

INTRODUCED ON 26-09-2016

[AS INTRODUCED IN THE SENATE]

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BILL

to provide for the constitution of a Commission of Inquiry to inquire into the revelations made by the disclosures contained in the Panama Papers.

WHEREAS the recent disclosures termed as 'PANAMA PAPERS Leaks' have revealed that several Pakistani nationals have been maintaining secret offshore bank accounts and interests in offshore companies, investments and properties and other assets outside Pakistan, which they have not declared to any official or competent authority in Pakistan;

AND WHEREAS such accounts, properties, assets, companies and investments appear to have been opened, incorporated, registered, made and/or acquired through undeclared and illegal sources, funds and means and, prima facie, to evade tax as well as scrutiny, accountability and liability under Pakistani law;

AND WHEREAS it is necessary to provide for a uniform, fair, non-discriminatory and transparent process of inquiry into the means by which the Panama-related properties, assets and interests were acquired by all Pakistani nationals thus named and their families;

AND WHEREAS it is accordingly expedient to provide for the constitution of a Commission of Inquiry to probe into the revelations made in the Panama Papers and to provide for matters connected therewith and ancillary thereto:

NOW THEREFORE it is hereby enacted as follows:-

1. Short title, application, extent and commencement. – (1) This Act may be called the PANAMA PAPERS INQUIRIES ACT 2016.

(2) It shall apply to the Commission of Inquiry constituted hereunder to inquire into the revelations in the Panama Papers and to the Respondents and their families.

(3) It extends to the whole of Pakistan and shall apply to all assets of the Respondents and of members of their families wherever these may be.

(4) It shall come into force at once and shall take effect notwithstanding any other law for the time being in force.

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

- (a) "Benami" shall refer to an interest, ownership or title of the real owner in any asset or property where the ostensible title is shown in some other person;
- (b) "Commission" means the Commission of Inquiry constituted under section 3;
- (c) "Chairman" means the Chairman of the Commission;
- (d) "CPC" means the Civil Procedure Code, 1908;
- (e) "CrPC" means the Code of Criminal Procedure, 1898 (Act V of 1898);
- (f) "Family" shall include the lineal ascendants and descendants, and spouse of the Respondent who are citizens of Pakistan;
- (g) "Panama Papers" means the recently leaked record, of accounts opened and assets held through the agency of, or facilitation by, the Panama-based Law firm Mossack Fonseca wherever these may have been opened, held or located;
- (h) "PPC" means the Pakistan Penal Code, 1860 (XLV of 1860);
- (i) "Prescribed" means prescribed by rules made under section 18 of this Act;
- (j) "Publicly" refers to any statement, declaration or offer made in the national or international press or media;

(k) "Relator" means any person who, on application, has been permitted by the Commission to join the proceedings before it;

(l) "Respondents" means Pakistani citizens or persons and their families of Pakistani origin who, notwithstanding dual nationality, retain Pakistani nationality and whose names appear in the Panama Papers;

(m) "Terms of Reference" or "TORs" means the TORs contained in the Schedule

3. Constitution of Commission of Inquiry: (1) The Federal Government shall, by Notification in the official Gazette, constitute a Commission of Inquiry in accordance with the provisions of this Act.

(2) The Federal Government shall make a reference to the Chief Justice of Pakistan to nominate three judges of the Supreme Court to be constituted as a Commission to inquire into the revelations made by the Panama Papers in accordance with this Act and the Schedule, and shall designate the senior-most member to be the Chairman of the Commission or if the Chief Justice is himself a member, he shall be the Chairman. The Federal Government shall thereupon constitute the nominated judges as the Commission by a Notification in the official Gazette.

(3) The Commission shall conduct the inquiry and perform its function in accordance with this Act and the Terms of Reference (TORs) contained in the Schedule;

provided in the Schedule to this Act shall only be amended pursuant to a consensus between the Government and the Opposition in Parliament.

(4) The Commission shall have all the powers vested in it under this Act and the Schedule.

(5) The TORs shall specify the time period within which any such inquiry shall be concluded and may specify different time limits for different categories of cases;

Provided that the Federal Government may, on the recommendation of the Chairman of the Commission, extend the time so specified.

(6) The Commission shall on the conclusion of the inquiry conducted by it in each case submit a Final Report in respect thereof to the Federal Government.

4. **Publication and order of probe:** Each report of the Commission in the case of each Respondent and his family members shall be published by the Federal Government within one week of its submission

provided that the report concerning any Respondent who publicly volunteers himself and his family for accountability or who publicly admits holding of off-shore assets, along with his family, shall be completed and submitted in the first instance.

5. **Prosecution:** A Respondent held responsible by the Commission for any illegal act or conduct shall be prosecuted and punished in accordance with law by a court of competent jurisdiction.

6. (1) **Powers of the Commission:** The Commission shall have all the powers of a Court under the Constitution, CPC, CrPC, and the Supreme Court Rules.

(2) Without prejudice to the generality of the foregoing:-

(i) The Government of Pakistan, the Provincial Governments and all Governmental agencies and executive authorities including the National Accountability Bureau, Federal Investigation Agency, Intelligence Bureau, Federal Board of Revenue, State Bank of Pakistan and Securities and Exchange Commission of Pakistan shall act in aid of the Commission and extend all cooperation and assistance necessary to the Commission and shall comply with all its directions.

(ii) The Government of Pakistan shall be obliged by law to fully assist the investigation by extending all necessary financial, legal, diplomatic support including obtaining cooperation from other states and various international agencies for the conduct of the investigation.

- (iii) The Government of Pakistan shall be responsible for creating appropriate infrastructure and other facilities and for making available all required funds to the Commission to complete its task.
- (iv) The Commission shall constitute a national or international joint investigation team or teams and seek international cooperation from foreign countries and agencies to provide information, documents, evidence and record from abroad or otherwise request for cooperation and assistance in the investigation or issue letters and interrogatories, in accordance with the United Nations Convention Against Corruption (the "UNCAC") , the World Bank Stolen Assets Recovery Initiative (the "STAR") and Mutual Legal Assistance Requests (the "MLARS"). Where ever necessary, such requests, letters and communications by the Commission shall be deemed to be requests, letters and communications by the Government of Pakistan.
- (v) The Commission may obtain the services of such advocates of good repute as may be necessary to assist in an inquiry or inquiries and the Federation shall provide for their remuneration as determined by the Commission.
- (vi) The Commission may also permit a relator to assist it but no fee shall be payable to the relator.
- (vii) In the event an inquiry relates to a Respondent who has himself reduced the stages of the Inquiry by admitting, publicly or through communication to the Commission, holding of assets mentioned or alluded to in the Panama Papers, the inquiry concerning him/her and his/her family shall be concluded in accordance with the Schedule in the first (03) three months extendable by (01) one month for reasons to be recorded by the Commission, from the date of commencement of the inquiry. Inquiries in respect of other Respondents shall only commence thereafter and be concluded within (12) twelve months.

7. **Proceedings to be open and burden of proof:** All proceedings and documents before the Commission shall be open to the public and the burden shall be on the Respondent and his family to establish the legality of the income, fund or sources expended to acquire property, asset or interest in question. In the event of a gift, the legitimate source of the donor's income will have to be established.
8. **Summons and discovery-** (1) Notwithstanding the generality of the powers of a Civil Court under Code of Civil Procedure, 1908 (Act V of 1908), the Commission shall have the following powers, namely:-
- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of any documents;
 - (c) receiving evidence on affidavits;
 - (d) issuing commissions for the examination of witnesses or documents; and
 - (e) requisitioning any public record or copy thereof from any court or office.
- (2) The Commission shall also have the power to require any person or authority, subject to any privilege which may be claimed by that person or authority under any law for the time being in force, to furnish information or documents on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject-matter of the inquiry. Privilege shall in no case be claimed with respect to assets already admitted through application to the Commission or in a public statement made by the Respondent.
9. **Powers of entry, search etc-** (1) The Chairman or any officer, not below the rank of an officer of BS-17, specially authorised in this behalf by the Chairman may:-
- (a) enter any building or place where the Commission has reason to believe that any books of account or other documents, computers, hard or soft discs or any other means or instruments for the storage of data in any format or filing system relating to the subject-matter of the inquiry may be found; and
 - (b) seize any such books of account or documents computers, hard or soft discs or any other means or instruments for the storage of data in any format or filing system

or take extracts or copies therefrom, subject to the provisions of section 102 and section 103 of the CrPC, in so far as they may be applicable.

10. Power to order police investigation.- (1) The Commission shall, for the purposes of this Act, have the power to order a police investigation under the Cr.P.C. into any matter coming before it.

(2) In conducting an investigation ordered under sub-section (1), the Police shall exercise the powers conferred on it in respect of a cognizable case by chapter XIV of the CrPC.

11. Power to punish for contempt.- (1) The Commission shall have the same powers as that of the Supreme Court to punish any person who,-

- (a) abuses, interferes with or obstructs the process of the Commission in any way or disobeys any order of the Commission;
- (b) scandalizes the Commission or otherwise does anything which tends to bring the Commission or a member of the Commission in relation to his office into hatred, ridicule or contempt;
- (c) does anything which tends to prejudice the determination of a matter pending before the Commission; or
- (d) does any other thing which, by any other law, for the time being in force constitutes contempt of court:

Provided that fair comments made in good faith and in the public interest on the working of the Commission or on its Final Report after the completion of the inquiry shall not constitute contempt of the Commission.

(2) Exercise of the powers conferred on a Commission by this section shall be regulated by rules made by the Supreme Court.

12. Additional powers of the Commission.- In case the specific nature of an inquiry so requires, the Commission shall exercise the following additional powers for the purposes of this Act, namely:-

- (a) the power to constitute special teams, consisting of officers from the executive authorities and experts in specific fields, for the purposes of assisting the Commission in conducting an inquiry. The special teams shall have such powers as may be provided by the Commission;
- (b) such other powers as are deemed necessary for conducting the inquiry.

13. Terms of Reference: (i) Notwithstanding anything contained in this Act or any other law and in addition to the foregoing the Commission shall proceed in accordance with and exercise the powers specified in the TORs contained in the Schedule to this Act.

(ii) The TORs may not be amended without a consensus between the Government and the Opposition in both Houses of Parliament.

14. Judicial Proceedings.- All proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of PPC.

15. Procedure of the Commission.- (1) The Commission shall have the power to regulate its own procedure except as provided in this Act or in the Schedule hereto.

(2) The Commission shall fix the places and times of its sittings.

(3) The Commission may act notwithstanding the temporary absence of any member or the existence of a vacancy among its members, provided that each Final Report shall be made by all three members.

16. Statements made by persons before the Commission.- No statement made by a person in the course of giving evidence before the Commission other than a Respondent or a member of his family, shall subject him to, or be used against him in, any civil or criminal proceeding except in a prosecution for giving false evidence by such statement:

Provided that the statement is made in reply to a question which he is required by the Commission to answer; or is otherwise relevant to the subject-matter of inquiry.

17. **Protection of action taken in good faith.**- No suit or other legal proceedings shall lie against any member of the Commission or any person acting under the direction of the Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder or in respect of the publication, by or under the authority of the Commission, of any report, paper or proceedings.

18. **Power to make rules.**- The Federal Government may if necessary, by Notification, in the official Gazette, make rules to carry out the purposes of this Act

Provided that such Rules shall be placed before both Houses of Parliament immediately upon promulgation and may be repealed by a resolution of either House.

SCHEDULE

TERMS OF REFERENCE

I. Preliminary:

PRIORITY OF CASES: While inquiring into the Terms of Reference given below the Commission shall first advert to the cases of Respondents, including their family members, who have publicly volunteered for accountability or have publicly admitted holding of assets and properties or off-shore companies abroad. Only after exhausting all available cases within this category will the Commission then proceed to inquire into the properties and affairs of other Respondents in such order as it may choose.

II. (1). The Commission shall:

(i) Examine information, including information made available by the disclosure of the Panama Papers, relating to involvement of Respondents, their family members in acquiring properties, assets and interests outside Pakistan in their own names or in the names of companies and entities registered in any jurisdiction, state or country and to determine in each case whether any law has been infringed by the Respondent or any member of the family of the Respondent, and if so, also to determine responsibility for such infringement.

(ii) In order to come to a conclusion in each case, determine whether the provisions of laws relating inter alia to income tax, wealth tax, foreign exchange, companies and elections have been infringed by the Respondent or any member of

the family of the Respondent, with due regard inter alia to the following matters as may be applicable to each case:-

- (a) details of all the properties, assets and bank accounts held and/or acquired, benami or otherwise, by the Respondent and members of the Respondent's family or by off-shore companies, in or outside Pakistan;
 - (b) sources and means of transfer/ or transmission of the funds and incomes utilized to purchase the properties, assets and bank accounts in (a) above;
 - (c) income earned and profits or dividends obtained or funds received, income tax if any payable or paid by the Respondent and each member of the family of the Respondent on the funds and incomes in (b) above as well as otherwise on a year-wise basis;
 - (d) To ensure that the transactions are not based on proceeds of drug trafficking or terrorist finance, the details and particulars of the persons or entities from whom the properties in (a) above were purchased, and the funds and incomes in (b) above were obtained and, in case the sellers are companies, or companies owned by companies, the names and particulars of the individuals, (howsoever remote and behind how so many corporate veils) actually owning the seller company or companies or the properties, assets or bank accounts of such companies.
- (iii) Appoint a committee of experts in international forensic audit (hereinafter referred to as the "Experts Committee") to carry out an exhaustive investigation and audit into the offshore companies and their accounts owned by the Respondent and his Family including all transactions, sales and purchases of all assets, moveable and immovable, including stocks, shares, debentures and equitable or benami interests, opening and operation of all bank accounts, including offshore bank accounts and incorporation of all companies including offshore companies whether directly or behind corporate veil(s) wherever in the world they maybe.
- (iv) It shall be the critical duty of the Experts Committee to verify and report to the Commission, the money trail which provided funds for such offshore companies and the consequential payments out of such funds for investments and other financial transactions.
- (2) Without prejudice to the generality of the foregoing, and in order to arrive at the whole truth, the Commission shall obtain evidence with regard to, examine and give its findings on each of the following questions with respect to each Respondent and each member of his family:
- (i) What properties, and of what real market value, are held beneficially, benami or have otherwise been bought and/or sold by the Respondent and his Family during the period 1985 to 2016?

- (ii) What sources of income were available to the Respondent and his Family during this period?
- (iii) What bank accounts in their own names or benami were these funds kept in?
- (iv) Were the Respondent and his Family members not required to pay Income Tax in Pakistan for such incomes?
- (v) On which date and through which banks were the funds utilized in the purchase of the properties abroad?
- (vi) Lifting the veil of incorporation, who was the person(s) from whom the aforesaid properties were purchased?
- (vii) When were the properties purchased by the seller from whom these were obtained by the Respondent and/or his family members with similar disclosure of the seller's particulars, bank and income tax statements of the seller?
- (viii) Where a Respondent himself admits ownership of any properties abroad, what other properties, assets or interests did the Respondent or his Family acquire by payments made from bank accounts from which the disclosed properties were purchased by the Respondent or any other bank accounts in their names?
- (ix) Is the year-wise accretion and acquisition of assets commensurate with the Income Tax paid year wise by the Respondent and his Family since 1985?
- (x) Whether opening, maintaining and operating offshore accounts by or on behalf of the Respondent and his Family or being beneficiaries of such accounts could be regarded as legal and proper for him and his Family?
- (xi) Whether the Respondent and his Family are required to disclose money trail and transfer of funds into their offshore accounts and money trail and transfer of funds out of such accounts for purchase of properties or other investments in foreign countries?
- (xii) Whether any Pakistani staying abroad under agreements between the Government of Pakistan and another sovereign state is not a state guest in that country on behalf of Pakistan?
- (xiii) Whether any property, gifts or amounts received by him during that period and/or properties and assets acquired or obtained by him did not belong to the State of Pakistan and were these not liable to be deposited in the State Exchequer or Tosha Khana?
- (xiv) Whether a Respondent, by concealing the ownership and sources of income through which the properties were procured, and concealing them in the nomination papers or before relevant tax authorities during the previous

elections, has not committed corrupt and illegal practices under the elections and tax laws?

- (xv) Whether all transfer of funds, purchase of assets and all other investments and transactions can be chronologically reconciled with individual Income Tax paid by the Respondent and each Family member?

- (3). Respondent and Family to authorise Committee.** The Respondent and members of his family shall execute mandatory authorisations by irrevocable general powers of attorney empowering the Experts Committee and/or its designated members, or any other person designated by the Commission, to lift all corporate veils, access all bank accounts, offshore companies and their accounts, stock exchange accounts, corporate registers including registers of shareholders and directors, land and estate records (by whatever name or nomenclature called in any jurisdiction), and the facilitation of the Committee/member by the Respondent by any other means that may be required by any foreign jurisdiction, government, authority or official concerned, and such facilitation may include the signing of any required documents, forms, applications, requests or authorisations as if the person empowered were the concerned Respondent or family member;

Provided that an irrebuttable presumption of guilt shall arise against the Respondent in the event the Respondent or members of his/her family refuse or fail to give the authorizations or extend the facilitation referred to in this Section;

Provided further that once ownership of the Respondent or his Family of an asset or interest is proved, or admitted, (whether as banamidar, beneficiary, trustee or in any other capacity), the burden of proving that it was lawfully acquired through legitimate incomes, sources, funds, and through a lawful mode, shall be on the Respondent.

- (4) Forfeiture:** In case a Respondent and his Family omit to extend fullest cooperation to the Committee or if they are unable to rebut the presumption that the assets were not acquired through legitimate Income Tax paid incomes, sources, funds and means, the Commission shall direct them to forthwith liquidate and bring those assets and funds to Pakistan where the State shall forfeit them.

(5) Cross-examination: Every Respondent and his Family members shall present themselves before the Commission for examination and cross-examination, by any advocate, any relator or other person permitted by the Commission.

(6) The Commission shall also:

- i. Require, in addition to the exercise of powers under clause (iv) of Section 6 (2) and Section 12 of the Act, a forensic audit by a competent and independent firm of Pakistani auditors, of each case separately in accordance with the provisions of the Act, to determine the legality of each of the transactions covered by these TORs wherein the burden of proving the lawful nature of the transaction shall be on the Respondent;
- ii. require the Respondent and every family member to make a full and complete disclosure, on oath and/or affidavit, of all the properties, bank accounts, shares and all other assets of the Respondent and every member of the family of the Respondent, along with their market value, whether held benami or otherwise, and in case the property or off-shore company is claimed to be benami or in trust require the Respondent to obtain a similar disclosure from the real owner, the benamidar and the trustee.

STATEMENT OF OBJECTS

The Act seeks to provide a legal process for inquiries into the trans-national and trans-jurisdictional secreted transfers and deposits of vast sums of Pakistani rupees and resources by persons whose names have been disclosed in the recent leaks of the Panama Papers and by their family members. Since funds have been secretly transmitted to, and parked or utilized in foreign countries behind corporate veils, and since the disclosures have been made by a reputable international body of investigative journalists, the category of persons named in the Panama Leaks is distinct and stands apart. For this purpose this new special law is designed to facilitate the State, through specific provisions providing for effective trans-national and trans-jurisdictional tracing and outreach, to uncover all those secreted funds, assets and properties .

SENATOR AITZAZ AHSAN (LEADER OF THE OPPOSITION)
SENATOR SAEED GHANI
SENATOR AHMED HASSAN
SENATOR GIANCHAND
SENATOR HAJI SAIF-ULLAH KHAN BANGASH
SENATOR ISLAMUDDIN SHAIKH
SENATOR KARIM AHMED KHAWAJA
SENATOR KHANZADA KHAN
SENATOR MIR MUHAMMAD YOUSAF BADINI
SENATOR MUKHTIAR AHMED DHAMRAH @ AAJIZ
SENATOR OSMAN SAIFULLAH KHAN
SENATOR ABDUL REHMAN MALIK
SENATOR SALEEM MANDVIWALA
SENATOR SHERRY REHMAN
SENATOR FARHATULLAH BABAR
SENATOR FAROOQ HAMID NAEK
SENATOR ROZI KHAN KAKAR
SENATOR TAJ HAIDER
SENATOR KHALIDA PARVEEN
SENATOR RUBINA KHALID
SENATOR SASSUI PALIJO
SENATOR SEHAR KAMRAN
SENATOR HARI RAM
SENATOR ILYAS AHMAD BILOUR
SENATOR SHAHI SYED
SENATOR MUHAMMAD DAUD KHAN ACHAKZAI, ADVOCATE
SENATOR SITARA AYAZ
SENATOR ZAHIDA KHAN
SENATOR MIR ISRARULLAH KHAN ZEHRI
SENATOR RUBINA IRFAN
SENATOR MOHSIN AZIZ
SENATOR BRIG. (R) JOHN KENNETH WILLIAMS
SENATOR SYED SHIBLI FARAZ
SENATOR NAUMAN WAZIR KHATTAK
SENATOR SAMINA ABID
SENATOR KAMIL ALI AGHA
SENATOR MUSHAHID HUSSAIN SYED
SENATOR MOHAMMAD AZAM KHAN SWATI
Members-In-Charge