

<sup>159</sup>[CHAPTER XII-A

**PROVINCIAL FINANCE COMMISSION AND  
FISCAL TRANSFERS**

**SECTION 120-A: ESTABLISHMENT OF PROVINCIAL FINANCE COMMISSION.**

On coming into force of this Chapter, the Governor forthwith shall constitute a Provincial Finance Commission for Sindh hereinafter referred to as the Finance Commission.

<sup>160</sup>[**SECTION 120-B: MEMBERSHIP.**

- (1) The Finance Commission shall consist of ten members, including the Chairman as under:-
  - (a) four members shall be *ex-officio*, namely:
    - (i) the Minister for Finance of the Province, who shall be the Chariman of the Finance Commission, and in his absence for what so ever reasons, the members may elect one of the members present to be Chairman in the manner prescribed for the duration of his absence;
    - (ii) the Secretary to the Government, Local Government and Rural Development Department;
    - (iii) the Secretary to Government, Finance Department who shall be the Secretary of the Commission; and
    - (iv) the Secretary to the Government, Planning and Development Department;
  - (b) three professional members from the private sector to be appointed in the manner stated in the Seventh Schedule; and
  - (c) one Zila Nazim, or Taluka or Town Nazim and one Union Nazim.

**Explanation:** For the purposes of this Chapter “private sector person” means a person who is not in the Service of Pakistan or any statutory body or any other body which is owned or controlled by the Federal Government or the Provincial Government or a Local Government.

- (2) The Finance Department shall act as the Secretariat of the Provincial Finance Commission.
- (3) The term, remuneration, other terms and conditions of service of the professional members of the Finance Commission shall be as provided in the Seventh Schedule provided that the term of office and other terms and conditions of service of a member shall not be altered to his prejudice during his term of office.
- (4) The professional members of the Finance Commission shall be appointed by the Governor in a manner that there is approximate equivalence in their number from amongst experts in economics, finance and public administration, each possessing a post graduate degree, preferably a doctorate in a related subject, and having at least ten years of practical experience in a related field.
- (5) No proceedings or act of the Finance Commission shall be invlid merely on the ground of existence of a vacancy other than that of a professional member in or defect in the composition of the Finance Commission.
- (6) A professional member shall be removed in the prescribed manner.]

<sup>161</sup> **[SECTION 120-C: A PROFESSIONAL MEMBER SHALL BE ELIGIBLE TO BE RE-APPOINTED.]**

A professional member shall be eligible to be re-appointed for another term but shall not, in any case, be eligible for appointment in the service of Pakistan or any Local Government for a period of two years, commencing from the date of relinquishment of his office.

<sup>162</sup> **[SECTION 120-D: FUNCTIONS, DUTIES AND POWERS OF THE FINANCE COMMISSION.**

(1) The functions, duties and powers of the Finance Commission shall be to make recommendations to the Governor for-

- (a) a formula for distribution of resources including-
  - (i) distribution between the Government and the Local Governments out of the proceeds of the Provincial Consolidated Fund into a Provincial Retained Amount and a Provincial Allocable Amount respectively;

*Provided that in no case shall the Provincial Allocable Amount be so determined, that it is less than the funds transferred to Local Governments in the financial year 2001-2002 and the establishment charges budgeted for the functions of Local Governments in the same year, excluding transfers in lieu of Octroi and Zila Taxes:*

*Provided further that all the moneys received by the Government in lieu of Octroi and Zila Taxes shall be added to the Provincial Allocable Amount separately; and*

- (ii) distribution of the Provincial Allocable Amount amongst the District Governments, Taluka and Town Municipal Administrations and the Union Administrations as shares;
- (b) the making of grants in aid by the Government to the Local Governments from the Provincial Retained Amount; and
- (c) any other matter relating to finance for and of the Local Government referred to the Finance Commission by the Governor, or the Government, or by a Local Government.

(2) The recommendations shall be based on the principles of fiscal need, fiscal capacity, fiscal effort and performance.

(3) Before finalization of the recommendations under sub-section (1), the Finance Commission shall hold consultations with the relevant Departments of the Government, Local Governments and, in the discretion of the Finance Commission, with any other body or persons and this process may carry on during the currency of an Order made by the Governor under sub-section (5) of this Section.

(4) The Finance Commission shall forward the provisional recommendations prepared under sub-section (1) to the Cabinet, which shall provide its views within two weeks failing which the Finance Commission shall make its recommendations to the Governor.

(5) The Finance Commission may review the recommendations on receiving the views of the Cabinet if any, and on finalization of its recommendations shall forward them to the Governor.

(6) As soon as may be after receiving the recommendations of the Finance Commission, the Governor shall by Order specify in accordance with the recommendations of the Finance Commission under clause (a) of sub-section (1), the Provincial Retained Amount and the Provincial Allocable Amount, and in turn the shares *inter se* of the Local Governments and that share shall be paid directly to the Local Government concerned promptly in accordance with the laid down procedure:

*Provided that the Finance Commission may recommend an interim formula only for financial year 2002-2003.*

(7) The Governor may, by Order, also make grants in aid of the revenues of the Local Government in need of assistance and such grants shall be an additional charged expenditure upon the Provincial Consolidated Fund after deduction of Provincial Allocable Amount.

**SECTION 120-E: CERTAIN INSTITUTIONAL PROCESSES OF THE FINANCE COMMISSION.**

(1) In every financial year, at least three months before the finalization of the Provincial Budget the Finance Commission shall require the Finance Department to submit a statement of estimated revenues and expenditures of the Government for the following financial year and shall also require a statement of the Provincial Allocable Amount and its distribution prepared in the light of the Order under Section 120-D(6).

(2) The Finance Department shall provide the Finance Commission with a statement of the Provincial Allocable Amount and its distribution, prepared in accordance with the Order under Section 120-D(6), on approval of the Provincial Budget.

(3) The Finance Commission may cause any information required for making assessments and decisions on fiscal transfers to be placed before it from any organization or office of the Government, or Local Government.

(4) The Finance Commission shall take all decisions by a majority of members present and voting:

*Provided that at least a majority of the professional members are present:*

*Provided further that the Chairman shall have the casting vote.*

(5) The Finance Commission shall present to the Government and Local Governments an annual report on fiscal transfers and Local Government resources.

(6) The Government shall cause a copy of the report to be laid before the Provincial Assembly and the Local Governments shall cause a copy of the report to be laid before the respective Councils.

**SECTION 120-F: PROVINCIAL ALLOCABLE AMOUNT AND COMPOSITE BALANCE.**

(1) The Provincial Allocable Amount reflected in the annual Budget <sup>163</sup>[Proposals] of the Province shall be in accordance with the Order specified in Section 120-D(6).

(2) All Local Government funds in a Province, except the Union funds, shall form part of the Composite balance of the Province only for the purpose of calculating the overdraft requirements of the Province.

**SECTION 120-G: FORMULA AND ITS APPLICATION AND REVISION.**

(1) The Provincial Allocable Amount and share of the Local Government shall be determined in accordance with the Order and shall be paid on the basis of actual monthly receipts of the Government.

(2) The Order shall remain in force for a period of three years.

(3) At least six months before the expiry of the aforesaid period, the Finance Commission shall recommend the formula for the next period, in accordance with sub-section (1) of Section 120-D, on the basis of evaluation of impact of fiscal transfers on the Local Governments and other relevant matters.

(4) Any evaluation similar to the objectives of sub-section (3) above carried out by an agency other than the Finance Commission may also be taken into consideration by the Finance Commission.

(5) In case the recommendation is not finalized before the expiry of the Order under Section 120-D, the Order in force shall continue to serve as the determinant of the Provincial Allocable Amount and the shares of the Local Governments, as the case may be, till such time that a new Order is made.

**SECTION 120-H: OBTAINING OF DATA.**

(1) The data required for the formulation and application of the formula shall be obtained by the Finance Commission from the Federal, Provincial or Local Governments, and or from any authority Corporation body, or organization established by or under law or which is owned or controlled by any Government or in which any of the Governments has a controlling share or interest or any other source.

(2) The Finance Commission may, where it deems appropriate, institute data collection or recommend such data collection to any agency and may also recommend to the Government to bear the cost of such data collection.

**SECTION 120-I: ENSURING FLOW OF FUNDS TO LOCAL GOVERNMENTS.**

The Government and the Local Governments shall provide reports to the Finance Commission in accordance with timeframes and methodology for the flow of funds prescribe by the Finance Commission.

**SECTION 120-J: CERTIFICATION REQUIREMENTS FOR FISCAL TRANSFERS.**

(1) The Finance Commission in consultation with the Government shall determine the requirements for certification of fiscal transfers.

(2) Certifications under sub-section (1) shall, *inter alia*, include the following-

- (a) Provincial Allocable Amount and its calculation;
- (b) Transfer of funds in accordance with determined shares to the District Governments, Taluka Municipal Administrations, Town Municipal Administrations and the Union Adminisistrations in the Province;
- (c) Transfer of funds in accordance with the decisions of the Finance Commission on references made to it from time to time; and
- (d) Revenues and expenditures of the Government and Local Governments.

(3) In case where the institutional processes of the Government or the Local Governments generate data required for administration of fiscal transfers, the Finance Commission may recommed further requirements for certification.

(4) The certification required by the Finance Commission shall be furnished to the Finance Commission by the Government, Local Governments, any relevant agency connected with the Government or the Federal Government.

**SECTION 120-K: REFERENCE BY PROVINCIAL GOVERNMENT OR LOCAL GOVERNMENT TO THE FINANCE COMMISSION.**

The Government or a Local Government may seek redress of grievances relating to any matter connected with fiscal transfers by the Government concerning itself or another Local

Government by making a reference to the Finance Commission alongwith the grounds of such grievance whereupon the Finance Commission may take a decision for the purpose of redress of grievance *provided that the decision so made shall not change the order in force under sub-section (6) of Section 120-D or the shares of the Local Government.*

**SECTION 120-L: RULES OF BUSINESS.**

Notwithstanding anything to the contrary contained in Section 191 of the Ordinance, the Government shall make Rules of Business of the Finance Commission on the latter's recommendation.

**SECTION 120-M. PROCEDURAL POWERS OF THE FINANCE COMMISSION.**

Nothing contained in this Chapter shall be construed to impose limits on the powers of the Finance Commission under any law for the time being in force as regards calling for any information relating to the fiscal transfer formula and transfer of funds and shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act No.V of 1908).]

