



USAID FIRMS PROJECT

# Khyber Pakhtunkhwa Board of Investment and Trade Bill, 2014

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# Abstract:

The USAID Pakistan Firms project aims to assist the Khyber Pakhtunkhwa Board of Investment and Trade (KPBOIT) in meeting its mandate of promoting investment and trade in the province. In an effort to assist KPBOIT in developing adequate legal structure, a comprehensive study of possible legal structures was carried out. Based on the results of that study and approvals from provincial government, it was concluded that the KPBOIT should act as an autonomous body formed under statute. This paper presents draft Bill for consideration of provincial government of Khyber Pakhtunkhwa.

# Acronyms

BEE	Business Enabling Environment
KPBOIT	Khyber Pakhtunkhwa Board of Investment and Trade
KPK	Khyber Pakhtunkhwa
SOW	Scope of Work
US	United States
USAID	United States Agency for International Development



# Draft Khyber Pakhtunkhwa Board of Investment and Trade Bill, 2014

[TO BE INTRODUCED IN THE PROVINCIAL ASSEMBLY]

## A BILL

To provide for the establishment of the Khyber Pakhtunkhwa Board of Investment and Trade as the principal agency to promote, encourage and facilitate local and foreign investment in the Province of the Khyber Pakhtunkhwa.

**WHEREAS** the Constitution of the Islamic Republic of Pakistan, 1973 empowers provinces to raise domestic or international loan or give guarantees and to announce concessions for purposes of local and foreign direct investments in the provinces;

**AND WHEREAS** it is expedient to provide for the establishment of an autonomous body which shall act as one window operation facility to promote, encourage, assist and facilitate investors in the Khyber Pakhtunkhwa and proactively engage and coordinate with all departments of the Provincial Government as well as the Federal Government and other strategic stakeholders from public and private sectors, to fully realize the economic potential of the Province;

**AND WHEREAS** establishment of the Khyber Pakhtunkhwa Board of Investment and Trade will create an enabling environment for investment through advocacy for investment friendly policy reforms; engender public private partnership; and provide for adequate measures to facilitate and secure investment in the Province;

**AND WHEREAS** the objective of the Khyber Pakhtunkhwa Board of Investment and Trade is to assist and facilitate investment in all sectors in order to achieve sustainable economic growth for the ultimate benefit of the public through delivery of required services, infrastructure and facilities;

It is hereby enacted as follows:-

### 1. Short Title, Extent and Commencement.

- (1) This Act may be called the Khyber Pakhtunkhwa Board of Investment and Trade Act, 2014.
- (2) It shall extend to the whole of the Province of the Khyber Pakhtunkhwa.
- (3) It shall come into force at once.

### 2. Definitions.

- (1) In this Act, unless there is anything repugnant in the subject or context:
  - (a) "Act" means the Khyber Pakhtunkhwa Board of Investment and Trade Act, 2014;
  - (b) "Board" means the Khyber Pakhtunkhwa Board of Investment and Trade established under Section 3;

- (c) “Chairman” means the Chairman of the Board appointed under Section 7;
- (d) “Chief Executive” means the Chief Executive of the Board appointed under Section 8;
- (e) “*Ex-officio* Member” means an *ex-officio* Member appointed under Section 5 and includes any other Member co-opted by the Board by virtue of his office;
- (f) “Department” means a department of the Government;
- (g) “Gazette” means the Official Gazette of the Khyber Pakhtunkhwa;
- (h) “Government” means the Government of the Khyber Pakhtunkhwa;
- (i) “Member” means a Member of the Board;
- (j) “Patron-in-Chief” means the patron-in-chief designated under Section 6;
- (k) “Private Sector Member” means a Member of the Board including a co-opted Member other than an *Ex-officio* Member of the Board, who is not in the service of Pakistan or of any statutory body or any body owned or controlled by the Government or the federal government;
- (l) “Province” means the Province of the Khyber Pakhtunkhwa; and
- (m) “Regulations” means regulations made under Section 24 this Act and approved by the Board.

### **3. Establishment of the Khyber Pakhtunkhwa Board of Investment and Trade.**

- (1) There is hereby established a Board to be called the Khyber Pakhtunkhwa Board of Investment and Trade. The Board may also be referred to by its acronym, KPBOIT.
- (2) The Board shall be a body corporate with perpetual succession and common seal, and may sue and be sued in its own name, and, subject to and for the purposes of this Act, shall have administrative and financial powers, and may enter into contracts, acquire, purchase, take, hold, enjoy and convey or transfer or otherwise dispose of or deal with any movable and immovable property or any interest therein, upon such terms as it deems fit.
- (3) That Board shall be administratively and functionally independent, and the Government shall use its best efforts to promote, enhance and maintain the independence of the Board.

### **4. Head office.**

The head office of the Board shall be at Peshawar and the Board may, with the approval of the Patron-in-Chief, establish sub-offices within the Province.

### **5. Composition of the Board.**

- (1) The KPBOIT shall consist of not less than twenty five and not more than thirty Members of which not less than eight and not more than twelve shall be *Ex-officio* Members:
- Provided that the Government may increase or decrease the number of Members, from time to time, as it may consider appropriate;
- Provided further that the number of *Ex-officio* Members shall not exceed the number of Private Sector Members.
- (2) The Board shall consist of the following:

- (a) *Ex-officio* Members:
- (i) Patron-in-Chief;
  - (ii) Chairman;
  - (iii) Additional Chief Secretary, Planning and Development Department;
  - (iv) Secretary Finance Department;
  - (v) Secretary Industries Department;
  - (vi) Provincial Chief, Small and Medium Enterprise Development Authority;
  - (vii) Managing Director, Bank of Khyber;
  - (viii) President Sarhad Chamber of Commerce and Industry; and
  - (ix) Chief Executive.
- (b) Private Sector Members, who shall be amongst persons of known integrity, expertise, experience and knowledge in areas including, *inter alia*, academia, accountancy, agriculture, banking, business, commerce, economics, engineering, finance, industry, investment, law, marketing, mathematics, science, statistics and technology.

#### **6. Patron-in-Chief.**

The Chief Minister of the Province shall be the President and Patron-in-Chief of the Board. He shall be entitled to attend all meetings of the Board, and when present, shall act as the Chairman of the meeting.

#### **7. Chairman.**

(1) The Chairman shall:

- (a) Be appointed on such terms and conditions as the Government may determine by notification in the Gazette;
- (b) Be appointed from the private sector who shall be person of known integrity and having background of sound policy making and policy implementation skills. The Chairman, at the time of his appointment and during the term of his office, shall not be a defaulter of any financial institution and any of the Government or federal government institution. The Chairman shall enjoy the status equivalent to the Minister of the Province;  
  
Provided, however that, the Chairman shall not be entitled for any remunerations or benefits applicable for the minister of the Government;  
  
Provided, further that the Chairman, at the time of his appointment and during the term of his office, shall not be the chairman of boards of more than two public sector entities.
- (c) Have a term of three years from the date of notification in pursuance of subsection (1) above; and
- (d) Perform such functions, as may be assigned to him by the Board or the Patron-in-Chief for the purposes of the Act.

#### **8. Chief Executive.**

- (1) Subject to the provisions of the Act, the Government shall appoint Chief Executive on the recommendation of the Board, who shall be a representative from the private sector and shall be responsible for the day-to-day administration of the affairs of the Board under the supervision of the Board.
- (2) The Chief Executive shall be entitled to remuneration and privileges as applicable to Management Position Scale-I, and shall be subject to such terms and conditions as the Board may prescribe, from time to time.
- (3) The Chief Executive shall be a person of known integrity, competence and expertise and he shall not be less than the age of forty-five years and not more than sixty-five years.
- (4) The Chief Executive shall be an *Ex-officio* Member of the Board and shall also discharge functions as secretary to the Board and perform such functions as the Board may assign, from time to time.
- (5) The Chief Executive shall be answerable to the Board for all administrative and financial matters. The Board may delegate administrative and financial powers to the Chief Executive for carrying out day-to-day affairs of the Board. The Chief Executive shall also be the principal accounting officer of the Board.
- (6) The Chief Executive shall have a term of three years from the date of notification under this Section. He shall be eligible for reappointment as the Chief Executive upon recommendation of the Board to the Government. He may resign from his office by giving one month notice, by writing under his own hand, addressed to the Government.

#### **9. Appointment, Removal, Resignation and Vacancy of Members.**

- (1) An *Ex-officio* Member shall hold office as Member till such time as he holds the office by virtue of which he is a Member and upon his ceasing office by virtue of transfer, retirement, resignation, removal or otherwise, the person appointed in his stead shall be the Member.
- (2) The Government shall, by notification in the Gazette, appoint Members, other than *Ex-officio* Members, for a term of four years:  
  
Provided, however that, half of the Members first appointed under this Act, to be selected by random ballot in accordance with procedure approved by the Board, shall retire after two years;  
  
Provided further that, the vacancies so occurring shall be filled in by the Government by fresh appointment;  
  
Provided further that, no Member shall be eligible for successive tenure, following his ceasing to be Member by resignation, retirement, removal or otherwise.
- (3) Notwithstanding sub-section (2) of this Section 9, a Member other than an *Ex-officio* Member shall be deemed retired from office if such Member, without approval of the Board, fails to attend three consecutive meetings of the Board.
- (4) A Member other than an *Ex-officio* Member may at any time resign from his office by notice in writing addressed to the Government.
- (5) A vacancy in the Board, caused by the death, resignation, retirement or removal of any Member including the Chief Executive; shall be filled in by the Government by appointment of another Member within thirty days, for the remaining of the term of his predecessor.

**10. Committees.**

- (1) The Board may constitute committee or committees to assist it in the performance of its functions. Such committee or committees shall consist of such persons as the Board may deem fit, including any Member or officer of the Board. The Board may co-opt as member of a committee or committees, other person deemed relevant for enhancing the purposes of this Act.
- (2) Subject to any directions given by the Board, committeeman be constituted to perform following functions, namely:
  - (i) Coordination with the Board of Investment under Section 15 of the Board of Investment Ordinance, 2001;
  - (ii) Make recruitments/appointments of such officers, advisers, consultants and employees, on contract as well as on regular basis, as it considers necessary for the efficient performance of its functions:

Provided, that all appointments shall be made in accordance with the prescribed educational, technical or professional qualifications and experience and shall be in accordance with the regulations made pursuant to this Act;

- (iii) Determine terms and conditions of service of the Board employees;
- (iv) Fix salaries and other emoluments;
- (v) Oversee implementation of Board decisions;
- (vi) Regulate working of the Board offices;
- (vii) Monitor purchases and expenditure; and
- (viii) Perform any other function delegated by the Board from time to time.

**11. Meetings o the Board.**

- (1) Subject to the provisions of this Act, the Board shall regulate the procedure for its own meetings.
- (2) The Board shall meet at least once every three months.
- (3) Meetings of the Board shall be presided–
  - (a) By the Patron-in-Chief;
  - (b) In the absence of the Patron-in-Chief, by the Chairman;
  - (c) In the absence of the Patron-in-Chief and the Chairman, the meeting shall be adjourned to same time and day of the next week.
- (4) Subject to sub-section (3) above, at any meeting of the Board, the quorum shall be one-third of the total membership of the Board.
- (5) All questions in the meetings of the Board shall be decided by a majority of the Members present and voting, and in case of equality of votes, the chairman of the meeting shall have a second or casting vote.
- (6) Any urgent business of the Board may be transacted by circulation among all its Members and any proposal so circulated and approved by two third majority of the

Members shall be as effective and binding as if such proposal had been passed at a regular meeting of the Board.

## **12. Validity of Proceedings.**

No act, proceedings, decision or order of the Board or a committee thereof shall be invalid by reason only of existence of any vacancy or defect in the constitution of the Board or, as the case may be, a committee of the Board.

## **13. Functions of the Board.**

- (1) Notwithstanding anything contained in any other law, the functions of the Board shall be to –
  - (a) provide one window operation facility to investors by proactively engaging and coordinating with all concerned departments of the Government as lead agency for the purposes of promoting, encouraging and facilitating both local and foreign investment in the Province;
  - (b) Advise the Government on creating an enabling environment for investment through advocacy of specific investment friendly policy reforms and provision of adequate infrastructure facilities for making the process attractive to investors;
  - (c) Assist in developing a comprehensive public private partnership policy for adoption by the Government and to subsequently develop innovative models based on the policy in different potential sectors of the Khyber Pakhtunkhwa economy;
  - (d) undertake sub-sectors studies and develop concepts, briefs and fact sheets both internally and through outsourcing to consultants on different priority sectors of the Khyber Pakhtunkhwa economy that have the potential for growth and employment generation and share the same with private and institutional investors including multilateral and bilateral donors;
  - (e) Identify sector wise potential projects and prepare pre-feasibility reports of such projects wherever possible;
  - (f) to do advocacy and to hold conferences, seminars, roundtables and structure presentations locally and internationally, to attract potential investors by creating awareness about Government policies, building confidence and exchanging practical and feasible investment ideas;
  - (g) Liaise proactively with the banking industry and State Bank of Pakistan to improve the deposit to loan ratio in the Province and encourage and assist the banks/institutions for small and medium enterprises and small scale agriculture financing;
  - (h) Engage on a regular basis with the larger business community including but not limited to; business association, forums, trade bodies and chambers of commerce and industry, both in the Province and nationally to stimulate ideas for investment in the Province;
  - (i) Attract and identify long term investment for larger projects, without prejudice to the generality of the foregoing; including hydel power house, gas/coal power houses, oil and gas exploration, mining, waste to energy projects, textiles, hotels, tourism, theme and venture parks, education, health, wood based project, tobacco, automobile, electronics, services, synthetic fibers, fruit, vegetables, and

food, including by issuing trade bonds, arranging venture capital or other means subject to approval of the Government and facilitating the creation of investment vehicles;

- (j) Formulate sectoral committees for different sectors on need basis at grass root level, for advice and assistance for the purposes of the Act;
- (k) Set up and undertake model projects by public private partnerships; and
- (l) To take all other actions as may be necessary for carrying out the purposes of this Act.

#### **14. Powers of the Government to Issue Directives**

The Government may, as and when it considers necessary, issue policy directives to the Board, not inconsistent with the provisions of this Act, and the Board shall comply with such directives.

#### **15. Grants**

The Government may, from time to time, place annual grants at the disposal of the Board for the smooth exercise of its functions.

#### **16. Fund**

- (1) There shall be established a fund to be called the 'KPBOIT Fund', which shall vest in the Board and shall be used by the Board to meet all expenditure incurred in connection with the functioning of the Board.
- (2) The Fund shall consist of :
  - (a) Grants by the Government;
  - (b) Local and foreign aid or loans or donations obtained or raised by the Board with the approval of the Government;
  - (c) Fees and charges received by the Board;
  - (d) Seed money as perpetual part of the fund;
  - (e) Income from the model project set up by the Board; and
  - (f) Any other sums, which may in any manner become payable to or vested in the Board.
- (3) The Board shall make regulations for incurring expenditures as well as investments from the Fund.
- (4) The Board may open and maintain accounts at such scheduled banks as it may from time to time determine. The Board may with the approval of the Government, open and maintain foreign currency accounts.

#### **17. Accounts and Audits.**

- (1) The Board shall cause proper accounts to be kept and shall as soon as practicable after the end of each financial year, cause to be prepared for that financial year, a statement of accounts of the Board which shall include a balance sheet and an account of income and expenditure.
- (2) Within sixty days after the end of each financial year, the annual financial statements of the Board shall be audited by the Auditor-General of Pakistan or by a firm of chartered accountants nominated by the Auditor-General of Pakistan.

- (3) The auditors shall make a report to the Board upon the balance sheet and accounts and in such report, they shall state whether in their opinion the balance sheet is a full and fair balance sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the affairs of the Board and, in case they have called for any explanation or information from the Board, whether it has been given and whether it is satisfactory.

#### **18. Annual Report.**

- (1) Within ninety days from the end of each financial year, the Board shall cause a report to be prepared on the activities of the Board during that financial year.
- (2) The Board shall, within one hundred and twenty days of the end of each financial year send a copy of the annual report of the Board under sub-section (1) together with a copy of the statement of accounts of the Board certified by the auditors and a copy of the auditors' report to the Government which shall be laid before the Provincial Assembly within two months of the receipt and caused to be published in the Gazette.

#### **19. Delegation of Powers.**

Subject to the provisions of this Act, the Board may by general or special order, delegate to the Chairman, the Secretary or any officer of the Board, any of its powers or functions, subject to such conditions as it may deem fit to impose.

#### **20. Members, officers, staff, etc. deemed to be public servants.**

- (1) The Chairman, non *Ex-officio* Members, employees, advisers and consultants of the Board authorized to perform any function under this Act shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).
- (2) The age of superannuation shall be sixty years for the employees of the Board.

#### **21. Assistance to the Board.**

- (1) The Board may require any information from all sources including private sector organizations and agencies, any department, statutory body, corporation, agency of the Government which, in its opinion, concerns any matter relating to the Board, and the requisite information shall be provided to the Board within a fortnight of the receipt of such request.
- (2) The Board may request any department, statutory body, corporation, agency of the Government, to review such proposals, policies, directions, guidelines, notifications, circulars, orders, regulations and rules, which, in its opinion, concern any matter relating to the Board, and the concerned department, statutory body, corporation, agency of the Government shall give its decision in writing based on sound reasons within a fortnight of such request.
- (3) Subject to sub-section (4), if, upon receiving the decision under sub-section (2), the Board is of opinion that the decision adversely affects any policy relating to its working, it may request the concerned department, statutory body, corporation, agency of the Government to review such decision in consultation with it or its authorized officer.
- (4) In case the Board is not satisfied with the revised decision of the department, statutory body, corporation, agency of the Government under sub-sections (2) and (3), the unresolved issue shall be placed before the Board wherein the representative from the concerned department, statutory body, corporation etc., would be invited by special invitation to assist the Board to arrive at a final decision.



**22. Indemnity.**

No suit, prosecution, or other legal proceeding shall lie against the Board or its Chairman, Secretary, Members, employees or consultants for anything in good faith done or intended to be done under this Act or any regulations made there under.

Explanation: The word “good faith” shall have the same meaning as given to it in Section 52 of the Pakistan Penal Code (Act XLV of 1860).

**23. Transfer of Employees and Assets.**

(1) On the commencement of this Act;

- (a) all assets, rights, powers, authorities and privileges and property, movable and immovable, cash and bank balances, reserve funds, investments and all other interests and rights in, or arising out of such property and all debts, liabilities and obligations of whatever kind of the Khyber Pakhtunkhwa Board of Investment and Trade set up under executive notifications number AEA (IND)3-58/2012/BOIT/14993 dated 2 September 2013; AEA (IND)3-58/2012/BOIT/14994 dated 2 September 2013; and AEA (IND)3-58/2012/BOIT/17423 dated 31 October 2013 in existence before the commencement of this Act shall stand transferred to and vest in the Board;
- (b) no officer, employee, servant, or any other person holding any post in connection with the affairs of the Board in existence before the commencement of this Act shall have any right or lien to appointment to any post in the Board;
- (c) officers, employees, servants, or any other person holding any post in connection with the affairs of the Board in existence before the commencement of this Act, not considered for appointment in the Board, shall have the option to be discharged from service on payment of admissible relieving benefits or alternatively, their services shall be placed at the disposal of the relevant Department for absorption on the terms and conditions to be determined by that Department but not less favorable than those which they were entitled to in the Board in existence before the commencement of this Act, and unless sooner they are absorbed elsewhere, they shall continue to draw their pay, allowances, privileges or other benefits from the Board as they were drawing while holding their posts in the Board in existence before the commencement of this Act;
- (d) save as otherwise provided in clause (a), all the debts and obligations incurred or contracts entered into or rights acquired and all matters and things engaged to be done by, with or for the board in existence before the commencement of this Act, shall be deemed to have been incurred, entered into, acquired or engaged to be done by, with or for the Board , as the case may be; and
- (e) all suits and other legal proceedings instituted by or against the Board in existence before the commencement of this Act shall be deemed to be suits and proceedings by or against the Board and may proceed and be dealt with accordingly.

**24. Power to Make Regulations.**

The Board may, by notification in the Gazette, make regulations, not inconsistent with the provisions of this Act, for carrying out the purposes of this Act.

**25. Act To Override Other Laws.**

The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force. To the extent of any overlap of functions between the Board or any authority of the Government, the Board shall have primacy to deal with such matter and undertake such function.

**26. Removal of Difficulties.**

If any difficulty arises in giving effect to the provisions of this Act, the Board may, with approval of the Patron-in-Chief, within two years of the commencement of this Act, make such order, not inconsistent with the express provisions of this Act, as may appear to it to be necessary or expedient for the purpose of removing such difficulty.

**27. Repeal and Savings.**

- (1) The executive notifications No. AEA (IND)3-58/2012/BOIT/14993 dated 2 September 2013; AEA (IND)3-58/2012/BOIT/14994 dated 2 September 2013; and AEA (IND)3-58/2012/ BOIT/17423 dated 31 October 2013 are hereby repealed.
- (2) Anything done, actions taken, orders passed, instruments made, notifications issued, agreements made, process or communication issued, powers conferred, assumed or exercised by the Board or its officers under the notifications given in sub-section (1) above, and before the commencement of this Act, shall be deemed to have been validly done, made, issued, taken, initiated, conferred, assumed and exercised, and provisions of the Act shall be deemed always to have had effect accordingly.

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