

**THE KHYBER PAKHTUNKHWA HEALTH FOUNDATION ACT, 2016.**

**(KHYBER PAKHTUNKHWA ACT NO. VII OF 2016)**

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<sup>1</sup>Inserted vide Khyber Pakhtunkhwa Act No. XXIII of 2017

**THE KHYBER PAKHTUNKHWA HEALTH FOUNDATION ACT, 2016.**

**(KHYBER PAKHTUNKHWA ACT NO. VII OF 2016)**

*[First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of Khyber Pakhtunkhwa (Extraordinary), dated the 7/06/2016].*

**AN  
ACT**

*to provide for the establishment of a Health Foundation  
in the Province of the Khyber Pakhtunkhwa.*

**WHEREAS** it is expedient to provide for the establishment of a Health Foundation in the Province of the Khyber Pakhtunkhwa to promote and enable the development of innovative health care delivery models to achieve policy objectives of Government of the Khyber Pakhtunkhwa to improve coverage through various means of Public Private Partnership for healthcare delivery services and the matters connected herewith and ancillary thereto;

It is hereby enacted as follows:

**1. Short title, extent and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Health Foundation Act, 2016.

(2) It shall extend to the whole of the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once.

**2. Definitions.**---In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say,-

- (a) “Board” means the Board of Governors, constituted under section 4 of this Act;
- (b) “Chairperson” means Chairperson of the Board;
- (c) “Foundation” means the Khyber Pakhtunkhwa Health Foundation, established under section 3 of this Act;

- (d) “Fund” means the Foundation Fund established under section 13 of this Act;
- (e) “Government” means the Government of the Khyber Pakhtunkhwa;
- <sup>1</sup>[(f) “Health Agency” means the Health Department or any of its Attached Department, sub-ordinate offices, autonomous bodies under its administrative control or any other organization or institution owned and controlled by Health Department;]
- <sup>2</sup>[(f-a) “Healthcare delivery services” means healthcare and allied services and includes infrastructure, diagnostics, equipments and other support services necessary for improvement of healthcare delivery;
- (f-b) “Health Project” means a program, activity or a scheme meant to ensure, improve or consolidates healthcare delivery services, whether or not reflected in the annual development program of the Province and includes the design, construction, developmental and operation of new infrastructure facilities or the rehabilitation, modernization, expansion, maintenance or operation of existing infrastructure facilities;]
- (g) “Managing Director” means the Managing Director of the Foundation appointed under section 9 of this Act;
- (h) “member” means a member of the Board;
- (i) “NGO” means non-governmental organization, duly registered with Government, offering health services;
- <sup>3</sup>[(j) “public private partnership” means the mutually binding public private partnership agreement between the Health Agency and a private party for the healthcare delivery services and for improvement of existing infrastructure or development of new infrastructure;]

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<sup>1</sup>Substituted vide Khyber Pakhtunkhwa Act No. XXIII of 2017

<sup>2</sup>Inserted vide Khyber Pakhtunkhwa Act No. XXIII of 2017

<sup>3</sup>Substituted vide Khyber Pakhtunkhwa Act No. XXIII of 2017

- <sup>1</sup>[(j-a) “private party” means a company, an entity, a firm, an association of persons, an NGO or a sole proprietor, who intends to enter into a public private partnership agreement with the Health Agency;]
- (k) “prescribed” means prescribed by rules or regulations;
- (l) “regulations” mean regulations made under this Act;
- (m) “rules” mean rules made under this Act; and
- (n) “Search and Nomination Council” means Search and Nomination Council notified by Government under section 6 of this Act.

**3. Establishment of the Foundation.**---(1) As soon as may be, after the commencement of this Act, Government shall establish a Foundation to be known as the Khyber Pakhtunkhwa Health Foundation, for the development, promotion and facilitation of public private partnership through various means, in line with the health policy of Government.

(2) The Foundation shall be a body corporate having perpetual succession, and a common seal with the power to acquire and dispose of property both movable and immovable and shall by the said name sue and be sued.

(3) The main office of the Foundation shall be at Peshawar.

**4. Board of Governors.**---(1) The oversight, guidance, management and general control of the Foundation and its affairs shall vest in the Board, which shall exercise all powers and do all acts and things that may be exercised or done by the Foundation.

(2) Government, not later than two months, from the date of the commencement of this Act, shall notify the Board, which shall consist of a Chairperson and such official and non-official members, as provided in sub-section (4).

(3) The Government on the recommendation of Search and Nomination Council shall appoint Chairperson from amongst its non-official members, who shall preside over the Board meetings.

(4) The other members shall be,-

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<sup>1</sup>Inserted vide Khyber Pakhtunkhwa Act No. XXIII of 2017

(a)	Secretary to Government, Planning and Development Department or his nominee, not below the rank of additional Secretary;	Member
(b)	Special Secretary to Government, Health Department;	Member
(c)	one representative of the Khyber Pakhtunkhwa Chamber of Commerce and Industry, nominated by President, Khyber Pakhtunkhwa Chamber of Commerce and Industry;	Member
(d)	one Economist providing economics' perspective in public benefit;	Member
(e)	a member from civil society with experience in health and social welfare;	Member
(f)	a member from social development organization with experience in health and other relevant; <sup>1</sup> [Deleted]	Member
(g)	a member philanthropist/ industrialist with experience in business and industries <sup>2</sup> [;] <sup>3</sup> [and]	Member
<sup>4</sup> (h)	two retired medical professionals, one of whom shall be a female;	Member]

(5) The Chairperson and non-official members shall hold office for a term of three years and who shall be eligible for re-appointment for another such term only.

<sup>1</sup>Deleted vide Khyber Pakhtunkhwa Act No. XXIII of 2017

<sup>2</sup>Replaced vide Khyber Pakhtunkhwa Act No. XXIII of 2017

<sup>3</sup>Added vide Khyber Pakhtunkhwa Act No. XXIII of 2017

<sup>4</sup>Added vide Khyber Pakhtunkhwa Act No. XXIII of 2017

(6) The Chairpersons and members at clauses (c),(d), (e), (f), <sup>1</sup>[(g) and (h)] shall be appointed by Government on the recommendation of Search and Nomination Council.

(7) The Chairperson and non-official members, may resign from his office by tendering his resignation to Government <sup>2</sup>[with one month notice.]

(8) Subject to sub-section (2), the Chairperson or a non-official member, as the case may be, shall continue to hold office until his resignation is accepted by the Chief Minister.

(9) Government may remove the Chairperson or a non-official member, on the grounds of inefficiency or misconduct after giving him an opportunity of being heard.

(10) The Managing Director shall act as the Secretary to the Board and shall not have a casting vote.

(11) The Board may co-opt any expert in the relevant field for an initiative on need basis and shall not have a casting vote.

(12) Any vacancy caused due to death, resignation or removal of the Chairperson or a non-official member, shall be filled in by Government through appointment of another person as Chairperson or a non-official member, as the case may be, and such appointee shall, hold such office for the unexpired term of his predecessor.

**5. Meetings of the Board.**---(1) A meeting of the Board shall be called by the Chairperson on such date and at such place, as he may deem appropriate.

<sup>3</sup>[(2) The Board shall meet twice in a year, or as frequently as required by the Chairperson.]

(3) Meeting of the Board shall be presided over by the Chairperson, or in his absence, by <sup>4</sup>[any member nominated by the Chairperson] any other member elected by the members.

(4) Six members shall constitute the quorum for a meeting of the Board but non-official member shall not be represented by any other member:

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<sup>1</sup>Substituted vide Khyber Pakhtunkhwa Act No. XXIII of 2017

<sup>2</sup>Added vide Khyber Pakhtunkhwa Act No. XXIII of 2017

<sup>3</sup>Substituted vide Khyber Pakhtunkhwa Act No. XXIII of 2017

<sup>4</sup>Inserted vide Khyber Pakhtunkhwa Act No. XXIII of 2017

<sup>1</sup>[Provided that at least one official member shall be present in the meeting.]

(5) All decisions at a meeting shall be made by majority of votes. In the event of equality of votes, the person presiding meeting shall have a second or casting vote.

**6. Search and Nomination Council.**---(1)A Search and Nomination Council shall be notified by Government, for the recommendations of persons suitable to be appointed as non-official members of the Board including Chairperson and shall consist of-

- |     |   |               |
|-----|---|---------------|
| (a) | Minister for Health;  | Chairman      |
| (b) | Additional Chief Secretary Planning and Development Department;   | Vice-Chairman |
| (c) | Secretary to Government, Health Department;   | Member        |
| (d) | Vice-Chancellor of the Khyber Medical University;   | Member        |
| (e) | a philanthropist with substantial contribution to the health care system to be nominated by Government; | Member        |
| (f) | a retired senior person preferably a woman from medical profession to be nominated by Government; and   | Member        |
| (g) | a representative of civil society preferably a woman to be nominated by Government.                     | Member        |

(2) The Chairman shall chair the meeting of the Committee and in his absence, the Vice Chairman shall chair the meeting.

(3) A non-official member shall, unless otherwise directed by Government, hold office for a period of three years and shall be eligible for another term of three years or part thereof as Government may deem appropriate:

Provided that Government may remove a non-official member at any time after giving him an opportunity of being heard.

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<sup>1</sup>Substituted vide Khyber Pakhtunkhwa Act No. XXIII of 2017

**7. Powers and functions of the Board.**---(1) Subject to the provisions of this Act and rules, the Board shall exercise such powers and perform such functions, as may be necessary to carry out the purposes of this Act.

<sup>1</sup>[(2) Without prejudice to the generality of the forgoing sub-section (1), the Board shall-

- (a) approve the policy guidelines on public private partnership;
- (b) ensure that all the Health Projects are consistent with overall policy framework and strategies of the Government;
- (c) resolve major issues and conflicts arising in public private partnership;
- (d) approve standards, guidelines, procedures and mode for awarding public private partnership agreement and standardized bidding documents;
- (e) approve or reject a Health Project of any amount submitted by the Technical Committee or a private party for public private partnership;
- (f) create, abolish or re-designate a post; provided while creating post, the financial implications do not exceed the approved annual budget;
- (g) approve regulations and organizational structure of the Foundation;
- (h) approval of financial plans, schedule of new expenditures, annual budgets and business plans of Foundation;
- (i) enhance private sector participation and provisions of health services and operationalize public private partnership and innovative modalities in areas defined by the Government; and
- (j) undertake contract management of Health Projects; and
- (j) perform such other functions as may be assigned to it by the Government.]

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<sup>1</sup>Substituted vide Khyber Pakhtunkhwa Act No. XXIII of 2017

**8. Delegation of Powers.**---The Board may delegate any of its powers and functions to any employee of the Foundation.

<sup>1</sup>[**8A. Technical Committee.**---(1) There shall be established a Steering Committee under the Chairmanship of Managing Director with following composition:

- (a) official members which includes Director General Health, Chief Planning Officer of the Health Department, and representatives of the Planning and Development Department and Finance Department, not below the rank of Additional Secretary;
  - (b) non-official members from private sector as technical experts to be nominated and approved by the Board for a period of three (03) years; and
  - (c) such other co-opted members as the Steering Committee deems appropriate.
- (2) The Technical Committee shall-
- (a) implement the policies relating to the public private partnership related initiatives approved by the Board;
  - (b) evaluate and privatize Health Projects proposals on the basis of prioritization conducted by the Advisory Committee of the Foundation;
  - (c) prepare and apprise each public private partnership agreement to ensure its legal regulatory, social, economic and commercial viability;
  - (d) make recommendations to the Board for the approval or rejection of a Health Project;
  - (e) ensure that the Health Agency and the private parities in a public private partnership comply with the provisions of this Act;
  - (f) submit to the Board annual and such other reports as the Board may require;

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<sup>1</sup>Inserted vide Khyber Pakhtunkhwa Act No. XXIII of 2017

- (g) maintain record of all documentation relating to the public private partnership agreement and the Health Project;
- (j) implement the recommendations and guidelines issued by the Board; and
- (k) carry out such other functions as may be assigned to it by the Board for the purposes of this Act.

**8B. Public private partnership.**---Notwithstanding anything contained in the Khyber Pakhtunkhwa Public Private Partnership Act, 2014 (Khyber Pakhtunkhwa Act No. XX of 2014), the Health Agency shall be fully empowered to enter into public private partnership with private parties under mutually agreed terms and conditions in one or several Health Projects with the approval of Health Foundation and, in accordance with the provisions of this Act.]

**9. Managing Director.**---(1) The Board shall appoint a Managing Director on such terms and conditions as may be prescribed; provided that the person appointed as Managing Director shall have at least fifteen years management experience in Public health or medical profession with gradually increasing abilities of enhanced management:

Provided that till the appointment of a Managing Director, Government may make an interim arrangement and post a suitable officer for a period of six months, as the Managing Director:

Provided further that if no Managing Director is appointed, Government may only once extend such period, for a further period of six months.

(2) The Managing Director shall serve during the pleasure of the Board for the term up to three years which may further be extended for another term.

(3) The Managing Director shall perform such functions as may be prescribed or assigned to him by the Board.

<sup>1</sup>[(3A) The Managing Director shall act as Principal Accounting Officer of the Board; and

(3B) The Managing Director may delegate any of its functions to any employee of the Foundation with the approval of Board of Governors.]

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<sup>1</sup>Inserted vide Khyber Pakhtunkhwa Act No. XXIII of 2017

(4) The Managing Director, while acting as Secretary to the Board, shall be responsible for:

- (i) convening the meetings of the Board;
- (ii) the preparation of the agenda, working paper and its distribution among the members of Board of Governors;
- (iii) recording the minutes of each meeting of the Board and its prompt dispatch to the concerned quarters;
- (iv) proper follow-up of all matters connected with or arising out of a meeting of the Board; and
- (v) monitoring and evaluation of the progress of projects approved by the Board.

(5) The Managing Director shall be responsible for any other task given to him by the Board from time to time.

(6) The Managing Director may resign from his office by tendering his resignation to the Board.

(7) The Board may remove the Managing Director on the grounds of inefficiency or misconduct as may be prescribed by Rules.

**10. Committees.**---The Board may constitute such financial, technical, advisory or any other committees as may be deemed necessary for carrying out the functions of the Foundation or the Board under this Act.

**11. Appointment of Officers, etc.**---The Board may employ officers, advisors, consultants and other employees in service of Foundation, as may be necessary for the efficient administration of Foundation, in such manners and on such terms and conditions, as may be prescribed.

**12. Public Servants.**---All employees of the Foundation shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

**13. Fund.**---(1) There shall be a fund to be known as the Khyber Pakhtunkhwa Health Foundation Fund, which shall consist of endowments, grants/contributions, donations, trusts, bequest by:

- (i) Federal Government;
- (ii) Government;
- (iii) International and local donor agencies; and
- (iv) Others.

(2) The Fund established under section 14 of the Khyber Pakhtunkhwa Health Foundation Act, 1995, shall be part and parcel of this Fund.

(3) The Fund shall be utilized for the purpose of the Foundation and shall be regulated under the overall supervision of the Board in such a manner as may be prescribed by the Board.

**14. Audit and Accounts.**---(1) The Fund shall be maintained in the scheduled bank and shall be operated in accordance with the direction of the Board.

(2) Funds of the Foundation shall be kept in a separate bank account specifically opened for the purpose.

(3) The Board may invest money not required for immediate expenditure in Government Saving Scheme or in fixed deposit with banks approved by Government.

(4) The bank account shall be operated jointly by the Managing director and <sup>1</sup>[Deleted] Director Finance of the Foundation.

(5) The accounts of the Fund shall be maintained <sup>2</sup>[and audited] in such form and in such manner as may be prescribed.

(6) The Managing Director shall prepare Annual Account Statement of the Fund within thirty (30) days of closing of the respective financial year. A copy of the annual statement, duly approved by the Board, shall be sent to Secretary to Government of Khyber Pakhtunkhwa Finance Department, through the Secretary Health Department.

(7) Accounts of the Fund shall be audited by the Auditor General of Pakistan.

**15. Power to make rules.**---Government may make rules for carrying out the purpose of this Act.

**16. Power to make regulations.**---Subject to the Provision of this Act and the rules, the Board may make regulations, as may be necessary for carrying out the purposes of this Act.

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

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<sup>1</sup>Deleted vide Khyber Pakhtunkhwa Act No. XXIII of 2017

<sup>2</sup>Inserted vide Khyber Pakhtunkhwa Act No. XXIII of 2017

**18. Repeal and saving.**---(1)The Khyber Pakhtunkhwa Health Foundation Act, 1995 (Khyber Pakhtunkhwa Act No. VI of 1995) is hereby repealed.

(2) Notwithstanding the repeal of the aforesaid Act, anything done, action taken, rules made, and notification or order issued under the aforesaid Act, shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done; taken, made or issued, under this Act, and shall have effect accordingly.

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

(4) On commencement of this Act:

- (i) all employees recruited by the Health Foundation under the repealed Act; and
- (ii) all assets and liabilities, including furniture, fixtures machinery and vehicles;

shall stand transferred to the Foundation established under this Act.