

**Draft Model Provincial Floodplain  
Management Act 2015**

# Draft Model Provincial Floodplain Management Act 2015

An Act to provide for protection of rivers, flood control and connected matters

**Preamble:** Whereas it is necessary to make provisions for proper management of Flood Plains of rivers and their tributaries in the Province and catering for the matters connected with and ancillary thereto, in the manner hereafter appearing;

It is hereby enacted as follows:

## Chapter 1

### Preliminary

#### 1. Title, Extent and Commencement

- (1) This act may be cited as Provincial Floodplains Management Act 2015.
- (2) The Act shall apply throughout the Province.
- (3) It shall come into force on such date as the Government may, by notification, appoint:  
Provided that different dates may be appointed for coming into force of different provisions of this Act:  
Provided further that different dates may be appointed for coming into force of this Act in different areas of the Province

#### 2. Objectives of the Act: **The objectives of the Act include-**

- (a) Protection of rivers from encroachments etc;
- (b) Catering for the quality / better flow of river water;
- (c) Protection of overall environment in the river areas;
- (d) Better flood protection through (a), (b) and (c).

### 3. Definitions:

Unless there is anything repugnant in the subject or context, the following terms used in this Act shall have the meaning assigned to them as under:-

- (i) "Act" means Provincial Floodplain Management Act, 2015
- (ii) "Authority" means the Floodplain Management Authority established under the Act;
- (iii) "Board of Revenue" means the Board of Revenue established under the Land Revenue Act 1967;
- (iv) "Chairman" means the Chairman of the Authority;
- (v) "Collector" means a person exercising the powers of Collector under Land Revenue Act 1967;
- (vi) "Commissioner" means a person exercising the powers of Commissioner under the Provincial Land Revenue enactment;
- (vii) "Company" means a company registered under the Companies Ordinance, 1984;
- (viii) "Council" means the Flood Plain Management Council established under the Act;
- (ix) "Department" means a Department of the Provincial Government;
- (x) "Environment" has the same meaning given in the Environment Protection Act, 1997;
- (xi) "Government" means the Provincial Government;
- (xii) "High Risk Area" means the area demarcated as High Risk Area under the Act;
- (xiii) "Low Risk Area" means the area demarcated as Low Risk Area under the Act;
- (xiv) "Land Revenue" means the land revenue charged under the Land Revenue Act 1967;
- (xv) "NGO" means a Non Governmental Organization registered as a charitable society under the Societies Registration Act, 1860 and approved by the Collector for the purposes of the Act;

- (xvi) "Prescribed" means prescribed by the rules;
- (xvii) "Prior publication" has the same meaning given to it under the Provincial General Clauses Act, 1956;
- (xviii) "Province" means the concerned Province (Balochistan, Khyber Pakhtunkhwa, Punjab and Sindh);
- (xix) "Provincial Disaster Management Authority" means the Provincial Disaster Management Authority established under the National Disaster Management Authority Act, 2010;
- (xx) "Regulation" means regulation framed by the Authority under the Act;
- (xxi) "River Bed" means the normal flow area demarcated as River Bed under the Act;
- (xxii) "Flood Plain Management Area" means the River Bed, High Risk Area, Low Risk Area and area within two hundred yards beyond Low Risk Area ;
- (xxiii) "River" means any perennial water body draining the catchment area, declared by the government and includes the tributaries and streams or drainage channels running into it and the natural or manmade reservoirs on it, except the reservoirs under any Federal or Provincial entity
- (xxiv) "Rule" means rule framed by the Government under the Act;
- (xxv) "Tributary" means branch of river or stream perennial or non-perennial contributing to the water flow and draining there in;

## **Chapter 2**

### **Flood Plain Management Council**

#### **4. Establishment of the Council**

The Government shall establish Flood Plain Management Council within three months of the coming into force of the Act.

#### **5. Constitution of the Council**

- (1) The Council shall comprise the following
  - (i) Chief Minister
  - (ii) Minister for Irrigation
  - (iii) Minister for Environment Protection
  - (iv) Leader of Opposition in the Provincial Assembly

- (v) Head of Planning and Development
  - (vi) Senior Member Board of Revenue
  - (vii) Secretary Law Deptt;
  - (viii) Inspector General of Police
  - (ix) Representative of PDMA
  - (x) Representative of NGO dealing with environment protection
  - (xi) An expert from academia in the field of waters resources management
- (2) The Chief Minister shall be the President of the Council
- (3) The President may nominate any other member of the Council to be Vice President of the Council.
- (4) The President and in his absence the Vice President shall preside over the meetings of the Council: Provided that in the absence of both the President and Vice President, the President may nominate any other member of the Council to preside over a meeting.
- (5) The tenure of the members of the Council, other than ex-officio members, shall be three years.
- (6) The quorum of the meeting shall be 50% members and presiding officer under sub section (4) of this Section.

## **6. Functions of the Council**

- (1) Subject to the provisions of the Act, rules and directions of the Government, the Council shall be responsible for overall Flood Plains Management in the Province.
- (2) In particular, the council shall perform the following functions-
- (i) Formulation of policy for achievement of the objectives of the Act;
  - (ii) Approval of the Flood Plains Management plans of the Authority;
  - (iii) Giving directions to the Authority with relation to enforcement of the Act, Rules and Regulations;
  - (iv) Coordination with the relevant Departments of the Federal Government;
  - (v) Proposing rules for the approval of the Government;
  - (vi) Providing financial support to various entities under the Act;
  - (vii) Approval of the budget of the Authority;

- (viii) Giving directions to the concerned Departments of the Government regarding flood plain management;
  - (ix) Calling for information, reports, data etc. from the Authority and other entities working under the Act;
  - (x) Ordering inquiries, investigations and further necessary actions in any matter relating to flood plain management;
  - (xi) Determine the roles and responsibilities of various departments of government with relation to flood plain management;
  - (xii) Perform such other function, relating to flood plain management, as may be entrusted to it by the Government;
- (3) In case of an emergency, requiring immediate action or measure, the President of the Council may perform any of the functions of the Council as he may deem fit and place his action before the Council for *ex post facto* approval.
- (4) The Council shall perform its functions according to the prescribed procedure.

## **Chapter 3:**

### **Provincial Flood Plains Management Authority**

#### **7. Establishment of Authority**

- (1) The Government shall establish Provincial Flood Plains Management Authority within three months of the coming into force of the Act.
- (2) The Authority shall be a body corporate having its own seal, with power to acquire, hold and dispose of the property and sue and be sued in its own name: Provided that the Authority shall dispose of the property in the prescribed manner.
- (3) The head office of the Authority shall be at provincial capital: Provided that the Authority may have its regional offices at other places in the Province.

#### **8. Constitution of the Authority**

- (1) The Authority shall comprise the Chairman and following members -

- (a) Representative of Planning and Development
- (b) Senior Member, Board of Revenue or his representative not below the rank of Member;
- (c) Secretary Finance or his nominee not below the rank of Additional Secretary;
- (d) Secretary Irrigation or his nominee not below the rank of Additional Secretary;
- (e) Secretary Environment or his nominee not below the rank of Additional Secretary;
- (f) Secretary Health or his nominee not below the rank of Additional Secretary;
- (g) Representative of Law Department not below the rank of Additional Secretary;
- (h) Representative of IG Police not below the level of Deputy Inspector General of Police;
- (i) Representative of the Pakistan Railways, and
- (j) Two experts from academia, one each relating to environment and water resource management, appointed by the Government.

## **9. Tenure of the members**

Members of the Authority other than ex-officio members shall hold office for a period of 3 years

## **10. Functions of the Authority**

- (1) Subject to the provisions of Chapter 2, the Authority shall be principal body for Flood Plains Management under the Act.
- (2) The functions of the Authority include the following --
  - (i) Implementation of the flood plain management policy and directions of the Council
  - (ii) Preparation Flood Plains Management plan;
  - (iii) Implementation of the approved plans.
  - (iv) Acquisition of land for carrying out the purposes of the Act
  - (v) Requisition of resources for carrying out the purposes of the Act
  - (vi) Providing training to the people dealing with Flood Plains Management

- (vii) Carrying out research and publication in the field of Flood Plains Management
  - (viii) Giving advice to the Departments of the Government with relation to Flood Plains Management;
  - (ix) Promote general awareness and education with relation to Flood Plains Management; and
  - (x) Performing such other functions as may be assigned to it by the Council
- (3) The Authority shall perform its functions and exercise its powers under the general supervision of the Council.

## **Chapter 4: Flood Plain Management**

### **11. Flood Plains Management Areas:**

The following shall comprise the Flood Plains Management Areas of a river-

- (a) River Bed
- (b) High Risk Area
- (c) Low Risk Area
- (d) Two hundred yards beyond Low Risk Area

### **12. Demarcation:**

- (1) There shall be Demarcation Committee, notified by the Government, for each River to perform the functions under this section: Provided that the Demarcation Committee may be entrusted with other functions under the rules.
- (2) The Demarcation Committee shall comprise-
- (a) Chairman of the Committee appointed by the Government;
  - (b) District Officer (Revenue) of the concerned District;
  - (c) A representative of Irrigation Department;
  - (d) A representative of the Authority; and

- (e) A representative of the Environment Department.
- (3) The Government may direct the Demarcation Committee to prepare the Demarcation Scheme of a river in the Province within time specified by the Council.
  - (4) The Demarcation Committee shall, prepare a Demarcation Scheme for the said river and its major tributaries, which shall include the limits of the Flood Plains Management Areas for each River, their general features, cultivation and inhabitation in these areas.
  - (5) The Demarcation Committee shall publish the Demarcation Scheme, on two dates with the interval of ten days, in two prominent newspapers and invite objections, suggestions and other observations regarding the Scheme.
  - (6) Any person may, within thirty days of the last publication, submit his objections, suggestions or other observations to the Collector who shall, within thirty days conduct public hearing on the Demarcation Scheme and forward his report, which shall include the objections, suggestions or other observations along with his comments, to the Demarcation Committee.
  - (7) The Demarcation Committee shall review the report and may modify the Scheme in the light of the objections, suggestions, other observations and comments of the Collector.
  - (8) The Demarcation Committee may finalize the Scheme with or without modifications
  - (9) The Demarcation Committee shall submit the Scheme to the Board of Revenue for confirmation and notification.
  - (10) The Board of Revenue shall notify the confirmed scheme, which shall become effective after thirty days of the date, it is published in the Official Gazette.
  - (11) Appeal against the decision of the Board of Revenue may be filed before the Tribunal within thirty days of the notification, which shall be decided within ninety days of the filing of appeal and if it is not decided within this

period, it shall be decided by the Tribunal within next seven days against the contesting party which is responsible for the delay.

- (12) The Demarcation Scheme may be reviewed from time to time or on periodic basis as may be determined by the Council.

### **13. Excavation and removal of sand from River Area:**

- (1) No person shall excavate or remove any sand or earth or a mixture thereof from the Flood Plain Management Area except under a permit issued by the Commissioner..
- (2) The permit shall be issued through an auction conducted by an officer designated by Commissioner..
- (3) The excavation or removal of sand shall be strictly in accordance with the terms and conditions of the permit.
- (4) The Commissioner may cancel the permit, if the permit holder violates the terms and conditions of the permit.
- (5) Appeal against the decision of Commissioner under sub section (4) may be filed before the Authority within thirty days of the order of cancellation.

### **14. General Prohibitions:**

- (1) No person shall
  - a) Construct, or undertake any related physical works of any commercial building or non-commercial building, or undertake any other developmental work, within the River Bed, except that the Authority may undertake any such work
    - (i) under the approved plan or
    - (ii) in an emergency;
  - b) Construct, or undertake any related physical works of any commercial building or non-commercial building, or undertake any other developmental work, within the Flood Zone except with the permission of Authority given under the approved plan.
  - c) Except as provided by the Act or rules framed under it-

- (i) place or deposit or release, directly or indirectly, any substance into the river
- (ii) Dispose into rivers, directly or indirectly, such solid waste or hazardous waste or other substances as may be prescribed.

### **15. Power to remove encroachment:**

The Authority may authorize an officer to remove encroachments at the cost and risk of the person responsible for the encroachment in the prescribed manner after at least fifteen days' notice and providing a reasonable opportunity of hearing to the said person.

### **16. Land use and zoning Plans**

- (1) Government may prepare land use and zoning plans for the catchment area or a part thereof for a specific river or for all the rivers and their tributaries to which this Act applies, and may require mandatory compliance with such plans.
- (2) The construction or other developmental activities shall be undertaken in the Flood Plain Management Areas accordance with the land use and zoning plans prepared under sub-section (1).

### **17. Building Control**

The Government may make rules or apply any of the existing building control instruments, under any other law for the time being in force, to control construction of buildings in the catchment areas or Flood Plain Management Area of any river or a part thereof.

### **18. Sanitation arrangements:**

- (1) The owner, proprietor or manager of all existing hotel or other building, whether to be used for a public purpose or otherwise, shall within such area which, directly or indirectly drains into the river, shall ensure construction of proper septic tanks, and a soaking pit or an alternate arrangement acceptable to the Prescribed Officer.

- (2) The owner of all the new building, house, hotel, etc., within the area mentioned in sub section (1) make similar arrangements.
- (3) No new building, house, structure, or hotel, used for commercial or non-commercial purposes, within the area mentioned in sub section (1) shall be made unless the arrangements as mentioned in sub-section (1) are followed; provided.
- (4) The Authorized Officer or his representative may enter into any existing building or structure, constructed within Flood Plain Management Area for the purpose of inspection regarding proper sanitation arrangements.
- (5) The provisions of this section shall not apply to a kacha house built by a local inhabitant for his agriculture purpose.

#### **19. Power to seal:**

The Authorized Officer may, after due notice, stop and seal any commercial activity, business of a hotel, or establishment with respect to which any violation appears to have been committed under this Act or rules may requisition the police force through Officer Incharge of a Police Station within whose local jurisdiction, the violation has been committed.

#### **20. Flood Plain Management Fund**

- (1) There shall be established a Flood Plain Management Fund, which shall comprise
  - (a) Monies received from the auction of sand from the Rivers;
  - (b) Taxes collected from the commercial, recreational and related activities in the Flood Plain Management Areas;
  - (c) Grants made by the Government
  - (d) Donations received from individuals, NGOs and donor agencies
  - (e) Monies collected as fees for services
  - (f) Any other sum received by the Authority and District and Local Committees.
  - (g) Any other amount as may be prescribed.

- (2) The account of the Fund shall be maintained in one or more Scheduled Banks selected by the Government.
- (3) The Fund shall be utilized for the Flood Plain Management in the Province
- (4) The Fund shall be administrated by the Authority with the approval of the Council, towards meeting the expenses for emergency preparedness, response, mitigation relief and reconstruction in the Province.
- (5) The accounts of the Fund shall be maintained and audited in the prescribed manner.

## **21. Financial support by Government:**

- (1) The Government shall make provision in the annual budget for funds to cater for the purposes of carrying out the activities and programs relating to Flood Plain Management.
- (2) The Government may set up a Provincial Flood Insurance Company to provide for affordable insurance coverage for flood damage:  
Provided that the Provincial Flood Insurance Company shall be a non profit organization to be registered as a Section 42 Company under the Companies Ordinance, 1984.
- (3) The Government shall seek funds from the Federal Government for providing relief to the Flood Plain Management affected persons.
- (4) Subject to any Federal Law on this subject, the Government may, seek donations from international agencies.
- (5) The Government may exempt any NGO working in Flood Plain Management Areas from such Local Taxes and Provincial Taxes as it may deem fit:  
Provided the exemption under this sub section shall not be given to any NGO which is acting or likely to act in a manner contrary to law, morality, public order or other public interest.  
Provided further that there shall be no discrimination on the political grounds only.

- (6) The Government shall, within three months of coming into force of this Act, frame rules for giving effect to the provisions of this section.

## **Chapter 5:**

### **Offence, violations, penalties, trial, etc.**

#### **22. Punishment for obstruction, etc:**

Whoever, without reasonable cause,

- (a) Obstructs any officer or employee or agent of the Government, the Authority, or any person in the discharge of his functions under this Act; or
- (b) Refuses or comply with any direction given by on behalf of the Government, Council, Authority or any person under this Act;

Shall be punishable with imprisonment for a term which may extend to one year or with fine or with both and, if such obstruction or refusal to comply with such directions results in loss of lives or imminent danger thereto, shall on conviction by the competent court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

#### **23. Punishment for failure to remove encroachment:**

Whoever fails to remove an encroachment within ten days of the receipt of a notice shall on conviction by the competent court, be liable to imprisonment which may extend to six months, or with fine which may extend to five hundred thousand rupees, or with both: Provided that the punishment of imprisonment, in no case, shall be less than one month and the amount of fine, in no case, shall be less than ten thousands rupees.

#### **24. Punishment for failure of duty or connivance:**

Any officer on whom any duty has been imposed by or under this Act and who refuses to perform or withdraws himself from the duties of his office except under

express written permission of his superior or under circumstances beyond his control, shall on conviction by the competent court, be punishable with imprisonment for a term which may extend to one year or with fine.

**25. Punishment for other violations:**

- (1) Whoever is found guilty of any other violation of the provisions of this Act or rules, for which no penalty has been provided under shall be on conviction by the competent court, liable to imprisonment which may extend to six months, or with fine which may extend to five hundred thousand rupees, or with both: Provided that the punishment of imprisonment, in no case, shall be less than one month and the amount of fine, in no case, shall be less than ten thousands rupees.
- (2) Any person who is an abettor of any violation of the provision of this Act or rules shall be liable to the same penalty as provided in sub-section (1).

**26. Trial and nature of offences:**

- (1) The offences under the Act shall be tried by a court specified by the Government, on the complaint of a person authorized in this behalf by the Authority.
- (2) The offences under the Act shall be cognizable and non bailable.

**27. Offences by Companies or Firms**

Where an offence of encroachment upon a river or its tributary or unlawful disposal of solid waste or flow of untreated water into a river is committed by a company, body corporate or a firm, every director, manager secretary, or officer of servant of the company or body corporate, or every partner, manager or official actively dealing with the conduct of business of such firm, as the case may be, shall be deemed to have committed the offence, unless he proves that the offence was committed without his knowledge or that he used all his efforts to prevent the commission of such an offence.

## **Chapter 6:**

### **Tribunal, appeals, bar of jurisdiction, etc.**

#### **28. Tribunal**

- (1) The Government shall, within three months of the coming into force of the Act, establish with the concurrence of the Provincial High Court, a Tribunal comprising a retired judge of the said High Court to exercise jurisdiction under the Act.
- (2) The Tribunal shall have its office at Provincial capital.
- (3) The Tribunal shall exercise such jurisdiction which is vested in it by the Act or Rules, and shall conduct its proceedings according to the prescribed procedure.
- (4) The Tribunal may stay the operation of an impugned order, if it is satisfied that the petitioner or appellant shall suffer irreparable loss by the operation of the said order.
- (5) The Government, the Council and all other entities or functionaries, working or exercising any authority or performing any functions with relation to any matter covered by the Act, shall faithfully implement the decisions of the Tribunal

#### **29. Appeals**

- (1) Appeal against the decisions of the authority shall lie before the Tribunal
- (2) The Tribunal may call for the record of the any case decided by the Authority and pass such orders as it may deem fit.
- (3) The appellate authority shall perform its functions in the prescribed manner and in line with the principles of natural justice and fair play.

**30. Bar of Jurisdiction**

- (1) No court or tribunal shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken, orders made, direction, instruction or guidelines issued by the Government, Council, Authority or any person exercising any power conferred by, or in relation to its functions, by this Act.

**31. Indemnity**

Officers and employees of the Council, Provincial Government or Authority shall be immune from legal process in regard to any warning in respect or any impending disaster communicated or disseminated by them in their official capacity or any action taken or direction issued by them in pursuance of such communication or dissemination.

**32. Action taken in good faith**

No suit or prosecution or other proceeding shall lie in any court against the Government or the Council, Authority or any of their officer or employee or any person exercising any power in respect of any work done or purported to have been done or intended to be done in good faith by such Government, Authority, or such officer or employee or such person under the provisions of this Act or the rules made there under.

## **Chapter 7**

### **Miscellaneous**

**33. Liability of the owner, etc:**

- (1) Any offence committed by any person under this Act shall be deemed to have been committed by or at the instance of the owner, landlord, employer, lessor, licensor, mortgagor, manager or any other person in charge of the premises, building or land at the time that offence is committed and the burden of proving otherwise shall lie upon such person.

- (2) A tenant, lessee, licensee, mortgagee and occupant of the property shall be liable for any offence committed under this Act or rules with respect to that property.

#### **34. Officers, etc to be public servants:**

Every officer or any person employed by the Council or Authority, or any person authorized under any provision of this Act to perform certain act in a certain manner shall be deemed to be public servant within the meaning of section 21 of the Pakistan Penal Code 1960.

#### **35. Indemnity**

No suit, prosecution or legal proceedings, whatsoever, shall lie against any public servant in respect of anything which has been done, or intended to be done, in a good faith, under this Act or rules.

#### **36. Rules**

- (1) The Government may make rules to--
  - (a) carry out the functions entrusted to it under the Act,
  - (b) implement the provisions of the Act relating to the matters prescribed
  - (c) give effect to the provisions of the Act except such matters which are covered under sub section (2) of this section
- (2) Subject to clauses (a) and (b) of sub section (1) of this section, the Government shall not make rules relating to the matters entrusted to the Board under this Act.
- (3) The Rule making shall be subject to previous publication as defined in the Punjab General Clauses Act, 1956.

#### **37. Regulations**

- (1) Subject to the Act and the rules, the Board may frame regulations to carry out the functions entrusted to it under the Act.
- (2) The Government may direct the Board to modify any regulation which is repugnant to the provisions of the Act and rules.

**38. Removal of Difficulties:**

If any difficulty arises in the application of the Act which, in the opinion of the Government, is clearly detrimental to the purposes of the Act, the Government may, on the recommendations of the Authority or on its own motion, take such action or pass such order as it may consider necessary and proper in the circumstances.

**39. Act to override other laws.**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

-----