructs or offers any resistance to, or impedes or otherwise interferes with—

- (a) any authority, officer or person exercising any power or performing any duty conferred or imposed upon it or him by or in pursuance of this Ordinance or otherwise discharging any lawful function under this Ordinance; or
- (b) any person who is carrying out the orders of any such authority, officer or person as aforesaid or who is otherwise acting in accordance with his duty in pursuance of this Ordinance, shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

(2) Any person who willfully fails to comply with any requirement under section 21 shall be punished with imprisonment which shall not be less than one year but which may extend to five years and shall be liable to fine which shall not be less than the benefits derived from the *waqf* property but may extend to three times of the amount of income derived from the property.

(3) Any person who intentionally fails to comply with the provisions of section 7 or intentionally conceals any information or provide incomplete or incorrect information to the chief administrator as required under this Ordinance, shall be liable to pay such amount calculated by the concerned district collector or any other authority duly authorized by the chief administrator to do so, for the period of factum of *waqf* property or an imprisonment of up to five years, or both.

(4) The offences punishable under this Ordinance shall be tri-able by the courts of Sessions Judges, Islamabad.

28. **Administrative sanctions.**—Any person who fails to comply with any provision of this Ordinance for any other reason shall be penalized with an amount up to rupees twenty five million.

29. **Power to make rules.**—(1) The Chief Commissioner, ICT may make rules for the purpose of carrying into effect the provision of this Act.

(2) In particular and without prejudice to the generally of the foregoing power, such rules may provide for all or any of the following matters, namely—

- (a) prescribing the powers and duties of the officers appointed under this Act;
- (b) regulate the delegation of any powers by the chief administrator to an administrator or a deputy administrator;
- (c) prescribing the terms and condition on which *waqf* property may be leased or let out;
- (d) regulate the manner in which schemes for administration and development of *waqf* properties shall be prepared;
- (e) regulate the conditions of services and conduct of the persons employed under this Act;
- (f) regulate the conduct of litigation by or against the chief administrator;
- (g) prescribe the manner in which the accounts shall be kept;
- (h) prescribe the authority for auditing the accounts maintained by the Chief Administrator;

- (i) Prescribe the syllabus and curricula for the proper education and training of Imams and Khatibs and of other employees of the *Auqaf* Institutions in ICT;
- (j) prescribe and regulate the standards of syllabus and curricula of institutions providing Islamic religious education, by whatever name called, and, where considered necessary in the public interest, the scrutiny of the accounts of such institution; and
- (k) to appoint advisory committee consisting of public representatives, Ulema and other experts.

30. **Continuance of actions done under the *Auqaf* (Federal Control) Act, 1976.**—Everything done or purporting to have been done, action taken liability or penalty incurred or proceeding commenced, officer appointed or person authorized of power conferred, rule made or notification or order issued under the *Auqaf* (Federal Control) Act, 1976 (LVI of 1976) since repealed, shall, so far as it is not inconsistent with the provisions of this Ordinance, continue in force, and so far as may be deemed to have been done, taken, incurred, commenced, appointed, authorized, conferred, made or issued under this Ordinance.

31. **Repeal.**—On commencement of this Act, the Punjab *Waqf* Properties Ordinance, 1979 stands repealed to the extent of the territorial limits of the Islamabad Capital Territory.

No. 5/26/2020-ICT-II

GOVERNMENT OF PAKISTAN
MINISTRY OF INTERIOR

Islamabad, the July, 2020

STATEMENT OF OBJECTS AND REASONS

**SUBJECT:—AMENDMENT IN THE ISLAMABAD CAPITAL TERRITORY
WAQF PROPERTIES ACT, 2020**

In order to enhance the effectiveness of the implementation of the Orders passed by the Federal Government, the amendments are considered essential in the Islamabad Capital Territory *Waqf* Properties Act, 2020 for the proper management, supervision and administration of *waqf* properties in the territorial limits of Islamabad Capital Territory, Islamabad, whereas the Islamabad Capital Territory requires its

exclusive law for regulation and administration of *Waqf* properties situated therein. Furthermore, the facilities required for meeting the necessary expenses through exemptions are also required to be incorporated in detail.

ZAHEER-UD-DIN BABAR AWAN,
*Advisor to Prime Minister
on Parliamentary Affairs.*

Annex-B

[AS REPORTED BY STANDING COMMITTEE]

A

BILL

for the proper management and administration of waqf properties

WHEREAS it is expedient to provide for the proper management, supervision and administration of *waqf* properties in the territorial limits of the Islamabad Capital Territory, Islamabad and for matters ancillary thereto,

It is hereby enacted as follows:

1. **Short title, extent and commencement.**—(1) This Act shall be called the Islamabad Capital Territory *Waqf* Properties Act, 2020.

(2) It extends to the Islamabad Capital Territory, Islamabad.

(3) It shall come into force at once.

2. **Definitions.**—In this Act unless there is anything repugnant in the subject or context,—

(a) “administrator” means an administrator of *auqaf* appointed under section 4;

(b) “beneficiary” means any person who gets benefits from the *waqf* property or whose name is listed in the *waqf* document as benefiting from the *waqf* property;

(c) “beneficial owner” means a natural person who ultimately owns or controls a *waqf*, whether directly or indirectly or exercises effective control of that *waqf* through other means as prescribed;

- (d) “chief administrator” means the chief administrator of *auqaf* appointed under Section 3;
- (e) “competent authorities” mean the ‘regulators’, the “investigating or prosecuting agency” and the “Financial Monitoring Unit” as specified in the Anti-Money Laundering Act 2010;
- (f) “district courts” mean the district judiciary sub-ordinate to Islamabad High Court;
- (g) “High Court” means the Islamabad High Court, Islamabad;
- (h) “investigation or prosecuting agency” means the “investigating or prosecuting agency” as specified in the Anti-Money Laundering Act 2010 (Act VII of 2010);
- (i) “legal person” means any person or entity, other than a natural person, that can do the things that any person can usually do in law, such as entering into contracts, sue or can be sued, own property, and so on;
- (j) “natural person” means an individual or individuals;
- (k) “person” means a natural person or a legal person;
- (l) “prescribed” means prescribed by rules made under this Act;
- (m) “reporting entity” means any person as defined in the Anti-Money Laundering Act, 2010;
- (n) “*waqf* property” means property of any kind permanently dedicated by a person professing Islam for any purpose recognized by Islam as religious, pious or charitable, but does not include property of any *waqf* such as is described in section 3 of the Mussalman *Waqf* Validating Act, 1913 (VI of 1913), under which any benefit is for the time being claimable for himself by the person by whom the *waqf* was created or by any member of his family or descendants:

Explanation 1.—If a property has been used from time immemorial for any purpose recognized by Islam as religious, pious or charitable, then in spite of there being no evidence of express dedication, such property shall be deemed to be a *waqf* property.

Explanation 2.—Property allotted in lieu of or in exchange of *waqf* property left in India shall be deemed to be *waqf* property.

Explanation 3.—Property of any kind acquired with the sale proceeds or in exchange of or from the income arising out of *waqf* property or from subscription raised for any purpose recognized by Islam as religious, pious or charitable, shall be deemed to be *waqf* property.

Explanation 4.—The income from boxes placed at shrines and offerings, subscriptions or articles of any kind, description or use presented to a shrine or to any person at the premises of a shrine shall be deemed to be a *waqf* property.

Explanation 5.—Property permanently dedicated for the purposes of a Mosque, Takia, Khankah, Dargah or other shrines shall be deemed to be a *waqf* property.

Explanation 6.—Relief of the poor and the orphans, education, workshop, medical relief, maintenance of shrines and the advancement of any other object of charitable, religious or pious nature or of general public utility shall be deemed to be charitable purposes.

- (o) “*waqif*” means any person who dedicate the *waqf* property; and
- (p) “*waqf* manager” means any person or persons who are in charge of the day-to-day management and operations of the *waqf* property.

3. **Appointment of chief administrator of *auqaf*.**—(1)The Chief Commissioner, ICT shall appoint a chief administrator *Auqaf* for the Islamabad Capital Territory (ICT) and may by order, vest in him, the *waqf* properties situated in the territorial limits of ICT including all rights, assets, debts, liabilities and obligations relating thereto.

(2) No person shall be appointed as chief administrator unless he is a Muslim and serving Government servant of BS-19.

(3) The Chief Administrator shall be a corporation sole by the name of the chief administrator of *Auqaf*, ICT and shall have perpetual succession and an official seal and may sue and can be sued in his corporate name.

(4) The Chief Administrator shall perform his duties subject to administrative control of the Federal Government.

4. **Appointment of administrator and deputy administrator(s).**—(1) The Chief Commissioner, ICT may appoint administrator and deputy administrators

for *waqf* properties as may be specified in the notification to assist the chief administrator and any administrator or deputy administrator(s) so appointed shall subject to the general or special orders of the chief administrator, be competent to discharge such duties and exercise such powers of the chief administrator as may be assigned to him and when discharging such duties or exercising such powers shall have the same privileges and be subject to same liabilities as the chief administrator.

(2) The administrator or deputy administrator(s) appointed under sub-section (1) shall be under the administrative control of the chief administrator.

5. **General appointments.**—(1) The chief administrator with the previous sanction of Chief Commissioner, ICT may, from time to time, determine the number, designation and grade of the officers and servants whom he considers necessary to employ for the purpose of this Act and the amount and nature of salary, fees and allowances to be paid to each such officer and servant.

(2) All persons employed for the purpose of this Act shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (XLV of 1860).

6. **Registration of waqf property.**—(1) Any *waqf* manager, whether a creator of the *waqf* or otherwise, or any authorized representative nominated by him, shall register such *waqf* property with the chief administrator in the prescribed circumstances and manner.

(2) The information to be contained in the registration of any *waqf* shall be prescribed.

(3) Any *waqf* property not registered with the chief administrator as required under sub section (1) shall be deemed to have been notified under section 7.

(4) The district collector, ICT being custodian of land record and the supervisory officer of the registration branch where all deeds, agreements and documents are registered under Registration Act 1908 (XVI of 1908), shall furnish, in the prescribed circumstances and manner, a consolidated annual report of all *waqf* properties recorded as *waqf* during the year in respect of revenue limits of ICT to the chief administrator for information and further necessary action, or as deemed appropriate by the chief administrator, under the provisions of law for the time being in force.

(5) Any change in the *waqf* property information shall be updated by the *waqf* manager to the district collector, ICT in a timely manner as prescribed.

7. **Waqf manager to obtain and hold information.**—(1) Any *waqf* manager shall also obtain and hold the information as required under sub-section (2) of section 6, and shall ensure that the information is updated in a timely manner as prescribed.

(2) Any *waqf* manager shall provide, upon request, any of the information held in accordance with sub-section (1) of section 7 to the chief administrator in a timely manner as prescribed.

8. **Take over waqf property.**—(1) Notwithstanding anything to be contrary contained in section 22 of Religious Endowments Act, 1863 (XX of 1860) or any other law for the time being in force or in any custom or usage or in any decree, judgment or order of any court or any other authority or in any proceedings pending before any court or any other authority, the chief administrator may, by notification, take over and assume the administration, control, management and maintenance of waqf property:

Provided that during the lifetime of a *waqif* the chief administrator shall not take over and assume the administrative control, management and maintenance of such *waqf* property, except with the consent of such person and on such terms and conditions as may be agreed upon between such person and the chief administrator:

[Provided that the notification shall be served upon the management or the mutawalli and also affixed on some prominent part of the property which is sought to be taken over.]

Explanation:—For the purpose of this section, “control” and “management” shall include control over the performance and management of religious, spiritual, cultural and other services and ceremonies or rasoomat at or in a *waqf* property.

(2) No person shall perform services or ceremonies referred to in sub-section (1) except with the prior permission of the chief administrator and in accordance with such direction as may be given by him.

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

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

9. **Provision of miscellaneous information.**—(1) Prior to entering into a business relationship or carrying out an occasional transaction with a reporting entity, any *waqf* manager, whether a creator of the *waqf* or otherwise, shall disclose their status as such to the reporting entity as defined in Anti-money Laundering Act, 2010 (VII of 2010).

(2) With respect to any *waqf* in existence, at the time this provision comes into force, any *waqf* manager, whether a creator of the *waqf* or otherwise, shall disclose his status as such to any reporting entity with whom they have a business relationship.

10. **Eviction of persons wrongfully in possession of *waqf* properties.**—Any un-authorized person entering upon occupation of any immovable *waqf* property or using or occupying any such property to the use or occupation whereof by reason of any provisions of this Act or any rule made thereunder, he is not entitled or has ceased to be entitled may, after being provided a reasonable opportunity of showing cause against such action be summarily evicted from such *waqf* property by the administrator, with the use of such force as may be necessary and any crop raised in such property shall be liable to forfeiture and any building or other construction erected thereon shall also, if not removed by such un-authorized person, after service on him of a notice by the administrator requiring him to remove such building or construction within a period of not less than thirty days of the service on him of such notice, be liable to summary removal after the expiry of the period specified in the notice.

11. **Termination of tenancy.**—(1) If the administrator is satisfied that lessee or tenant of any immovable *waqf* property has committed a breach of the conditions of the lease or tenancy, the administrator may, after giving such lessee or tenant an opportunity of hearing, order the termination of lease or resumption of tenancy:

Provided that if the breach is capable of rectification, the administrator shall not order the termination of the lease or resumption of the tenancy unless he has issued a written notice requiring the lessee or tenant to rectify the breach within a reasonable time, not being less than thirty days or more than sixty days, to be stated in the notice and the lessee or tenant has failed to comply with such notice.

(2) Where an order terminating the lease or resuming the tenancy has been passed under the provisions of sub-section (1), the administrator may forthwith re-enter upon the *waqf* property and resume possession of it, subject to the payment of compensation to be fixed by the administrator for un-cut and un-gathered crops or for the improvements, if any, that may have been made by the lessee or tenant

under the terms of the lease or tenancy or with the permission of the chief administrator.

12. **Appeal.**—(1) Any person evicted under the provisions of section 10 or aggrieved by an order of termination of lease or resumption of tenancy made under section 11 may, within sixty days of such eviction or within thirty days of the order of termination of the lease or resumption of tenancy, prefer an appeal to the chief administrator and the chief administrator, after giving such person an opportunity of hearing, shall confirm, modify or vacate the order made by the administrator under section 10 or 11.

(2) If there is no appeal preferred against an order of eviction made under section 10 or an order of termination of lease or resumption of tenancy made under section 11, the eviction, termination of lease or resumption of tenancy, as the case may be, shall attain finality, and when there an appeal has been preferred, the decision of the chief administrator in appeal shall be considered final.

13. **Petition to High Court.**—(1) Any person claiming any interest, in any *waqf* property in respect of which a notification has been issued under section 8 may, within thirty days of the publication of such notification in the official Gazette may file a petition in the High Court for a declaration:—

- (a) that the property is not *waqf* property; or
- (b) that the property is *waqf* property within the limits stated in the petition:

14. **No temporary injunction or order without prior notice.**—Notwithstanding anything to the contrary contained in any other enactment for the time being in force, the district court or the High Court shall not, pending disposal of a petition filed under section 13 shall not issue a temporary injunction or an order restraining the chief administrator from taking over or assuming the administration, control, management and maintenance of property in respect of which a notification has been issued under section 8.

15. **Decision of the High Court shall be final.**—If no appeal is preferred within thirty days, the decision of the High Court, or when there is an appeal, the decision in appeal shall be final.

16. **Scheme for administration of *waqf* property.**—(1) The chief administrator shall in respect of a *waqf* property regarding which a notification under section 8 has been issued and the gross annual income from which exceeds one hundred thousand rupees and on other cases may settle a scheme for the administration and development of such *waqf* property.

(2) In the settlement of a scheme the chief administrator shall give effect to such wishes of the *waqif* as can be ascertained, and to which effect can be reasonable given.

17. **Sale process of *waqf* property.**—(1) The Chief Commissioner, ICT may, where it is satisfied that circumstances exists, sell or otherwise dispose of any *waqf* property in order,—

- (a) to secure maximum economic benefits out of such property and to avoid loss or damage to such property; or
- (b) to serve the best public interest and public purpose for which such property was dedicated; or
- (c) to give effect to such wishes of the person dedicating the property as can be ascertained; or
- (d) to enable the property to be used in the absence of evidence of express dedication, for the purpose for which it has been used or for any purpose recognized by Islam as religious, pious or charitable; or
- (e) to provide maintenance to those who, on account of un-employment, sickness, infirmity or old age are unable to maintain themselves; or
- (f) to provide education, medical aid, housing, public facilities and services such as roads, sewerage, gas and electric power; or
- (g) to prevent danger to life, property or public health.

(2) The Chief Commissioner, ICT may permit the chief administrator to invest the proceeds in accordance with his directions.

(3) For carrying out the purpose mentioned in sub-section (1) and (2), the Chief Commissioner, ICT shall seek permission from Federal Government.

18. **Use of *waqf* property and application of income therefrom.**— Subject to the provision of this Act, a *waqf* property shall be used for the purpose for which it was dedicated or has been used or for any purpose recognized by Islam as religious, pious or charitable, as the chief administrator may deem fit.

19. **Accounts.**—(1) The chief administrator shall maintain a complete record of all properties under his control and management, and shall keep accounts of income and expenditure of such properties including expenditure on the chief administrator and his establishment, in such manner as may be prescribed.

(2) all moneys received or realized by the chief administrator in respect of properties under his control and management shall form and be credited to a fund to be called auqaf fund which shall be under the control of and operated upon by the chief administrator subject to general supervision of Federal Government, and shall be kept in such custody as may be prescribed.

(3) At the end of each financial year the accounts maintained by the chief administrator shall be audited by such authority as may be prescribed by the Chief Commissioner, ICT and the audit report with the comments of the Chief Commissioner, ICT shall be laid before Federal Government.

20. Rents and lease moneys in respect of *waqf* property.— Any sum due as rent or lease money in respect of *waqf* property, the administration whereof has been taken over and assumed by the chief administrator if not paid within thirty days of its having become due, may be recovered as arrears of land revenue as provided in Land Revenue Act, 1967.

21. Power of chief administrator to issue instructions.—(1) The chief administrator may require any *waqf* manager the administration whereof has not been taken over or assumed by him under section 8 to furnish him with any return statement, statistics or other information regarding such *Waqf* Property, or a copy of any document relating to such property, and such person shall comply with such order or direction without any delay.

(2) The chief administrator may issue to *waqf* manager, the administration whereof has not been taken over or assumed by the chief administrator under section 8, such instructions or directions for the proper administration, control, management and maintenance of such *waqf* property as he may deem necessary including directions prohibiting delivery of sermons, khutbas or lectures which may contain any matter prejudicial to the sovereignty and integrity of Pakistan or calculated to arouse feelings of hatred or disaffection amongst various religious sects or groups in the country and directions prohibiting such person from indulging in party politics through sermons or lectures, and the *waqf* manager shall comply with such instructions and directions.

(3) The chief administrator shall require any *waqf* manager of *Waqf* Property registered under section 7 or of any *waqf* property administered by the chief administrator under section 8 to follow all or any of the instructions given below in order to prevent the money laundering and terrorist financing:—

- a. The person properly entered into lease deed shall deposit the lease/rent amount online through his bank account to the designated account of the chief administrator or administrator, while the *waqf* manager shall provide a computerized bill to the leaseholder;

- b. After execution of proper lease deed with the successful bidder/occupant of a *waqf* property by chief administrator, the same shall be displayed on official website for information and awareness of the general public or any authority;
- c. The leaseholder at the time of execution of agreement shall provide an affidavit to the effect that the property allotted to him and income there-from shall not be used for any illegal purposes including but not limited to money laundering or terrorist financing. The leaseholder shall annually submit verified bank account statement showing details of credited & debited amount to the chief administrator;
- d. To preserve complete record of the *waqf* property including auditable accounts statement, number of employees or advisors or investors or manager or accountants and their complete bio-data etc. for the last five years.

22. **Provision of information to competent authorities.**—(1) The chief administrator shall provide prescribed information about the *waqf* to competent authority in the prescribed manner and circumstances.

(2) The *waqf* manager shall provide to competent authorities, for domestic and international cooperation purposes at any time in the manner prescribed, any information regarding the *waqf* property, including but not limited to beneficial ownership of *waqf* property, the residences of the staff who have control over the *waqf* properties, any assets held or managed by a reporting entity in relation to *waqf* property or any other information relating to the *waqf* as specified in Anti-Money Laundering Act, 2010 (VII of 2010).

23. **Provision of information to reporting entities.**—(1) The chief administrator shall provide and upon request, to the reporting entity information about the beneficial ownership and assets of the *waqf* in the prescribed circumstances and manner.

(2) The reporting entity may, also obtain the information from the *waqf* manager about the beneficial owner, details of *waqf* assets, residential addresses of *waqf* manager and details of beneficiaries in the prescribed circumstances and manner.

24. **Bar of jurisdiction.**—Save as expressly provided in this Act, no civil or revenue court or any other authority, shall have jurisdiction.—

- (a) to question the legality of anything done under this Act by or at the instance of the Chief Administrator; or

- (b) in respect of any matter which the Chief Administrator is empowered by or under this Act to determine or settle; or
- (c) to grant an injunction or other order in relation to any proceeding before the Chief Administrator under this Act or anything done intended to be done by or at the instance of the chief administrator under this Act.

25. **Override effect.**—Every order made and every action taken under this Act shall have effect notwithstanding anything inconsistent therewith contained in any document, decree or order of any court, deed, enactment or any instrument having effect by virtue of any such enactment other than this Act.

26. **Offences.**—(1) Whoever obstructs or offers any resistance to, or impedes or otherwise interferes with—

- (a) any authority, officer or person exercising any power or performing any duty conferred or imposed upon it or him by or in pursuance of this Act or otherwise discharging any lawful function under this Act; or
- (b) any person who is carrying out the orders of any such authority, officer or person as aforesaid or who is otherwise acting in accordance with his duty in pursuance of this Act, shall be punished with imprisonment for a term which may extend to five years or **with fine upto twenty five million or with both.**

(2) Any person who willfully fails to comply with any requirement under section 21 shall be punished with imprisonment which shall not be less than one year but which may extend to five years and shall be liable to fine which shall not be less than the benefits derived from the waqf property but may extend to three times of the amount of income derived from the property.

(3) Any person who intentionally fails to comply with the provisions of section 7 or intentionally conceals any information or provide incomplete or incorrect information to the chief administrator as required under this Act, shall be liable to pay such amount calculated by the concerned district collector or any other authority duly authorized by the chief administrator to do so, for the period of factum of *waqf* property or an imprisonment of upto five years, or both.

(4) The offences punishable under this Act shall be triable by the court of sessions.

27. **Administrative sanctions.**—Any person who fails to comply with any provision of this Act for any other reason shall be penalized with an amount up to rupees twenty five million.

28. **Power to make rules.**—(1) Subject to approval by the Federal Government, the Chief Commissioner, ICT shall frame rules for the purpose of carrying into effect the provision of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

- (a) prescribing the powers and duties of the officers appointed under this Act;
- (b) regulate the delegation of any powers by the chief administrator to an administrator or a deputy administrator;
- (c) prescribing the terms and condition on which *waqf* property may be leased or let-out;
- (d) regulate the manner in which schemes for administration and development of *waqf* properties shall be prepared;
- (e) regulate the conditions of services and conduct of the persons employed under this Act;
- (f) regulate the conduct of litigation by or against the chief administrator;
- (g) prescribe the manner in which the accounts shall be kept;
- (h) prescribe the authority for auditing the accounts maintained by the Chief Administrator;
- (i) prescribe the syllabus and curricula for the proper education and training of Imams and khatibs and of other employees of the *auqaf* institutions in ICT;
- (j) prescribe and regulate the standards of syllabus and curricula of institutions providing Islamic religious education, by whatever name called, and, where considered necessary in the public interest, the scrutiny of the accounts of such institution; and
- (k) to appoint advisory committee consisting of public representatives, ulema and other experts.

29. **Continuance of actions done under the *Auqaf* (Federal Control) Act, 1976.**—Everything done or purporting to have been done, action taken liability or penalty incurred or proceeding commenced, officer appointed or person authorized of power conferred, rule made or notification or order issued under the *Auqaf* (Federal Control) Act, 1976 (LVI of 1976) since repealed, shall, so far as it is not inconsistent with the provisions of this Act, continue in force, and so far as may be deemed to have been done, taken, incurred, commenced, appointed, authorized, conferred, made or issued under this Act.

30. **Repeal.**—On commencement of this Act, the Punjab *Waqf* Properties Ordinance, 1979 shall stand repealed to the extent of the Islamabad Capital Territory, Islamabad.

STATEMENT OF OBJECTS AND REASONS

In order to enhance the effectiveness of the implementation of the Orders passed by the Federal Government, the amendments are considered essential in the Islamabad Capital Territory *Waqf* Properties Act, 2020 for the purpose management, supervision and administration of *waqf* properties in the territorial limits of Islamabad Capital Territory, Islamabad, whereas the Islamabad Capital Territory requires its exclusive law for regulation and administration of *Waqf* properties situated therein. Furthermore, the facilities required for meeting the necessary expenses through exemptions are also required to be incorporated in detail.

ZAHEER-UD-DIN BABAR AWAN,
*Advisor to Prime Minister
on Parliamentary Affairs.*

REPORT OF THE STANDING COMMITTEE ON INTERIOR ON THE ISLAMABAD CAPITAL TERRITORY TRUST BILL, 2020

1, Chairman of the Standing Committee on Interior have the honor to present this report on the Bill to define and amend the law relating to trusts [Islamabad Capital Territory Trust Bill, 2020] (Government Bill), referred to the Committee on 27th July, 2020.

2. The Committee comprises the following:

- | | |
|---------------------------------------|-----------------|
| (1) Raja Khurram Shahzad Nawaz | <i>Chairman</i> |
| (2) Mr. Sher Akbar Khan | <i>Member</i> |
| (3) Mehar Ghulam Muhammad Lali | <i>Member</i> |

(4)	Mr. Raza Nasrullah	<i>Member</i>
(5)	Khawaja Sheraz Mehmood	<i>Member</i>
(6)	Mr. Rahat Aman Ullah Bhatti	<i>Member</i>
(7)	Malik Karamat Ali Khokhar	<i>Member</i>
8)	Sardar Talib Hassan Nakai	<i>Member</i>
(9)	Ms. Nafeesa Inayatullah Khan Khattak	<i>Member</i>
(10)	Mr. Muhammad Akhtar Mengal	<i>Member</i>
(11)	Nawabzada Shazain Bugti	<i>Member</i>
(12)	Malik Sohail Khan	<i>Member</i>
(13)	Mr. Mohammad Pervaiz Malik	<i>Member</i>
(14)	Mr. Nadeem Abbas	<i>Member</i>
(15)	Ms. Maryam Aurangzaib	<i>Member</i>
(16)	Syed Agha Rafiullah	<i>Member</i>
(17)	Nawab Muhammad Yousuf Talpur	<i>Member</i>
(18)	Mr. Abdul Qadir Patel	<i>Member</i>
(19)	Mr. Asmatullah	<i>Member</i>
(20)	Mr. Ijaz Ahmad Shah, Minister for Interior	<i>Ex-officio Member</i>

3. The Committee considered the Bill as introduced in the National Assembly placed at **Annex-A**, in its meeting held on 28-7-2020, 29-7-2020, 7-8-2020, 10-8-2020 and 11-8-2020 and proposed following amendments, therein:-

Clause 2

In clause 2.—

- (i) the entire paragraphs shall be re-numbered alphabetically and re-marked accordingly;
- (ii) after re-numbered paragraph (n), following new paragraph “(o)”, shall be inserted, and the remaining clauses shall be re-marked accordingly:-

“(o) “Provincial Government” means the Government defined under Presidential Order No.1 of 1980”.—

- (iii) In paragraph,(d) the expression, “the oversight bodies of SRBs”, shall be omitted.

Caluse-17

In clause 17.—

- (i) In sub-clause (1), for the full stop at the end, semicolon shall be substituted, and thereafter the following proviso shall be added, namely:

“Provided that the director while inspecting the record under this sub-section, shall state the reasons in writing for such inspection.”

- (ii) In sub-clause (7), the word and comma, “financing,” shall be omitted.

Clause 20

In clause 20, In sub-clause (3), for the full stop at the end, semicolon shall be substituted, and thereafter the following proviso shall be added; namely:

“Provided that reasons of obtaining any kind of information, record shall be communicated to the trust along with notice of obtaining such information, record etc.”

Clause 106

After clause 106, following new clauses shall be added, namely.

- “107. **Obligator’s duties, liabilities and disabilities.**—The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject so far as may be to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment: Provided further that where he holds the property by virtue of a contract with a person for whose benefit he holds it or with any one through whom such person claims, he may, without the permission of the court, buy or become lessee or mortgagee of the property or any part thereof.

108. **Saving of rights of bona fide purchasers.**—Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration or create an obligation in evasion of any law for the time being in force.

CHAPTER-XI

Miscellaneous

109. **Power to make rules.**—Subject to the approval of the Federal Government, the Chief Commissioner of Islamabad Capital Territory shall make rules to carry out the purposes of this Act within a period not later than the Sixty days from the date of enactment of this Act.

110. **Power to interpret.**—(1) The Chief Commissioner, Islamabad Capital Territory, Islamabad can exercise arbitrary powers to clarify any confusion arising out of the interpretation of the sections of this Act:

Provided that the secretary must—

- (a) refer to the illustrations or explanations mentioned in the Trust Act 1882; and
- (b) consult the Law, Parliamentary Affairs and Human Rights department.

(2) Nothing contained in this section may be interpreted contrary to the judgments of High Courts or Supreme Court of Pakistan, as the case may be.

111. **Repeal.**—The Trust Act, 1882 (II of 1882) is hereby repealed to the extent of Islamabad Capital Territory, Islamabad.

112. **Saving.**—(1) Notwithstanding the aforesaid repeal in section 111 above, anything done, action taken, rules made or notifications issued under the aforesaid Act, so far as it is not inconsistent with the provisions of this Act, shall be deemed to have been made, done or taken under this Act and shall have effect accordingly.

(2) Any document referring to the repealed Act shall be construed as referring to corresponding provisions of this Act:

Provided that all the Trusts registered in Islamabad Capital Territory under the repealed Act shall be freshly registered under this Act within a period of six months.”

4. The Committee recommends that the Bill as reported by the Standing Committee placed at (Annex-B) may be passed by the National Assembly.

Sd-
(TAHIR HUSSAIN)
Secretary
Islamabad 11th August, 2020

-Sd
(RAJA KHURRAM SHAHZAD NAWAZ)
Chairman

ANNEX-A

[AS INTRODUCED IN THE NATIONAL ASSEMBLY]

A

BILL

to define and amend the law relating to trusts

WHEREAS it expedient to enact a law relating to registration, administration and monitoring of trusts registered within the territorial limits of Islamabad Capital Territory;

AND WHEREAS the Trust Act, 1882 (11 of 1882) does not cater effective administration and financial monitoring and evaluation of the trusts;

It is hereby enacted as follows:

CHAPTER-I

PRELIMINARY

1. **Short title extent, commencement and application.**—(1) This Act shall be called the. The Islamabad Capital Territory Trust Act, 2020

(2) It shall extend to the whole of the Islamabad Capital Territory.

(3) It shall come into force at once.

(4) Nothing herein contained shall affect the rules of Muslim law as to *waqf* or the mutual relations of the members of an undivided family as determined by any customary or personal law or to public or private religious or charitable endowments or to trusts to distribute prizes taken in war among the captors.

2. **Definitions.**—In this Act, unless there is anything repugnant in the subject or context;

- (a) “director” means the director of directorate of labour and industries, Islamabad Capital Territory;
- (b) “author of the trust” means the natural person who reposes or declares the confidence and assigns the property to the trustee for the benefit of beneficiary;
- (c) “beneficiary” means the natural person who benefits the confidence of the trust;
- (d) “breach of trust” means breach of any duty imposed on trustee as such by any law for the time being in force;
- (e) “competent authorities” means the ‘regulators’, “the oversight bodies for SRBs as specified in the Anti-Money Laundering Act 2010 (VII of 2010)”, the “investigating or prosecuting agency” and “the Financial Monitoring Unit”;
- (f) “department” means the directorate of labour and industries, Islamabad Capital Territory;
- (g) “district intelligence coordination committee” means the intelligence committee headed by the deputy commissioner or district magistrate, Islamabad Capital Territory, Islamabad and comprising the representatives of police and intelligence agencies;
- (h) “financial monitoring unit” means the financial monitoring unit specified under the Anti-Money Laundering Act, 2010 VII of 2010);
- (i) “home department” means the office of the Chief Commissioner, Islamabad Capital Territory;
- (j) “instrument of the trust” means the instrument by which the trust is declared.
- (k) “interest” means the beneficiary’s right against the trust property;
- (l) “investigating or prosecuting agency” mean an investigating or prosecuting agency as specified in the Anti-Money Laundering Act, 2010 (VII of 2010);

- (m) “law department” means directorate of law, Chief Commissioners’ office, Islamabad Capital Territory;
- (n) “notice” means a person is said to have known of a fact either when he actually knows that fact, or when, but for willful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Contract Act, 1872 (IX of 1872), and all expressions used herein and defined in the Contract Act, 1872 (IX of 1872), shall be deemed to have the meanings respectively attributed to them by that Act;
- (o) “prescribed” means prescribed by rules made under this Act;
- (p) “purpose” means any lawful purpose unless it is—
 - (i) forbidden by law; or
 - (ii) is of such a nature that, if permitted, it would defeat the provisions of any law; or
 - (iii) is fraudulent; or
 - (iv) involves or implies injury to the person or property of another; or
 - (v) the court regards it as immoral or opposed to public policy;
- (q) “registered” means registered with the director;
- (r) “reporting entity” means an entity specified under the Anti-Money Laundering Act 2010;
- (s) “revenue department” means office of the district collector, Islamabad Capital Territory;
- (t) “trust property” means the subject matter of the trust; it may be movable or immovable property;
- (u) “trust” means an obligation annexed to the ownership of property and rising out of the confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of beneficiary; and
- (v) “trustee” means any person who accepts the confidence of the author of the trust to the benefit of the beneficiary.

CHAPTER-II

OF THE CREATION OF THE TRUSTS

3. **Validity of trust.**—(1) No trust in relation to any immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered or by the will of the author of the trust or of the trustee and its ownership is transferred to the trust.

(2) No trust in relation to movable property is valid unless declared as aforesaid or unless the ownership of the property is transferred to the trust.

4. **Creation of trust.**—(1) Subject to the provisions of section 3, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts—

- (a) an intention on his part to create thereby a trust;
- (b) the purpose of the trust;
- (c) the beneficiary;
- (d) the trust-property; and
- (e) transfers the trust-property to the trustee unless the trust is declared by will or the author of the trust is himself to be the trustee.

(2) Every trust for which the purpose of the trust is unlawful is void and where it is created for more than one purpose and one of the purposes is unlawful then whole of the trust is void.

5. **Who may create trusts.**—A trust may subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust property be created—

- (a) by every natural person competent to contract under the Contract Act, 1872 (IX of 1872); or
- (b) with the permission of a principal civil court of original jurisdiction by or on behalf of a minor.

6. **Subject of trust.**—The subject matter of a trust must be property transferable to the beneficiary and it must not be merely beneficial interest under a subsisting trust.

7. **Who may be beneficiary.**—Every natural person capable of holding property may be a beneficiary and no legal person shall be a beneficiary under this Act.

8. **Disclaimer by beneficiary.**—A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee or by setting up with notice of the trust a claim inconsistent therewith.

9. **Who may be trustee.**—Every natural person capable of holding property and not a legal person may be a trustee but, where the trust involves the exercise of discretion, he shall not execute it unless he is competent to contract under the Contract Act, 1872 (IX of 1372).

10. **Acceptance to trust.**—(1) A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

(2) Each of the trustee accepting the trust in this section shall provide an affidavit that the trustee has read and understood the duties and liabilities of the trustee as mentioned in Chapter-IV;

11. **Disclaimer of trust.**—(1) Instead of accepting a trust, the intended trustee may, within a period of sixty days, disclaim it and such disclaimer shall prevent the trust-property from vesting in him.

(2) in case of more than one trustees, if one of trustees, disclaims to be a trustee, it shall not automatically confer the disclaiming trustee's rights on the other trustees. The author of the trust shall either (a) explicitly allow the co-trustees to proceed in case of any of the member's disclaimer, or (b) write a new trust-deed.

CHAPTER-III

OF THE ADMINISTRATION OF THE TRUSTS

12. **Trusts to be registered**—No Trust shall be functional unless it is registered under this Act with the Directorate of Labor and Industries, Islamabad Capital Territory, Islamabad.

13. **Application for registration**—(1) For every trust required to be registered under this Act, the trustee shall provide to the director at or before the time of registration, the information regarding the purpose, author of the trust, details of the trustees, Beneficiaries of the trust, and any other natural person exercising

ultimate effective control over the trust as prescribed, to the satisfaction of the department.

Explanation.—In case of more than one trustees, all the trustees will nominate one trustee who shall be responsible for the provision of information.

(2) The details of the information required to be provided under sub-section (1) above shall be prescribed.

14. **Verification of the application.**—The director shall verify the contents and particulars of the application before the registration through the investigating or prosecuting agencies who shall submit the verified report to the Director within 14 days of receiving the request from him.

15. **Registration of the properties**—(1) All movable and immovable properties must be registered in the name of the Trust under the Registration Act, 1908.

(2) Without prejudice to the Registration Act 1908, the registration of the properties must include the details of authors of the trust, beneficiaries, trustee, co-trustee, if any, and any other natural person exercising ultimate effective control over the trust.

16. **Certificate of registration.**—(1) The director, after fulfillment of legal requirements, as mentioned in the sections 13 to 15, shall register the trust under this Act and issue a certificate of registration to the trustee.

(2) The director, for the reasons to be recorded in writing, may refuse the registration of the application, if—

- (a). the purpose of the trust is unlawful or the trust proceeds are suspected to be proceeds of crime, as the investigating or prosecuting agencies inform the director under section 14 and the director may refer back the application to the law enforcement agencies for legal action or any of the members of the trust including author, trustees or any other person exercising ultimate effective control over the trust are declared proscribed by the office of the Chief Commissioner, Islamabad Capital Territory, or associated with the proscribed organizations under the Anti-Terrorism Act, 1997 or under the United Nations Security Council Act, 1943, and in such cases as mentioned in clause (b), the director shall share the details of individuals with the Ministry of Interior and Ministry of Foreign Affairs through the home department; or

- (b). the district intelligence coordination committee considers the trust a threat to national security; or
- (c) the author of the trust, trustee, beneficiary, or any person acting on their behalf fail to provide the complete personal details required under section 13 for the registration and functioning of the trust; or
- (d) any other reason as may be prescribed.

17. **Power to inspect record and compliance.**—(1) The director, or the district magistrate, ICT or the provincial government may summon any information relating to the trust from the trustee for any purpose, and shall have the power to inspect such record at any time.

(2). The officer summoning the record under sub-section (1) may share it with the competent authorities upon written request through the office of Chief Commissioner, Islamabad Capital Territory any information about the trust, trust assets, trust proceeds, author of the trust, trustee, beneficiary or any other person exercising ultimate effective control over the trust.

(3) The director may also share the information under this section relating to the trust assets and beneficiaries with the reporting entity upon request.

(4) The director may after conviction by the competent court of law impose financial penalty up to Rupees one million, if a trustee is found in violation to the purpose of the trust or fails to provide the information under sub-section (1).

(5) in case of failure to pay the penalty under sub-section (4), the director may seek a legal action through the court of original jurisdiction against the trustees he;cl responsible for non-compliance under this Act, and such legal action may result in imprisonment ranging from one month to six months.

The imprisonment granted under this section shall be for the non-compliance of the provisions of this Act and shall be in addition to the financial penalty already imposed under sub-section (4).

(6) The director may after conviction by the competent court of law impose financial penalty up to Rupees one million, if a trustee fails to provide the information required under sections 20 and 22, or fails to obtain and hold the information required under section 23. In addition, the trustee shall also be liable for imprisonment of minimum three months to a Maximum of six months if he fails to make information

available to the competent authorities as required under section 20 or to the department or director for the purposes of sharing information under section 20. This punishment shall be awarded by a court of the original jurisdiction.

(7) The director may further take over the properties of the trust or freeze its assets or remove a trustee or a beneficiary from the trust and assign new trustees or beneficiary through a legal order from a court of original jurisdiction in case the trust or trustee or beneficiary is convicted of a criminal offence, including terror financing, financing, money laundering or a threat to national security.

(8) Nothing in sub-sections (2), (3), (4), (5) and (6) shall limit the person's basic right of being given fair trial opportunity and appeal to the secretary of the Division concerned or the appellant court, as the case may be.

18. Power to obtain the registration record.—The department shall obtain the registration of trust record from the revenue department *i.e.* district collector, ICT, which was held by it before the enactment of this Act within a period of sixty days from the date of enactment of this Act, and, the department shall make efforts make the trust record in conformity with the provisions of this Act.

19. Register of trusts.—(1) The director shall maintain a register of the trusts in such manner as may be prescribed.

(2) The register shall contain information, including but not limited to the name and details of every trust, its purpose, author, trustee, beneficiaries, any person exercising ultimate effective control over the trust and other information as required by the department.

(3) The details must also include, if any of the person associated with the trust is living in Pakistan or outside Pakistan along with their residential addresses.

(4) The department shall explain the extent of the details of individuals as included in the sub-sections (1), (2) and (3) to be made public in a manner and circumstances as may be prescribed.

20. Access to the information—(1) The director may at any time require any information relating to the trust from the trustee, and the trustee is bound to provide the information in a timely manner as may be prescribed.

(2) For purposes of domestic and international cooperation, competent authorities may at any time require any information relating to the trust from the trustee, and the trustee shall provide the information in a timely manner as may be prescribed. Both the request of the competent authorities and response of the trustee shall be routed through the provincial government in a timely manner as may be prescribed.

(3) The reporting entity may, in a timely manner as may be prescribed, also obtain the information from the trustee about the details of trust assets, residential addresses of trustees and details of beneficiaries, however such request and response shall be routed through the department.

21. **Legal arrangement for holding the property.**—A trust may hold immovable and movable property under its name, or may sell or dispose of the property being held by it. Such sale and purchase shall *be* the responsibility of the trustee.

CHAPTER-IV

OF THE DUTIES AND LIABILITIES OF TRUSTEES

22. **Trustee to execute trust.**—(1) The trustee is bound to fulfill the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

(2) Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal civil court of original jurisdiction.

(3) Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

Explanation.—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be—

(a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death; and

(b) in the case of debts not bearing interest, to make such payment without interest.

(4) A trustee, or all of the trustees, as the case may be, are bound to disclose the fact that they are trustees when entering into a business relationship or carrying out an occasional transaction with a reporting entity.

23. **Trustee to collect and hold information.**—(1) A trustee or each of the trustees, as the case may be, must collect and hold information about the author of the trust, co trustee, if any, beneficiaries of the trust, and any other natural person exercising ultimate effective control over the trust to his satisfaction and requirement of the department, before the execution of the trust as mentioned in section 22.

(2) The trustee must provide the updated information under this Act to the director in timely manner as may be prescribed. In case of more than one trustee, only one trustee shall be nominated by other co-trustees for the purpose of provision of information.

(3) The trustees or the trustee shall collect and hold basic information about the other service providers to the trust including, but not limited to, investment advisers or managers, accountants or tax advisers, and, provide this information to the director even after the registration of the trust, in the circumstances and manner as may be prescribed.

(4) The details of the information required to be collected and held under sub-sections (1), (2), and (3) shall be as may be prescribed.

(5) The trustees or the trustee shall further inform the provincial government or the director and law enforcement agencies if it comes to their knowledge of any illegal utilization of the trust money by the beneficiaries, after and during the execution of the trust.

24. Trustee to inform himself to state of trust-property—A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust property to obtain, where necessary, a transfer of the trust property to himself and subject to the provisions of the instrument of trust to get in trust-money invested or insufficient or hazardous security.

Illustrations.—(a) The trust-property is a debt outstanding on personal security. The Instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(b) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

25. Trustee to protect title to trust-property.—A trustee is bound to maintain and defend all such suits, and subject to the provisions of the instrument of trust to take such other steps, as regards being had to the nature and amount or value to the trust Property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

Illustrations.—The trust-property is immovable property, which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the law for the registration of the documents, the trustee's duty is to cause the instrument to be registered.

26. **Trustee not to set up title adverse to beneficiary.**—The trustee must not for himself set up or aid any title to the trust-property adverse to the interest of the beneficiary.

27. **Core required from trustee.**—A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

28. **Conversion of perishable property.**—Where the trust is created for the benefit of several persons in succession, and the trust-property is of a Perishable nature or a future or reversionary interest, the trustee is bound unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediate profitable character.

29. **Trustee to be Impartial.**—(1) Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

(2) Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the court to control the exercise of same reasonably and in good faith.

30. **Trustee to prevent waste.**—Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit any act, which is destructive, or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

31. **Accounts and information.**—A trustee or each of the trustee, as the case may be, is bound to—

- (a) keep clear and accurate accounts of the trust-property and income;
- (b) at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property;
- (c) update the information in a timely manner about the author of the trust, beneficiaries, trustees, any other natural person exercising ultimate control over the trust, trust assets and incomes;

Explanation.—The details of the information shall be as may be prescribed in this Act;

- (d) get accounts audited by a third party at least once in a year;
- (e) submit financial reports to the director in every financial year; and
- (f) shall maintain the information collected under this section, and, section 23 for a period not less than the five years after their involvement with the trust ceases, or, the trust is extinguished.

32. **investment o trust-money.**—(1) Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound subject to any direction contained in the instrument of trust to invest the money on the following securities, and on no other, namely:—

- (a) in promissory notes, debentures, stock or other securities of a Provincial or Federal Government:

Provided that securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any government, shall be deemed, for the purposes of this clause, to be securities of such Government; and

- (b) on any other security expressly authorized by the instrument of trust, or by any rule which the High Court may prescribe in this behalf.

33. **Power to purchase redeemable stock at a premium.**—A trustee may invest in any of the securities mentioned or referred to in section 32, notwithstanding that the same may be redeemable and that the price exceeds the redemption value, and a trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section.

34. **Sale by trustee directed to sell within specified.**—Where a trustee, directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by a principal civil court of original jurisdiction.

35. **Liability for breach of trust.**—(1) Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary, has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of facts of the case and of his rights as against the trustee.

(2) A trustee committing a breach of trust is not liable to pay interest except in the following cases, namely:—

- (a) where he has actually received interest;
- (b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary;
- (c) where the trustee ought to have received interest, but has not done so;
- (d) where he may be fairly presumed to have received interest. He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c) and (d), to account for simple interest at the rate of six per cent per annum, unless the court otherwise directs;
- (e) where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest with half-yearly rests at the same rate; and
- (f) where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the net profits made by such employment.

36. **No set-off allowed to trustee.**—A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust property cannot set-off against his liability again which has accrued to another portion of the trust-property through another and distinct breach of trust.

37. **Non-liability for predecessor's default.**—Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

38. **No-liability for co-trustee's default.**—(1) Subject to the provisions of sections 25 and 27, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

- (a). Where he has delivered trust-property to his co-trustee without seeing to its proper application;

- (b). where he allows his co-trustee to receive trust-property and fails to make due inquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require;
- (c). where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

(2) A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee

39. **Several liabilities of co-trustee.**—(1) Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

(2) As between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss; and, if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

(3) Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

40. **Non-liability of trustee paying without notice of transfer by beneficiary.**—When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

41. **Liability of trustees where beneficiary's interest is forfeited to the Government.**—When the beneficiary's interest is forfeited or awarded by legal adjudication to the government or federal government, the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the government may direct in this behalf.

42. **Indemnity of trustees.**—Subject to the provisions of the instrument of trust and of sections 35 and 33, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

CHAPTER-V

OF RIGHTS AND POWERS OF TRUSTEE

43. **Right to title-deed.**—A trustee is entitled to have in his possession the instrument of trust and all the documents of title if any relating solely to the trust-property.

44. **Right to reimbursement of expenses.**—(1) Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses property incurred in or about the execution of the trust, or the realization, preservation or benefit of the trust-property, or the protection or support of the beneficiary,

(2) If the trust-property fails, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

(3) Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fails, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

45. **Right to indemnity from gainer by breach of trust.**—(1) A person other than trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is beneficiary the trustee has a charge on his interest for such amount.

(2) Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

46. **Right to apply to Court for opinion in management of trust-property.**—(1) Any trustee may, without instituting a suit, apply by petition to a principal civil court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the court for summary disposal.

(2) A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the court thinks fit.

(3) The costs of every application under this section shall be in the discretion of the court to which it is made.

47. **Right to settlement of accounts.**—When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust property examined and settled and, where nothing is due to the beneficiary under the trust, to an acknowledgement in writing to that effect.

48. **General authority of trustee**—(1) in addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 29, a trustee may do all acts which are reasonable and proper for the realization, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

(2) Except with the permission of a principal civil court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of execution of the lease, nor without reserving the best yearly rent that can be reasonably obtained.

49. **Power to sell in lots, an either by public auction or private contract.**—Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

50. **Power to sell under specie conditions Power to buy-in-and resell.**—(1) The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and resell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

(2) Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

51. **Power to convey.**—For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

52. **Power to Vail! Investments.**—A trustee may, at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section 32, and from time to time vary any such investments for others of the same nature.

53. Power to apply property of minors, etc., for their maintenance etc.—(1) Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians if any of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 32, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen:

Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

(2) Where the income of the trust- property is insufficient for the minor's maintenance or education or advancement of life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal civil court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement. or expenses.

(3) Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

54. Power to givs receipts.— Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust of power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering, the same there from, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

55. Power to compound, etc.—(1) Two or more trustees acting together may, if they think appropriate:

- (a) accept any composition or any security for any debt or for any property
- (b) allow any time for payment of any debt;
- (c) compromise, compound, abandon, submit to arbitration or otherwise settle and debt, account, claim or thing whatever relating to the trust; and

- (d) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

(2) The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorized to execute the trusts and powers thereof.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

56. Power to several trustees of whom one disclaims or dies.—When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

57. Suspension of trustee's powers by decree—Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER-VI

OF THE DISABILITIES OF TRUSTEES

58. Trustees cannot renounce after acceptance.—A trustee who has accepted. -the Trust cannot afterwards renounce it except.—

- (a) with the permission of a principal civil court of original jurisdiction, or
- (b) if the beneficiary is competent to contract, with his consent, or
- (c) by virtue of a special power in the instrument of trust.

59. Trustee cannot delegate.—A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless—

- (a) the instrument of trust so provides, or

- (b) the delegation is in the regular course of business, or
- (c) the delegation is necessary, or
- (d) the beneficiary, being competent to contract, consents to the delegation.

Explanation.—The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

60. **Co-trustees cannot act singly**—When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

61. **Control of discretionary power.**—Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal civil court of original jurisdiction.

62. **Trustee may not charge for services.**—In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Nothing in this section applies to any official trustee, administrator general, public curator, or person holding a certificate of administration.

63. **Trustee may not use trust-property for his own profit.**—A trustee shall not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust.

64. **Trustee for sale or his agent may not buy.**—No trust whose duty it is to sell trust property and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

65. **Trustee may not buy beneficiary's interest without permission.**—
(1) No trustee and no person who has recently ceased to be a trustee, may, without the permission of a principal civil court of original jurisdiction, buy or become mortgagee or lessee of the trust property or any part thereof and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

(2) No trustee whose duty it is to buy or to obtain a mortgage of lease of particular property for the beneficiary may buy it or any part thereof or obtain a mortgage or lease of it or any part thereof, for himself.

66. **Co-trustee may not lend to one of themselves.**—A trustee or co-trustee whose duty, it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by or on the personal security of himself, or one of his co-trustees.

CHAPTER-VII

OF RIGHTS AND LIABILITIES OF BENEFICIARY

67. **Rights to rents and profits.**—The beneficiary has subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

68. **Right to specific execution.**—The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest.—

(2) **Right to transfer of possession.**—Where is only one beneficiary and he is competent to contract or where there are several beneficiaries and they are competent to contract and all are of one mind, he or they may require the trustee to transfer the trust property to him or them, or to such person as he or they may direct.

(3) When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest nothing in sub-section (2) applies to such property during her marriage.

69. **Right to inspect and take copies of instrument of trust accounts, etc.**—The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust property, the accounts of the trust property and the vouchers if any by which they are supported and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

70. **Right to transfer beneficial interest.**—The beneficiary, if competent to contract, may transfer his interest but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

71. **Right to sue for execution of trust.**—Where no trustees are appointed or all the trustees die, disclaim, or discharged or where for any other reason the execution of a trust by the trustee is or becomes impracticable. The beneficiary may institute a suit for the execution of the trust and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

72. **Right to proper trustees.**—(1) The beneficiary has a right subject to the provisions of the instrument of trust, that the trust property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

(2) A person domiciled abroad, alien enemy a person having an interest inconsistent with that of the beneficiary, a person in insolvent circumstances; and unless the personal law of the beneficiary allows otherwise and a minor are not proper persons under this section.

73. **Right to compel to any act of duty.**—The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such and restrain from committing any contemplated or probable breach of trust.

74. **Wrongful purchase by trustee.**—(1) Where a trustee has wrongfully bought trust property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase money paid by the trustee, with interest, and such other expenses, if any as he has properly incurred in the preservation of the property and the trustee or purchaser must:

- (a) account for the net profits of the property;
- (b) be charged with an occupation-rent, if he has been in actual possession of the property; and
- (c) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

- (2) Nothing in this section—
 - (i) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or retransferred, have contracted in good faith with the trustee or purchaser; or
 - (ii) entitles the beneficiary to have the property declared subject to the trust or retransferred where he being competent to contract has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

75. Trust property into the hands of third persons.—(1) Where trust property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit or a declaration, that the property is comprised in the trust.

(2) Where the trustee has disposed of trust property and the money or other property which he has received therefore can be traced in his hands or the hands of his legal representative or legatee, the beneficiary has in respect thereof, rights as merely as may be the same as his rights in respect of the original trust property.

76. Saving of rights of certain transferees.—Nothing in section 75 entitles the beneficiary to any right in respect of property in the hands of—

- (a) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or
- (b) a transferee for consideration from such a transferee.

(2) A judgment creditor of the trustee attaching and purchasing trust property is not a transferee for consideration within the meaning of this section.

(3) Nothing in section 75 applies to money currency notes, negotiable instruments in the hands of a *bona fide* holder to whom they have passed in circulation, or shall be deemed to affect the Contract-Act, 1872 (IX of 1872), section 108, or the liability of a person to whom a debt or charge is transferred.

77. Acquisition by trustee of trust-property.—Where a trustee wrongfully sells or transfers trust property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

78. **Right in case of blended property.**—Where the trustee wrongfully mingles the trust property with his own, the beneficiary is entitled to a change on the whole fund for the amount due to him.

79. **Wrongful employment by partner-trustee.**—(1) If a partner, being a trustee, wrongfully employs trust property in the business or on the account of the partnership, on other partner is liable therefore in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

(2) The partners having such notice are jointly and severally liable for the breach of trust.

80. **Liability of beneficiary joining in breach of trust**—(1) Liability of beneficiary in committing breach of trust arises where one of several beneficiaries—

- (a). joins in committing breach of trust, or
- (b). knowingly obtains any advantage there from, without the consent of the other beneficiaries, or
- (c). becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or
- (d). has deceived the trustee and thereby induced him to commit a breach of trust, the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him, otherwise than as transferees for consideration without notice of the breach, until the loss caused by the breach has been compensated.

(2) When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

81. **Rights and liabilities of beneficiary's transferee.**—Every person to whom a beneficiary transfers his interest has the rights and is subject to the liabilities of the beneficiary in respect of such interest at the date of the transfer.

CHAPTER-III

OF VACATING THE OFFICE OF TRUSTEE

82. **Office how vacated.**—The office of a trustee is vacated by his death or by his discharge from his office.

83. **Discharge of trustee.**—the trustee may be discharged from his office only as follows—

- (a). by the extinction of the trust;
- (b). by the completion of his duties under the trust;
- (c). by such means as may be prescribed by the instrument of trust;
- (d). by appointment under this Act of a new trustee in his place;
- (e). by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract;
- (f). by the executive order of the Director if any of the trustee:
 - (i). is convicted by a court in criminal case;
 - (ii). fails to fulfill any of the duty or obligation required under this Act;
or
 - (iii). has been penalized under the sections 17 (c) and (e) above; and
- (g). by the court to which a petition for his discharge is presented under this Act.

84. **Petition to be discharged from trust.**—Notwithstanding the provisions of section 22, every trustee may apply by petition to a principal civil court of original jurisdiction to be discharged from his office and if the court finds that there is sufficient reason for such discharge, it may discharge him accordingly and direct his costs to be paid out of the trust property. But where there is no such reason, the court shall not discharge him, unless a proper person can be found to take his place.

85. **Appointment of new trustees on death, etc.**—(1) Whenever any person appointed a trustee disclaims of any trustee, either original or substituted, dies or is for a continuous period of six months absent from Pakistan, or leaves Pakistan for the purpose of residing abroad or is declared an insolvent or desires to be discharged from the trust or refuses or becomes in the opinion of a principal civil court of original jurisdiction unfit or personally incapable to act in the trust or accepts an inconsistent trust, a new trustee may be appointed in his place by—

- (a). the person nominated for that purpose by the instrument or trust (if any), or

- (b). if there be no such person or no such person able and willing to act, the author of the trust if he be alive and competent to contract or the surviving or continuing trustee or trustee for the time being, or legal representative of the last surviving and continuing trustee, or with the consent of the court, the retiring trustee, if they all retire simultaneously, or with the like consent, the last retiring trustee.

(2). Every such appointment shall be in writing under the hand of the person making it.

(3). On an appointment of new trustee the number of trustees may be increased.

(4). The official trustee may, with his consent and by the order of the court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be sole trustee.

(5). The provisions of this section relative to a trustee who is a dead include the case of a person nominated trustee in a will but dying before the testator and those relative to a continuing trustee included refusing or retiring trustee if willing to act in the execution of the power.

86. Appointment by Court.—(1) Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 35, the beneficiary may, without instituting a suit, apply by petition to a principal civil court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

(2) **Rule for selecting new trustees.**—In appointing new trustees, the court shall have regard have regard.

- (a). to the wishes of the author of the trust, as expressed in or to be inferred from the instrument of trust;
- (b). To the wishes of the person, if any, empowered to appoint new trustees;
- (c). To the question whether the appointment shall promote or impede the execution of the trust; and
- (d). Where there are more beneficiaries than one to the interests of all such beneficiaries.

87. Vesting of trust property in new trustees.—(1) Whenever any new trustee is appointed under sections 85 or 86, all the trust property for the time

being vested in the surviving or continuing trustees or trustee or in the legal representative of any trustee shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee as the case may require.

(2) **Power of new trustees.**—Every new trustee so appointed and every trustee appointed by a court, either before or after the passing of this Act, shall have the same powers, authorities and discretions and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

88. **Survival of trust.**—On the death or discharge of one of several co-trustees, the trust survives and the trust property passes to the others, unless the instrument of trust expressly declares, otherwise.

CHAPTER IX

OF THE EXTINCTION OF TRUSTS

89. **Trust how extinguished.**—A trust is extinguished—

- (a) when its purpose is completely fulfilled; or
- (b) when the director considers and has sufficient reasons to believe that the activities of the trust are included in the section 16 (b) of this Act and records reasons in the order to extinct the trust; or
- (c) when the fulfillment of its purpose becomes impossible by destruction of the trust property or otherwise; or
- (d) when the trust being revocable is expressly revoked:

Provided that reasonable defense opportunity has been given to the trust in case of sub-section (c), above and the trust has the right of appeal to the department.

90. **Revocation of trust.**—(1) A trust created under this Act shall be revoked at the pleasure of the testator.

- (2) A trust otherwise created can be revoked only—
 - (a) where all the beneficiaries are competent to contract by their consents;
 - (b) where the trust has been declared by non testamentary instrument or by word of mouth, in exercise of a power of revocation expressly reserved to the author of the trust; or

- (c) where the trust is for the payment of the debts of the author of the trust and has not been communicated to the creditors at the pleasure of the author of the trust.

Illustration.—A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

91. **Revocation not to defeat what trustees have duly done.**—No trust can be revoked by the author of the trust so as to defeat or prejudice, what the trustees may have duly done in execution of the trust.

CHAPTER X

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS

92. **obligation In nature of trust is created.**—An obligation in the nature of a trust is created in the cases mentioned in section 93

93. **Transferor intended to dispose of beneficial interest.**—Where the owner of property transfers or bequeaths and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

94. **Transfer to one for consideration paid by another.**—Where property is transferred to one person for a consideration paid by another person and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration. This section shall not affect, the provisions of the Code of Civil Procedure, 1908.

95. **Trust incapable of execution without exhausting trust-property.**—Where a trust is incapable of being executed or where the trust is completely executed without exhausting the trust property, the trustee, in the absence of a direction to the contrary, must hold the trust property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

96. **Transfer for illegal purpose.**—Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution or the transferor is not as guilty as the transferee or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

97. **Bequest for illegal purpose.**—(1) Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's life time the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

(2) Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

98. **Transfer pursuant to rescindable contract.**—Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

99. **Debtor becoming creditor's representative.**—Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

100. **Advantage gained by fiduciary.**—Where a trustee, executor, partner, agent, director of a company, legal advisor, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage or where any person so bound enters into any dealings under circumstances in which his own interests are or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

101. **Advantage gained by exercise of undue influence.**—Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

102. **Advantage gained by qualified owner.**—Where a tenant for life, co-owner, mortgagee or other qualified owner of any property by availing himself of his position as such gains an advantage in derogation of the rights of the other persons interested in the property or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred and to an indemnity by the same persons against liabilities properly contracted in gaining such advantage.

103. **Property acquired with notice of existing contract.**—Where a person acquires property with notice that another person has entered into an existing

contract affecting that property of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

104. **Properly to be held on trust.**—Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

105. **Advantage secretly gained by one of several compounding creditors.**—Where creditors compound the debts due to them and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

106. **Constructive trusts in cases not expressly provided for.**—In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof, as the case may be to the extent necessary to satisfy their just demands.

No. 5/25/2020-ICT-II

GOVERNMENT OF PAKISTAN

MINISTRY OF INTERIOR

STATEMENT OF OBJECTS AND REASONS

SUBJECT.—**AMENDMENT IN THE ISLAMABAD CAPITAL TERRITORY TRUST ACT, 2020**

In order to enhance the effectiveness of the implementation of the Orders passed by the Federal Government to cater effective administration and financial monitoring and evaluation of the trusts relating to registration, administration and monitoring of trusts registered within the territorial limits of Islamabad Capital Territory. Furthermore, the facilities required for meeting the necessary expenses through exemptions are also required to be incorporated in detail.

ZAHEER-UD-DIN BABAR AWAN,
*Advisor to Prime Minister
on Parliamentary Affairs.*

[AS REPORTED BY STANDING COMMITTEE]

A

BILL

to define and amend the law relating to trusts

WHEREAS it expedient to enact a law relating to registration, administration and monitoring of trusts registered within the territorial limits of Islamabad Capital Territory;

AND WHEREAS the Trust Act, 1882 (11 of 1882) does not cater effective administration and financial monitoring and evaluation of the trusts;

It is hereby enacted as follows:

CHAPTER I

PRELIMINARY

1. **Short title extent, commencement and application.**—(1) This Act shall be called The Islamabad Capital Territory Trust Act, 2020.

(2) It shall extend to the whole of the Islamabad Capital Territory.

(3) It shall come into force at once.

(4) Nothing herein contained shall affect the rules of Muslim law as to *waqf* or the mutual relations of the members of an undivided family as determined by any customary or personal law or to public or private religious or charitable endowments or to trusts to distribute prizes taken in war among the captors.

2. **Definitions.**—In this Act, unless there is anything repugnant in the subject or context:—

- (a) “author of the trust” means the natural person who reposes or declares the confidence and assigns the property to the trustee for the benefit of beneficiary;
- (b) “beneficiary” means the natural person who benefits the confidence of the trust:

- (c) “breach of trust” means breach of any duty imposed on trustee as such by any law for the time being in force;
- (d) “competent authorities” means the ‘regulators’, “the oversight bodies for SRBs as specified in the Anti-Money Laundering Act, 2010 (VII of 2010)”, the “investigating or prosecuting agency” and “the Financial Monitoring Unit”;
- (e) “department” means the directorate of labour and industries, Islamabad Capital Territory;
- (f) “director” means the director of directorate of labour and industries, Islamabad Capital Territory; “district intelligence coordination committee” means the intelligence committee headed by the deputy commissioner or district magistrate, Islamabad Capital Territory, Islamabad and comprising the representatives of police and intelligence agencies;
- (g) “financial monitoring unit” means the financial monitoring unit specified under the Anti-Money Laundering Act, 2010 (VII of 2010);
- (h) “home department” means the office of the Chief Commissioner, Islamabad Capital Territory;
- (i) “instrument of the trust” means the instrument by which the trust is declared.
- (j) “interest” means the beneficiary’s right against the trust property;
- (k) “investigating or prosecuting agency” means an investigating or prosecuting agency as specified in the Anti-Money Laundering Act, 2010 (VII of 2010);
- (l) “law department” means directorate of law, Chief Commissioners’ office, Islamabad Capital Territory;
- (m) “notice” means a person is said to have known of a fact either when he actually knows that fact, or when, but for willful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Contract Act, 1872 (IX of 1872), and all expressions used herein and defined in the Contract Act, 1872 (IX of 1872), shall be deemed to have the meanings respectively attributed to them by that Act;

- (n) “prescribed” means prescribed by rules made under this Act;
- (o) “provincial government” means the government defined under Presidential Order No. 1 of 1980;
- (p) “purpose” means any lawful purpose unless it is—
 - (i) forbidden by law; or
 - (ii) is of such a nature that, if permitted, it would defeat the provisions of any law; or
 - (iii) is fraudulent; or
 - (iv) involves or implies injury to the person or property of another; or
 - (v) the court regards it as immoral or opposed to public policy;
- (q) “registered” means registered with the director;
- (r) “reporting entity” means an entity specified under the Anti-Money Laundering Act, 2010;
- (s) “revenue department” means office of the district collector, Islamabad Capital Territory;
- (t) “trust” means an obligation annexed to the ownership of property and arising out of the confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of beneficiary;
- (u) “trustee” means any person who accepts the confidence of the author of the trust to the benefit of the beneficiary; and
- (v) “trust property” means the subject matter of the trust; it may be movable or immovable property;

CHAPTER-II

OF THE CREATION OF THE TRUSTS

3. **Validity of trust.**—(1) No trust in relation to any immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered or by the will of the author of the trust or of the trustee and its ownership is transferred to the trust.

(2) No trust in relation to movable property is valid unless declared as aforesaid or unless the ownership of the property is transferred to the trust.

4. **Creation of trust.**—(1) Subject to the provisions of section 3, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts—

- (a) an intention on his part to Create thereby a trust;
- (b) the purpose of the trust;
- (c) the beneficiary;
- (d) the trust-property; and
- (e) transfers the trust-property to the trustee unless the trust is declared by will or the author of the trust is himself to be the trustee.

(2) Every trust for which the purpose of the trust is unlawful is void and where it is created for more than one purpose and one of the purposes is unlawful then whole of the trust is void.

5. **Who may create trusts.**—A trust may subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust property be created —

- (a) by every natural person competent to contract under the Contract Act, 1872 (IX of 1872); or
- (b) with the permission of a principal civil court of original jurisdiction by or on behalf of a minor.

6. **Subject of trust.**—The subject matter of a trust must be property transferable to the beneficiary and it must not be merely beneficial interest under a subsisting trust.

7. **Who may be beneficiary.**—Every natural person capable of holding property may be a beneficiary and no legal person shall be a beneficiary under this Act.

8. **Disclaimer by beneficiary.**—A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee or by setting up with notice of the trust a claim inconsistent therewith.

9. **Who may be trustee.**—Every natural person capable of holding property and not a legal person may be a trustee but, where the trust involves the exercise of discretion, he shall not execute it unless he is competent to contract under the Contract Act, 1872 (IX of 1872).

10. **Acceptance to trust.**—(1) A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

(2) Each of the trustee accepting the trust in this section shall provide an affidavit that the trustee has read and understood the duties and liabilities of the trustee as mentioned in Chapter-IV;

11. **Disclaimer of trust.**—(1) Instead of accepting a trust, the intended trustee may, within a period of sixty days, disclaim it and such disclaimer shall prevent the trust-property from vesting in him.

(2) In case of more than one trustees, if one of trustees, disclaims to be a trustee, it shall not automatically confer the disclaiming trustee's rights on the other trustees. The author of the trust shall either (a) explicitly allow the co-trustees to proceed in case of any of the member's disclaimer, or (b) write a new trust-deed.

CHAPTER-III

OF THE ADMINISTRATION OF THE TRUSTS

12. **Trusts to be registered.**—No Trust shall be functional unless it is registered under this Act with the Directorate of Labor and Industries, Islamabad Capital Territory, Islamabad.

13. **Application for registration.**—(1) For every trust required to be registered under this Act, the trustee shall provide to the director at or before the time of registration, the information regarding the purpose, author of the trust, details of the trustees, Beneficiaries of the trust, and any other natural person exercising ultimate effective control over the trust as prescribed to the satisfaction of the department.

Explanation.—In case of more than one trustee, all the trustees will nominate one Trustee who shall be responsible for the provision of information

(2) The details of the information required to be provided under sub-section (1) above shall be prescribed.

14. **Verification of the application.**—The director shall verify the contents and particulars of the application before the registration through the investigating or prosecuting agencies who shall submit the verified report to the Director within 14 days of receiving the request from him.

15. **Registration of the properties.**—(1) All movable and immovable properties must be registered in the name of the Trust under the Registration Act, 1908.

(2) Without prejudice to the Registration Act, 1908, the registration of the properties must include the details of authors of the trust, beneficiaries, trustee, co-trustee, if any, and any other natural person exercising ultimate effective control over the trust.

16. **Certificate of registration.**—(1) The director, after fulfillment of legal requirements, as mentioned in the sections 13 to 15, shall register the trust under this Act and issue a certificate of registration to the trustee.

(2) The director, for the reasons to be recorded in writing, may refuse the registration of the application, if—

- (a) the purpose of the trust is unlawful or the trust proceeds are suspected to be proceeds of crime, as the investigating or prosecuting agencies inform the director under section 14 and the director may refer back the application to the law enforcement agencies for legal action or any of the members of the trust including author, trustees or any other person exercising ultimate effective control over the trust are declared proscribed by the office of the Chief Commissioner, Islamabad Capital Territory, or associated with the proscribed organizations under the Anti-Terrorism Act, 1997 or under the United Nations Security Council Act, 1948, and in such cases as mentioned in clause (b), the director shall share the details of individuals with the Ministry of Interior and Ministry of Foreign Affairs through the home department; or
- (b) the district intelligence coordination committee considers the trust a threat to national security; or
- (c) the author of the trust, trustee, beneficiary, or any person acting on their behalf fail to provide the complete personal details required under section 13 for the registration and functioning of the trust; or
- (d) any other reason as may be prescribed.

17. Power to inspect record and compliance.—(1) The director, or the district magistrate, ICT or the provincial government may summon any information relating to the trust from the trustee for any purpose, and shall have the power to inspect such record at any time:

Provided that the director while inspecting the record under this sub-section, shall state the reasons in writing for such inspection.

(2). The officer summoning the record under sub-section (1) may share it with the competent authorities upon written request through the office of Chief Commissioner, Islamabad Capital Territory any information about the trust, trust assets, trust proceeds, author of the trust, trustee, beneficiary or any other person exercising ultimate effective control over the trust.

(3) The director may also share the information under this section relating to the trust assets and beneficiaries with the reporting entity upon request.

(4) The director may after conviction by the competent court of law impose financial penalty up to Rupees one million, if a trustee is found in violation to the purpose of the trust or fails to provide the information under sub-section (1).

(5) In case of failure to pay the penalty under sub-section (4), the director may seek a legal action through the court of original jurisdiction against the trustees held responsible for non-compliance under this Act, and such legal action may result in imprisonment ranging from one month to six months.

The imprisonment granted under this section shall be for the non-compliance of the provisions of this Act and shall be in addition to the financial penalty already imposed under sub-section (4).

(6) The director may after conviction by the competent court of law impose financial penalty up to Rupees one million, if a trustee fails to provide the information required under sections 20 and 22, or fails to obtain and hold the information required under section 23. In addition, the trustee shall also be liable for imprisonment of minimum three months to a maximum of six months if he fails to make information available to the competent authorities as required under section 20 or to the department or director for the purposes of sharing information under section 20. This punishment shall be awarded by a court of the original jurisdiction.

(7) The director may further take over the properties of the trust or freeze its assets or remove a trustee or a beneficiary from the trust and assign new trustees or beneficiary through a legal order from a court of original jurisdiction in case the trust or trustee or beneficiary is convicted of a criminal offence, including terror financing, money laundering or a threat to national security.

(8) Nothing in sub-sections (2), (3), (4), (5) and (6) shall limit the person's basic right of being given fair trial opportunity and appeal to the secretary of the Division concerned or the appellant court, as the case may be.

18. **Power to obtain the registration record.**—The department shall obtain the registration of trust record from the revenue department *i.e.* district collector, ICT, which was held by it before the enactment of this Act within a period of sixty days from the date of enactment of this Act, and, the department shall make efforts to make the trust record in conformity with the provisions of this Act.

19. **Register of trusts.**—(1) The director shall maintain a register of the trusts in such manner as may be prescribed.

(2) The register shall contain information, including but not limited to the name and details of every trust, its purpose, author, trustee, beneficiaries, any person exercising ultimate effective control over the trust and other information as required by the department.

(3) The details must also include, if any of the person associated with the trust is living in Pakistan or outside Pakistan along with their residential addresses.

(4) The department shall explain the extent of the details of individuals as included in the sub-sections (1), (2) and (3) to be made public in a manner and circumstances as may be prescribed.

20. **Access to the information.**—(1) The director may at any time require any information relating to the trust from the trustee, and the trustee is bound to provide the information in a timely manner as may be prescribed.

(2). For purposes of domestic and international cooperation, competent authorities may at any time require any information relating to the trust from the trustee, and the trustee shall provide the information in a timely manner as may be prescribed. Both the request of the competent authorities and response of the trustee shall be routed through the provincial government in a timely manner as may be prescribed.

(3) The reporting entity may, in a timely manner as may be prescribed, also obtain the information from the trustee about the details of trust assets, residential addresses of trustees and details of beneficiaries, however such request and response shall be routed through the department:

Provided that reasons of obtaining any kind of information, record shall be communicated to the trust along with notice of obtaining such information, record etc.

21. **Legal arrangement for holding the property.**—A trust may hold immovable and movable property under its name, or may sell or dispose of the property being held by it. Such sale and purchase shall be the responsibility of the trustee.

CHAPTER IV

OF THE DUTIES AND LIABILITIES OF TRUSTEES

22. **Trustee to execute trust.**—(1) The trustee is bound to fulfill the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

(2). Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal civil court of original jurisdiction.

(3) Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

Explanation.—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be—

- (a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death; and
- (b) in the case of debts not bearing interest, to make such payment without interest.

(4) A trustee, or all of the trustees, as the case may be, are bound to disclose the fact that they are trustees when entering into a business relationship or carrying out an occasional transaction with a reporting entity.

23. **Trustee to collect and hold information.**—(1) A trustee or each of the trustees, as the case may be, must collect and hold information about the author of the trust, co-trustee, if any, beneficiaries of the trust, and any other natural person exercising ultimate effective control over the trust to his satisfaction and requirement of the department, before the execution of the trust as mentioned in section 22.

(2) The trustee must provide the updated information under this Act to the director in timely manner as may be prescribed. In case of more than one trustee, only one trustee shall be nominated by other co-trustees for the purpose of provision of information.

(3) The trustees or the trustee shall collect and hold basic information about the other service providers to the trust including, but not limited to, investment advisers or managers, accountants or tax advisors, and, provide this information to the director even after the registration of the trust, in the circumstances and manner as may be prescribed.

(4) The details of the information required to be collected and held under sub-sections (1), (2), and (3) shall be as may be prescribed.

(5) The trustees or the trustee shall further inform the provincial government or the director and law enforcement agencies if it comes to their knowledge of any illegal utilization of the trust money by the beneficiaries, after and during the execution of the trust.

24. Trustee to inform himself to state of trust-property.—A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust property to obtain, where necessary, a transfer of the trust property to himself and subject to the provisions of the instrument of trust to get in trust-money invested or insufficient or hazardous security.

Illustrations.—(a) The trust-property is a debt outstanding on personal security. The Instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(b) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

25. Trustee to protect title to trust-property.—A trustee is bound to maintain and defend all such suits, and subject to the provisions of the instrument of trust to take such other steps, as regards being had to the nature and amount or value to the trust property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

Illustrations.—The trust-property is immovable property, which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the law for the registration of the documents, the trustee's duty is to cause the instrument to be registered.

26. Trustee not to set up title adverse to beneficiary.—The trustee must not for himself set up or aid any title to the trust-property adverse to the interest of the beneficiary.

27. **Care required from trustee.**—A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such-property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

28. **Conversion of perishable property.**—Where the trust is created for the benefit of several persons in succession, and the trust-property is of a perishable nature or a future or reversionary interest, the trustee is bound unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediate profitable character.

29. **Trustee to be impartial.**—(1) Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

(2) Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the court to control the exercise of same reasonably and in good faith.

30. **Trustee to prevent waste.**—Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit any act, which is destructive, or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

31. **Accounts and information.**—A trustee or each of the trustee, as the case may be, is bound to —

- (a) keep clear and accurate accounts of the trust-property and income;
- (b) at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property;
- (c) update the information in a timely manner about the author of the trust, beneficiaries, trustees, any other natural person exercising ultimate control over the trust, trust assets and incomes;

Explanation.—The details of the information shall be as may be prescribed this Act;

- (d) get accounts audited by a third party at least once in a year;

- (e) submit financial reports to the director in every financial year; and
- (f) shall maintain the information collected under this section, and, section 23 for a period not less than the five years after their involvement with the trust ceases, or, the trust is extinguished.

32. **Investment of trust-money.**—(1) Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound subject to any direction contained in the instrument of trust to invest the money on the following securities, and on no other, namely:

- (a) in promissory notes, debentures, stock or other securities of a Provincial or Federal Government:

Provided that securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any government, shall be deemed, for the purposes of this clause, to be securities of such Government; and

- (b) on any other security expressly authorized by the instrument of trust, or by any rule which the High Court may prescribe in this behalf.

33. **Power to purchase redeemable stock at a premium.**—A trustee may invest in any of the securities mentioned or referred to in section 32, notwithstanding that the same may be redeemable and that the price exceeds the redemption value, and a trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section.

34. **Sale by trustee directed to sell within specified time.**—Where a trustee, directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by a principal civil court of original jurisdiction.

35. **Liability for breach of trust.**—(1) Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary, has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of facts of the case and of his rights as against the trustee.

(2) A trustee committing a breach of trust is not liable to pay interest except in the following cases, namely:-

- (a) where he has actually received interest;
- (b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary;
- (c) where the trustee ought to have received interest, but has not done so;
- (d) where he may be fairly presumed to have received interest. He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c) and (d), to account for simple interest at the rate of six per cent per annum, unless the court otherwise directs;
- (e) where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest with half-yearly rests at the same rate; and
- (f) where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the net profits made by such employment.

36. **No set-off allowed to trustee.**—A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust property cannot set-off against his liability again which has accrued to another portion of the trust-property through another and distinct breach of trust.

37. **Non-liability for predecessor's default.**—Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

38. **Non-liability for co-trustee's default.**—(1) Subject to the provisions of sections 25 and 27, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

- (a) Where he has delivered trust-property to his co-trustee without seeing to its proper application;

- (b) where he allows his co-trustee to receive trust-property and fails to make due inquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require;
- (c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

(2) A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

39. Several liabilities of co-trustee.—(1) Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

(2) As between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss; and, if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

(3) Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

40. Non-liability of trustee paying without notice of transfer by beneficiary.—When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled

46. Right to apply to Court for opinion in management of trust-property.—(1) Any trustee may, without instituting a suit, apply by petition to a principal civil court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the court for summary disposal.

(2) A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the court thinks fit.

(3) The costs of every application under this section shall be in the discretion of the court to which it is made.

47. **Right to settlement of accounts.**—When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled and, where nothing is due to the beneficiary under the trust, to an acknowledgement in writing to that effect.

48. **General authority of trustee.**—(1) In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 29, a trustee may do all acts which are reasonable and proper for the realization, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

(2) Except with the permission of a principal civil court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of execution of the lease, nor without reserving the best yearly rent that can be reasonably obtained.

49. **Power to sell in lots, an either by public auction or private contract.**—Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

50. **Power to sell under special conditions Power to buy-in-and resell.**—(1) The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and resell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

(2) Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

51. **Power to convey.**—For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

52. **Power to vary investments.**—A trustee may, at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section 32, and from time to time vary any such investments for others of the same nature.

53. **Power to apply property of minors, etc., for their maintenance etc.**—(1) Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians if any of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 32, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen:

Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

(2) Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement of life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal civil court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

(3) Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

54. **Power to give receipts.**—Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust of power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering, the same there from, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

55. **Power to compound, etc.**—(1) Two or more trustees acting together may, if they think appropriate,

- (a) accept any composition or any security for any debt or for any property;
- (b) allow any time for payment of any debt;

- (c) compromise, compound, abandon, submit to arbitration or otherwise settle and debt, account, claim or thing whatever relating to the trust; and
- (d) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

(2) The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorized to execute the trusts and powers thereof.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

56. Power to several trustees of whom one disclaims or dies.—When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

57. Suspension of trustee's powers by decree.—Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER-VI

OF THE DISABILITIES OF TRUSTEES

58. Trustees cannot renounce after acceptance.—A trustee who has accepted. - the Trust cannot afterwards renounce it except.

- (a) with the permission of a principal civil court of original jurisdiction, or
- (b) if the beneficiary is competent to contract, with his consent, or
- (c) by virtue of a special power in the instrument of trust.

59. **Trustee cannot delegate.**—A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless

- (a) the instrument of trust so provides, or
- (b) the delegation is in the regular course of business, or
- (c) the delegation is necessary, or
- (d) the beneficiary, being competent to contract, consents to the delegation.

Explanation.—The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

60. **Co-trustees cannot act singly.**—When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

61. **Control of discretionary power.**—Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal civil court of original jurisdiction.

62. **Trustee may not charge for services.**—In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Nothing in this section applies to any official trustee, administrator general, public curator, or person holding a certificate of administration.

63. **Trustee may not use trust-property for his own profit.**—A trustee shall not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust.

64. **Trustee for sale or his agent may not buy.**—No trust whose duty it is to sell trust property and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

65. **Trustee may not buy beneficiary's interest without permission.**—
(1) No trustee and no person who has recently ceased to be a trustee, may, without

the permission of a principal civil court of original jurisdiction, buy or become mortgagee or lessee of the trust property or any party thereof and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

(2) No trustee whose duty it is to buy or to obtain a mortgage of lease of particular property for the beneficiary may buy it or any part thereof or obtain a mortgage or lease of it or any part thereof, for himself.

66. **Co trustee may not lend to one of themselves.**—A trustee or co-trustee whose duty, it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by or on the personal security of himself, or one of his co-trustees.

CHAPTER-VII

OF RIGHTS AND LIABILITIES OF BENEFICIARY

67. **Rights to rents and profits.**—The beneficiary has subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

68. **Right to specific execution.**—The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest.

(2) **Right to transfer of possession.**—Where is only one beneficiary and he is competent to contract or where there are several beneficiaries and they are competent to contract and all are of one mind, he or they may require the trustee to transfer the trust property to him or them, or to such person as he or they may direct.

(3) When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest nothing in sub section (2) applies to such property during her marriage.

69. **Right to inspect and take copies of instrument of trust accounts, etc.**—The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust property, the accounts of the trust property and the vouchers if any by which they are supported and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

70. **Right to transfer beneficial interest.**—The beneficiary, if competent to contract, may transfer his interest but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

71. **Right to sue for execution of trust.**—Where no trustees are appointed or all the trustees die, disclaim, or discharged or where for any other reason the execution of a trust by the trustee is or becomes impracticable. The beneficiary may institute a suit for the execution of the trust and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

72. **Right to proper trustees.**—(1) The beneficiary has a right subject to the provisions of the instrument of trust, that the trust property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

(2) A person domiciled abroad, alien enemy a person having an interest inconsistent with that of the beneficiary, a person in insolvent circumstances; and unless the personal law of the beneficiary allows otherwise and a minor are not proper persons under this section.

73. **Right to compel to any act of duty.**—The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such and restrain from committing any contemplated or probable breach of trust.

74. **Wrongful purchase by trustee.**—(1) Where a trustee has wrongfully bought trust property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase money paid by the trustee, with interest, and such other expenses, if any as he has properly incurred in the preservation of the property and the trustee or purchaser must

- (a) account for the net profits of the property;
- (b) be charged with an occupation-rent, if he has been in actual possession of the property; and

- (c) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.
- (2) Nothing in this section
- (a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or retransferred, have contracted in good faith with the trustee or purchaser; or
- (b) entitles the beneficiary to have the property declared subject to the trust or retransferred where he being competent to contract has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

75. **Trust property into the hands of third persons.**—(1) Where trust property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit or a declaration, that the property is comprised in the trust.

(2) Where the trustee has disposed of trust property and the money or other property which he has received therefore can be traced in his hands or the hands of his legal representative or legatee, the beneficiary has in respect thereof, rights as merely as may be the same as his rights in respect of the original trust property.

76. **Saving of rights of certain transferees.**—Nothing in section 75 entitles the beneficiary to any right in respect of property in the hands of—

- (a) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or
- (b) a transferee for consideration from such a transferee.

(2) A judgment creditor of the trustee attaching and purchasing trust property is not a transferee for consideration within the meaning of this section.

(3) Nothing in section 75 applies to money currency notes, negotiable instruments in the hands of a bona fide holder to whom they have passed in circulation, or shall be deemed to affect the Contract Act, 1872 (IX of 1872), section 108, or the liability of a person to whom a debt or charge is transferred.

77. Acquisition by trustee of trust-property wrongfully converted.—

Where a trustee wrongfully sells or transfers trust property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

78. Right in case of blended property.—Where the trustee wrongfully mingles the trust property with his own, the beneficiary is entitled to a change on the whole fund for the amount due to him.

79. Wrongful employment by partner-trustee.—(1) If a partner, being a trustee, wrongfully employs trust property in the business or on the account of the partnership, on other partner is liable therefore in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

(2) The partners having such notice are jointly and severally liable for the breach of trust.

80. Liability of beneficiary joining in breach of trust.—(1) Liability of beneficiary in committing breach of trust arises where one of several beneficiaries

- (a) joins in committing breach of trust, or
- (b) knowingly obtains any advantage there from, without the consent of the other beneficiaries, or
- (c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or
- (d) has deceived the trustee and thereby induced him to commit a breach of trust, the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him, otherwise than as transferees for consideration without notice of the breach, until the loss caused by the breach has been compensated.

(2) When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

81. Rights and liabilities of beneficiary's transferee.—Every person to whom a beneficiary transfers his interest has the rights and is subject to the liabilities of the beneficiary in respect of such interest at the date of the transfer.

CHAPTER-VIII

OF VACATING THE OFFICE OF TRUSTEE

82. **Office how vacated.**—The office of a trustee is vacated by his death or by his discharge from his office.

83. **Discharge of trustee.**—the trustee may be discharged from his office only as follows—

- (a) by the extinction of the trust;
- (b) by the completion of his duties under the trust;
- (c) by such means as may be prescribed by the instrument of trust;
- (d) by appointment under this Act of a new trustee in his place;
- (e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract;
- (f) by the executive order of the Director if any of the trustee:
 - (i) is convicted by a court in criminal case;
 - (ii) fails to fulfill any of the duty or obligation required under this Act;
or
 - (iii) has been penalized under the sections 17 (c) and (e) above; and
- (g) by the court to which a petition for his discharge is presented under this Act.

84. **Petition to be discharged from trust.**—Notwithstanding the provisions of section 22, every trustee may apply by petition to a principal civil court of original jurisdiction to be discharged from his office and if the court finds that there is sufficient reason for such discharge, it may discharge him accordingly and direct his costs to be paid out of the trust property. But where there is no such reason, the court shall not discharge him, unless a proper person can be found to take his place.

85. **Appointment of new trustees on death, etc.**—(1) Whenever any person appointed a trustee disclaims of any trustee, either original or substituted, dies

or is for a continuous period of six months absent from Pakistan, or leaves Pakistan for the purpose of residing abroad or is declared an insolvent or desires to be discharged from the trust or refuses or becomes in the opinion of a principal civil court of original jurisdiction unfit or personally incapable to act in the trust or accepts an inconsistent trust, a new trustee may be appointed in his place by—

- (a) the person nominated for that purpose by the instrument or trust (if any), or
 - (b) if there be no such person or no such person able and willing to act, the author of the trust if he be alive and competent to contract or the surviving or continuing trustee or trustee for the time being, or legal representative of the last surviving and continuing trustee, or with the consent of the court, the retiring trustee, if they all retire simultaneously, or with the like consent, the last retiring trustee.
- (2). Every such appointment shall be in writing under the hand of the person making it.
- (3) On an appointment of new trustee the number of trustees may be increased.
- (4). The official trustee may, with his consent and by the order of the court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be sole trustee.
- (5). The provisions of this section relative to a trustee who is a dead include the case of a person nominated trustee in a will but dying before the testator and those relative to a continuing trustee included refusing or retiring trustee if willing to act in the execution of the power.

86. Appointment by Court.—(1) Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 85, the beneficiary may, without instituting a suit, apply by petition to a principal civil court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

(2) **Rule for selecting new trustees.**—In appointing new trustees, the court shall have regard:

- (a) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust;

- (b) to the wishes of the person, if any, empowered to appoint new trustees;
- (c) to the question whether the appointment shall promote or impede the execution of the trust; and
- (d) where there are more beneficiaries than one to the interests of all such beneficiaries.

87. **Vesting of trust property in new trustees.**—(1) Whenever any new trustee is appointed under sections 85 or 86, all the trust property for the time being vested in the surviving or continuing trustees or trustee or in the legal representative of any trustee shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee as the case may require.

(2) **Power of new trustees.**—Every new trustee so appointed and every trustee appointed by a court, either before or after the passing of this Act, shall have the same powers, authorities and discretions and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

88. **Survival of trust.**—On the death or discharge of one of several co-trustees, the trust survives and the trust property passes to the others, unless the instrument of trust expressly declares, otherwise.

CHAPTER-IX

OF THE EXTINCTION OF TRUSTS

89. **Trust how extinguished.**—A trust is extinguished
- (a) when its purpose is completely fulfilled; or
 - (b) when the director considers and has sufficient reasons to believe that the activities of the trust are included in the section 16 (b) of this Act and records reasons in the order to extinct the trust; or
 - (c) when the fulfillment of its purpose becomes impossible by destruction of the trust property or otherwise; or
 - (d) when the trust being revocable is expressly revoked:

Provided that reasonable defense opportunity has been given to the trust in case of sub-section (c), above and the trust has the right of appeal to the department.

90. **Revocation of trust.**—(1) A trust created under this Act shall be revoked at the pleasure of the testator.

- (2) A trust otherwise created can be revoked only—
- (a) where all the beneficiaries are competent to contract by their consents;
 - (b) where the trust has been declared by non testamentary instrument or by word of mouth, in exercise of a power of revocation expressly reserved to the author of the trust; or
 - (c) where the trust is for the payment of the debts of the author of the trust and has not been communicated to the creditors at the pleasure of the author of the trust.

Illustration: A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

91. **Revocation not to defeat what trustees have duly done.**—No trust can be revoked by the author of the trust so as to defeat or prejudice, what the trustees may have duly done in execution of the trust.

CHAPTER-X

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS

92. **Obligation in nature of trust is created.**—An obligation in the nature of a trust is created in the cases mentioned in section 91

93. **Transferor intended to dispose of beneficial interest.**—Where the owner of property transfers or bequeaths and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

94. **Transfer to one for consideration paid by another.**—Where property is transferred to one person for a consideration paid by an other person and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration. This section shall not affect, the provisions of the Code of Civil Procedure, 1908.

95. **Trust incapable of execution without exhausting trust-property.**—Where a trust is incapable of being executed or where the trust is completely executed without exhausting the trust property, the trustee, in the absence of a direction to the contrary, must hold the trust property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

96. **Transfer for illegal purpose.**—Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution or the transferor is not as guilty as the transferee or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

97. **Bequest for illegal purpose.**—(1) Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's life time the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

(2) Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

98. **Transfer pursuant to rescindable contract.**—Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

99. **Debtor becoming creditor's representative.**—Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

100. **Advantage gained by fiduciary.**—Where a trustee, executor, partner, agent, director of a company, legal advisor, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage or where any person so bound enters into any dealings under circumstances in which his own interests are or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

101. **Advantage gained by exercise of undue influence.**—Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice

that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

102. Advantage gained by qualified owner.—Where a tenant for life, co-owner, mortgagee or other qualified owner of any property by availing himself of his position as such gains an advantage in derogation of the rights of the other persons interested in the property or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred and to an indemnity by the same persons against liabilities properly contracted in gaining such advantage.

103. Property acquired with notice of existing contract.—Where a person acquires property with notice that another person has entered into an existing contract affecting that property of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

104. Property to be held on trust.—Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

105. Advantage secretly gained by one of several compounding creditors.—Where creditors compound the debts due to them and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

106. Constructive trusts in cases not expressly provided for.—In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof, as the case may be to the extent necessary to satisfy their just demands.

107. Obligor's duties, liabilities and disabilities.—The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject so far as may be to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment: Provided further that where he holds the property by virtue of a contract with a person for whose benefit he holds it or with any one through whom such person claims, he may, without the permission of the court, buy or become lessee or mortgagee of the property or any part thereof.

108. **Saving of rights of bona fide purchasers.**—othing contained in this Chapter shall impair the rights of transferees in good faith for consideration or create an obligation in evasion of any law for the time being in force.

CHAPTER XI

Miscellaneous

109. **Power to make rules.**—Subject to the approval of the Federal Government, the Chief Commissioner of Islamabad Capital Territory shall make rules to carry out the purposes of this Act within a period not later than the Sixty days from the date of enactment of this Act.

110. **Power to interpret.**—(1) The Chief Commissioner, Islamabad Capital Territory, Islamabad can exercise arbitrary powers to clarify any confusion arising out of the interpretation of the sections of this Act:

Provided that the secretary must —

- (a) refer to the illustrations or explanations mentioned in the Trust Act 1882; and
- (b) consult the Law, Parliamentary Affairs and Human Rights department.

(2) Nothing contained in this section may be interpreted contrary to the judgments of High Courts or Supreme Court of Pakistan, as the case may be.

111. **Repeal.**—The Trust Act, 1882(11 of 1882) is hereby repealed to the extent of Islamabad Capital Territory, Islamabad.

112. **Saving.**—(1) Notwithstanding the aforesaid repeal in section 111 above, anything done, action taken, rules made or notifications issued under the aforesaid Act, so far as it is not inconsistent with the provisions of this Act, shall be deemed to have been made, done or taken under this Act and shall have effect accordingly.

(2) Any document referring to the repealed Act shall be construed as referring to corresponding provisions of this Act:

Provided that all the Trusts registered in Islamabad Capital Territory under the repealed Act shall be freshly registered under this Act within a period of six months.

STATEMENT OF OBJECTS AND REASONS

In order to enhance the effectiveness of the implementation of the Orders passed by the Federal Government, to cater effective administration and financial monitoring and evaluation of the trusts relating to registration, administration and monitoring of trusts registered within the territorial limits of Islamabad Capital Territory. Furthermore, the facilities required for meeting the necessary expenses through exemptions are also required to be incorporated in detail

ZAHEER-UD-DIN BABAR AWAN,
*Advisor to Prime Minister
on Parliamentary Affairs.*

TAHIR HUSSAIN,
Secretary.