

NOTIFICATION.

Dated Quetta, the 1st September, 2020.

No.PAB/Legis;V(02)/2020. The Balochistan Waqf Properties Bill, 2020 (Bill No. 02 of 2020), having been passed by the Provincial Assembly of Balochistan on 26th August, 2020 and assented to by the Governor, Balochistan on 31st August, 2020 is hereby published as an Act of the Balochistan Provincial Assembly.

**The Balochistan Waqf Properties Act 2020 Act No .III of 2020
AN
ACT**

to make provisions and to repeal be existing Waqf properties ordinance, 1979;

WHEREAS to cater for the monitoring an evaluation purposes of the Waqf and to make provisions relating to the proper management and administration of Waqf Properties in Balochistan Province.

AND WHEREAS it is expedient to make provisions relating to proper management and administration of waqf properties in the Balochistan or matters incidental thereto;

**Short title,
extent and
commencement**

1. (1) This Act may be called as the Balochistan Waqf Properties Act, 2020.

(2) It extends to whole of Balochistan.

(3) It shall come into force at once.

Definitions.

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

(a) "Act" means the Balochistan Waqf properties Act, 2020;

(b) "Administrator" and "Deputy Administrator" means an Administrator of Auqaf and Deputy Administrator of Auqaf appointed under section 4;

(c) "beneficial owner" means a natural person who ultimately owns or controls a waqf, whether directly or indirectly, or by exercising effective control of that waqf through other means as may be prescribed;

- (d) "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;
- (e) "Chief Administrator" and "Deputy Chief Administrator" means the Chief Administrator Auqaf and Deputy Chief Administrator Auqaf appointed under section 3;
- (f) "competent authorities" means the 'regulators', the 'oversight bodies for Self-Regulatory Bodies (SRB), the "investigating or prosecuting agency" and the "Financial Monitoring Unit" as specified in the Anti-Money Laundering Act, 2010;
- (g) "Director General" means Director General Balochistan Charities (Registration, Regulation and Facilitation Authority) Act, 2019.
- (h) "Department" means Department of Religious Affairs, Government of Balochistan.
- (i) "Deputy Manager Auqaf" means any person or persons who is in charge of the day-to-day management and operations of the Waqf property;
- (j) "Government" means the Government of Balochistan;
- (k) "Investigating or Prosecuting Agency" means the Investigating or Prosecuting Agency as specified in the Anti-Money Laundering Act, 2010;
- (l) "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 and be sued, own property, and so on;
- (m) "natural person" means an individual or individuals;
- (n) "person" means a natural person or a legal person;
- (o) "prescribed" means prescribed by rules made under this Act;
- (p) "reporting entity" shall have the same meaning as defined in the Anti-Money Laundering Act, 2010;
- (q) "Rules" means rules made under this Act;
- (r) "waqif" means any person or persons who dedicates the Waqf Property.
- (s) "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 (Act 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 waqf property.

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

Explanation 3.—Any 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 a shrine 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 waqf property.

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

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

**Appointment of
Chief
Administrator of
Auqaf AND Deputy
Chief
Administrator
Auqaf.**

3.(1)The Authority empowered shall appoint a Chief Administrator Auqaf for Balochistan and may, by order, vest in him and the waqf properties situated in the Province including all rights, assets, debts, liabilities and obligations relating thereto; provided that the Secretary of Religious Affairs Department by virtue of his office shall act as Chief Administrator Auqaf Balochistan.

(2) The Authority empowered shall appoint Deputy Chief Administrator Auqaf of (BPS-19), to exercise such powers and perform such functions as assigned under this Act and rules made there under.

(3)No person shall be appointed as Chief Administrator Auqaf and Deputy Chief Administrator Auqaf unless he is a Muslim and possesses such qualifications as may be prescribed by Government.

(4)The Chief Administrator shall be a corporation sole by the name of the Chief Administrator of Auqaf, Balochistan, and shall

have perpetual succession and an official seal, and may sue and be sued in his corporate name.

(5)The Chief Administrator shall be subject to the general control of Government.

Appointment of Administrator and Deputy Administrators.

4.(1) The Authority empowered may appoint an Administrator(s)for such area or areas and Deputy Administrator(s) for such Districts as may be specified in the Notification to assist the Chief Administrator and any Administrator or Deputy Administrator 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.

General appointments.

5.(1) The Chief Administrator with the previous sanction of Government 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 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 purposes of this Act shall be deemed to be public servants within the meaning of Section 21 of the Pakistan Penal Code (XLV of 1860).

Administrator, Deputy Administrator and officer to be Muslim.

6. No person shall be appointed as an Administrator, Deputy Administrator or officer under this Act unless he is a Muslim and possesses such qualifications as may be prescribed.

Registration of Waqf Property.

7. (1) Any Deputy Manager Auqaf, whether a creator of the Waqf or otherwise, or any authorized representative nominated by him, shall get the waqf property registered with the Director General Balochistan Charities (Registration, Regulation and Facilitation Authority through Religious Affairs Department 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 Director General Balochistan Charities (Registration, Regulation and Facilitation Authority through Religious Affairs Department as required under sub-section (1) shall be deemed to have been notified under section 9.

(4)The District Administrator Auqaf / Deputy Commissioner, being the custodian of the land record and the Additional Deputy Commissioner (Revenue) / Assistant Commissioner (Revenue), being the focal point of registering all deeds, agreements and requisite documents, 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 their respective Districts 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 Deputy Manager Auqaf to the Additional Deputy Commissioner (Revenue) / Assistant Commissioner (Revenue) in a timely manner as prescribed.

Deputy Manager Auqaf to obtain and hold information

8.(1) The Deputy Manager Auqaf shall also obtain and hold the information as required under sub-section (2) of section 7 and shall ensure that the information is updated in a timely manner as prescribed.

(2) Any Deputy Manager Auqaf 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.

Chief Administrator may take over Waqf Property by Notification.

9.(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 other authority or in any proceedings pending before any Court of other authority, the Chief Administrator may, by notification, take over and assume the administration, control, management and maintenance of waqif property:

Provided that during the life-time of waqf, 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.

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 (Rasoomat) at or in a waqf property.

(2)No person shall perform services or ceremonies (Rasoomat) 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 Director General Balochistan Charities (Registration, Regulation and Facilitation Authority shall maintain a centralized record in such a manner, design and structure as may be notified in the official gazette, of all properties registered with him under

section 7 or the administration thereof has been taken over or assumed under this section.

(4) At the end of each financial year, the Director General Balochistan Charities (Registration, Regulation and Facilitation Authority shall prepare and submit report to Chief Administrator of the waqf properties registered under section 7 or the administration whereof has been taken over or assumed under this section to Government.

Provision of Miscellaneous information.

10. (1) Prior to entering into a business relationship or carrying out an occasional transaction with a reporting entity, any Deputy Manager Auqaf, whether a creator of the waqf or otherwise, shall disclose its status as such to the reporting entity.

(2) The Deputy Manager Auqaf in respect of any waqf existing before the commencement of this Act, whether a creator of the waqf or otherwise, shall disclose its status as such to the reporting entity with which they have a business relationship.

Eviction of persons wrongfully in possession of waqf properties.

11. Any person unauthorizedly 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 there-under, he is not entitled or has ceased to be entitled may, after being given a reasonable opportunity of showing cause against such action be summarily evicted 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 person after serving 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.

Power to terminate a lease or resume a tenancy of breach of conditions.

12.(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 to appear and state his objections, 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 ninety days, to be stated in the notice, and the lessee or tenant has failed to comply with such notice:

Provided further that if any immovable waqf property is required to be used for public purpose by Government, the Administrator shall, after serving three notices within intervals of one month for eviction of the waqf property, terminate the lease.

(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 ungathered crop 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.

Appeal and finality.

13.(1) Any person evicted under the provisions of section 11 or aggrieved by an order of termination of lease or resumption of tenancy made under section 12 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 may, after giving such person an opportunity of being heard, confirm, modify or vacate the order made by the Administrator under section 11 or 12.

(2) If there is no appeal against an eviction under section 11 or an order of termination of lease or resumption of tenancy made by the Administrator under section 12 of the eviction, termination of lease or resumption of tenancy, as the case may be, shall be final, and when there is an appeal, the decision of the Chief Administrator in appeal shall be final.

Petition to District Court against Notification.

14.(1) Any person claiming any interest, in any waqf property in respect of which a notification has been issued under section 9 may, within thirty days of the publication of such notification, file petition with the District Court within whose jurisdiction the waqf property or any property or any part thereof is situated for a declaration:-

(a) That the property is not waqf property;

(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 (s) of section 2, or the services or ceremonies (Rasoomat) mentioned in section 9.

(2) The District Court may, for reasons to be recorded, refuse to issue any process for compelling the attendance of any witness for the purpose of examination or the production of any document or other thing if it considers necessary that it has been made for the purpose of vexation or delay.

Appeal against the decision of district court.

15. Any person aggrieved by a decision of the District Court under sub-section (1) of section 14 may, within sixty days of the order, appeal to the High Court.

District Court and High Court not to issue temporary injunction or order.

16. 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 14 or an appeal filed under section 15 have the power to issue a temporary injunction or 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 9.

Decision of the District court under section 14 or the High Court under section 15 to be final.

17. If there is no appeal, the decision of the District Court, or when there is an appeal, the decision in appeal shall be final.

Chief Administrator to prepare scheme for the administration and development of waqf property.

18.(1) The Chief Administrator shall as respects the waqf property in respect of which a notification under section 9 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 under sub-section (1), the Chief Administrator shall give effect to such wishes of the Waqif as can be ascertained, and to which effect can be reasonably given.

Sale of waqf property by chief administrator and application of proceeds.

19. The Authority empowered may, where it is satisfied that circumstances exist which make it necessary to 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 unemployment, 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, permit the Chief Administrator to do so and to invest the proceeds in accordance with its directions: Provided that the sale proceeds of the property shall not be used for any purpose unless the main purpose of the waqf is served and satisfied.

Use of waqf property and application of income therefrom.

20. 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.

Chief Administrator to maintain accounts.

21.(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 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 Government.

Rents and lease moneys in respect of waqf property may be recovered as arrears of land revenue.

22. 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.

Chief Administrator may call for return, etc. And may issue instructions and dedication in respect of waqf property.

23. (1) The Chief Administrator may require any Deputy Manager Auqaf, the administration of any waqf property 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 Deputy Manager Auqaf, the administration of waqf property 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 Deputy Manager Auqaf shall comply with such instructions and directions.

(3) The Chief Administrator shall require any Deputy Manager Auqaf 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 following instructions in order to prevent the money laundering and terrorist financing:-

- (a) The person properly entered into lease deed shall deposit the lease or rent amount online through his bank account to the designated account of the Chief Administrator or Administrator, while the Deputy Manager Auqaf 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, which 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.
- (d) The leaseholder shall annually submit verified Bank account statement showing details of credited and debited amount to the Chief Administrator.
- (e) To preserve complete record of the Waqf Property including auditable accounts statement, number of employees, Advisors, Investors, Managers, Accountants and their complete Bio-data etc. for the last five years.

Provision of information to competent authorities.

24. (1) The Chief Administrator shall provide prescribed information about the waqf to any competent authority in the prescribed manner and circumstances.

(2) The Deputy Manager Auqaf 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.

Provision of information to reporting entities.

25. (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 Deputy Manager Auqaf about the beneficial owner, details of Waqf assets, residential addresses of Deputy Manager Auqaf and details of beneficiaries in the prescribed circumstances and manner.

Bar of jurisdiction.

26. 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.

Effect of orders etc., inconsistent with this Act.

27. 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.

Protection of action taken under this Act.

28. 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 Act or the rules made there-under.

Offences.

29. (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 or with both.

(2) Any person who disobeys or willfully fails to comply with any requirement under section 22 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 Administrator Auqaf / Deputy Commissioner or Additional Deputy Commissioner (Revenue) or Assistant Commissioner (Revenue) or any other authority duly authorized by the Chief Administrator to do so, for the period of factum of waqf property, or an imprisonment which may extend to five years, or both.

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

Administrative sanctions.

30. Any person who fails to comply with any of the provisions of this Act for any other reason shall be punished with a fine which may extend to rupees twenty five million.

Power to make rules.

31. (1) The Government may make rules for the purpose of carrying into effect the provisions 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) regulating the delegation of any powers by the Chief Administrator to Deputy Chief Administrator, Administrator or a Deputy Administrator;
- (c) prescribing terms and condition on which waqf property may be leased or let out;
- (d) regulating the manner in which schemes for administration and development of waqf properties shall be prepared;

- (e) regulating the conditions of services and conduct of the persons employed under this Act;
- (f) regulating the conduct of litigation by or against the Chief Administrator;
- (g) prescribing the manner in which the accounts shall be kept;
- (h) prescribing the authority for auditing the accounts maintained by the Chief Administrator;
- (i) prescribing the syllabus and curricula for the proper education and training of Imams and Khatibs and of other employees of the Auqaf Institutions in Balochistan;
- (j) prescribing and regulating 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.

Removal of difficulties.

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

Repeal and Savings.

33.(1) The Balochistan Waqf Properties Ordinance, 1979 (**IV of 1979**), on commencement of this Act, shall stand repealed.

(2) Notwithstanding the repeal of the Ordinance mentioned under sub-section (1) of this section, anything done, rules made, notifications or orders issued, officer appointed, notice given, proceedings commenced or other action taken under the repealed Ordinance or purportedly under that Ordinance till the coming into force of this Act, shall be deemed to have been validly done, made, issued, appointed, given, commenced or taken, under this Act.

(TAHIR SHAH KAKAR)
Secretary.