

Regulatory Procedure

HOW TO APPROACH THE WAFAQI MOHTASIB (OMBUDSMAN)



Small and Medium Enterprises Development Authority

**Ministry of Industries & Production
Government of Pakistan**

www.smeda.org.pk

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1. Introduction of SMEDA

The Small and Medium Enterprises Development Authority (SMEDA) was established with the objective to provide fresh impetus to the economy through the launch of an aggressive SME development strategy. Since its inception in October 1998, SMEDA has adopted a sectoral SME development approach. A few priority sectors were selected on the criterion of SME presence. In depth research was conducted and comprehensive development plans were formulated after identification of impediments and retardants. The all-encompassing sectoral development strategy involved overhauling of the regulatory environment by taking into consideration other important aspects including finance, marketing, technology and human resource development.

Currently, SMEDA along with sectoral focus offers a range of services to SMEs including over the counter support systems, exclusive business development facilities, training and development and information dissemination through a wide range of publications. SMEDA's activities can now be classified into following broad areas:

Creating a Conducive Environment; includes collaboration with policymakers to devise facilitating mechanisms for SMEs by removing regulatory impediments across numerous policy areas

Cluster/Sector Development; comprises formulation and implementation of projects for SME clusters/sectors in collaboration with industry/trade associations and chambers

Enhancing Access to Business Development Services development and provision of services to meet business management, strategic and operational requirements of SMEs.

Along with the sectoral focus a broad spectrum of services are now being offered to the SMEs by SMEDA, which are driven by factors such as enhanced interaction amongst the stakeholders, need based sectoral research, over the counter support systems, exclusive business development facilities, training and development for SMEs and information dissemination through a wide range of publications.

2. Role of Legal Services Cell, SMEDA

The Legal Services Cell (LSC) is a part of Business & Sector Development Services Division of SME DA and plays a key role in providing an overall facilitation and support to SMEs. The LSC provides guidance based on field realities pertaining to SMEs in Pakistan.

LSC believes that information dissemination to SMEs on the existing regulatory environment is of paramount importance and plays a pivotal role in their sustainable development.

In order to facilitate SMEs at an individual level LSC has developed user-friendly systems, which provide them with detailed description of laws and regulations including processes and steps required for compliance.

The purpose of this document is to introduce to the SMEs and the service providers to an institution, which provides for administrative accountability on the part of a federal agency or a federal government official against alleged maladministration complained of by an aggrieved party.

3. Disclaimer

Information in this document is provided only for general information purpose and on an "as is" basis without warranties of any kind. Use of this information is at the user's sole risk. As laws and regulations are subject to change, SMEDA assumes no responsibility for the accuracy of this information and shall not be liable for any damages arising from its use.

4 Who is the Wafaqi Mohtasib?

The Wafaqi Mohtasib or the Federal Ombudsman is appointed by the President of Pakistan to undertake an investigation into any allegation of mal-administration on a complaint made by an aggrieved person against Federal Ministries and agencies or any of their officers and employees.

5 Applicable law

The Federal Ombudsman or the Wafaqi Mohtasib is appointed and regulated in accordance with the “Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order, 1983.

6 When can a complaint be filed with the Mohtasib?

A complaint can be filed in the following cases;

- a) Mal-administration on the part of any functionary of a ministry, division, department, commission or office of the Federal Government.
- b) Mal-administration on the part of a functionary of a statutory body, corporation or an institution established/controlled by the Federal Government.
- c) On a reference made by the President, the Federal Council, or the National Assembly.
- d) On a motion of the High Court or the Supreme Court made during the course of proceedings before them.

The Ombudsman can also initiate an investigation on his own accord, where in his opinion, the matter under consideration amounts to mal-administration.

7 What is mal-administration?

The following acts and omissions of a functionary of the government departments mentioned above, shall amount to mal-administration for the purposes of filing a complaint with the Ombudsman:

- a) Negligence, incompetence or delay during the course of administrative responsibilities.
- b) Any decision, process, recommendations, act of omission or commission which is:
 - i. Contrary to law, rules and regulations.
 - ii. Perverse, arbitrary, unjust or discriminatory.
 - iii. Is based on irrelevant grounds
 - iv. Is based on corrupt practices or improper motives such as nepotism and bribery.

8 Instances where a complaint cannot be filed with the Mohtasib

The Mohtasib is prohibited from making an inquiry or conducting an investigation where the matter filed in the complaint relates to the following instances:

- a) Where the matter has the same cause of action as instituted in a suit previously and is still pending before a court of competent jurisdiction.
- b) If the issue relates to the external/foreign affairs of Pakistan.
- c) If the subject concerns the affairs of the defense of Pakistan including military, naval and air force and all matters pertaining to these forces governed by relevant law.
- d) Where the matter relates to a personal grievance of the public servant/functionary concerning the department/division against whom the complaint has been filed.
- e) Where the matter relates to the Federal Public Service Commission.

9 Time period for filing a complaint

The person aggrieved of the matter alleged in the complaint must file his complaint within **three months**, commencing from the time when he first had the notice of the matter complained of. However, the Mohtasib may entertain a complaint that has not been filed within the prescribed time if he believes that there are special circumstances that permit him to do so.

10 How to file a complaint with the Mohtasib

- Either the aggrieved person must file the complaint himself or his legal representative, in case the aggrieved person is no longer living. The Mohtasib Office will not receive any complaint, which is without any name and or not filed by the aggrieved person himself or his representative.
- The complaint can be filled out on WMS-Form “A” (Please see **Annexure 1**) which is available free of charge at the Mohtasib’s Head and Regional Offices.
- However, if the complaint is not accompanied by a WMS Form “A”, it should follow the following format:
 - a) The complaint must be in writing and can be written either in English or Urdu.
 - b) It should be addressed to the Mohtasib himself.
 - c) It should be supported by an affidavit attested by an oath commissioner, which must state the following particulars:
 - i. The allegations contained in the complaint are true and correct to the best of knowledge of the complainant.
 - ii. No complaint on the same subject has been filed previously with the Mohtasib’s Head or Regional Offices.

- iii. No judicial proceeding is pending before a court or tribunal in connection with the subject matter of the complaint.
 - iv. A previous representation regarding the allegations in the complaint was made to a senior officer of the relevant department but was either unjustly turned down or not responded to within a reasonable time.
- The complaint can be handed over to the Mohtasib personally or delivered to his Head office or regional offices (for addresses, please refer to **Annexure1**) through any available means of communication.
 - Copies of the complainants ID card and last correspondence with the agency against whom the complaint is made should be annexed with the application.
 - A receipt acknowledging and registering the complaint is issued immediately if the complainant appears personally and within 72 hours if it is lodged using any other means of communication.
 - In the event a complaint is not entertained or is rejected by the Mohtasib's Office, the reasons for doing so are communicated to the complainant.

11 Personal Hearing for the presentation of complaints to the Mohtasib

The Mohtasib may hold personal hearings for the presentation of complaints on such a date and time that shall be indicated from his office.

If a complainant wishes to present his complaint in a personal hearing he shall present it at least two hours before the time fixed for the personal hearing, to either:

- a) The Registrar at the Mohtasib's Head office or
- b) The Registrar at the Regional Office

If the Mohtasib is not available on a particular date fixed for a personal hearing, the complainant is adequately informed of an alternate date and time for the hearing.

12 Investigation Proceedings

On receiving a complaint the Mohtasib may decide not to conduct an investigation into the matter. In such a situation he shall communicate his reasons for not proceeding with the investigation to the complainant. However, in matters where the Mohtasib does decide to undertake an investigation he shall adopt such procedure, as he considers appropriate, in conjunction with the following procedural practices:

12.1 Notice

- The Mohtasib shall begin the investigation proceedings by issuing a notice to:

- a) Either the principal officer of the department against whose functionary the complaint is made.
- b) Or to the person alleged to have taken the action complained of.

The notice shall call upon the alleged person/principal officer to answer to the allegations in the complaint.

12.2 Response to the notice

- The notice must be responded to within 15 days of the receipt of the notice or within the time period allowed by the Mohtasib to do so.
- If the Agency does not respond within 30 days the Mohtasib shall proceed on his own accord with the investigation of the case.

12.3 Investigation and Hearings of the case

The investigation and hearing of the case is conducted in private by the Mohtasib's office, but the Mohtasib may adopt such procedure as he thinks fit including the furnishing of information and documents from the parties regarding the matter concerned.

12.4 Recommendations for Implementation

- If the Mohtasib is of the opinion that the matter alleged in the complaint amounts to mal-administration he shall communicate his recommendations for implementation to the alleged agency or the concerned department.
- Such recommendations are to be complied with, within the time period prescribed by the Mohtasib.
- The recommendations by the Mohtasib for taking action with respect to the complaint can be framed as follows:
 - a) To consider the matter in question in further detail
 - b) To modify/cancel the decision or act of omission complained of.
 - c) To give a detailed explanation of the decision in question
 - d) To take disciplinary measures against an officer of the department
 - e) To dispose of the case in question within a prescribed time
 - f) To actively improve the efficiency of the department within a prescribed time
 - g) To take any other step specified by the Mohtasib.

12.5 Action for implementation of the recommendations

- On receiving the recommendations the concerned department of the government shall inform the Mohtasib of the action taken on the recommendations within the time prescribed by the Mohtasib.
- If the department does not take action with respect to the recommendations of the Mohtasib it must state its reasons for not doing the same.
- The Mohtasib shall then forward a copy of the communication of the department received by him to the complainant.

12.6 Non- compliance with the recommendations

- Where the Agency does not take action in accordance with the recommendations of the Mohtasib and does not state its reasons for doing so, it is considered as non-compliance or defiance of the recommendations.
- In the event of non-compliance or defiance of the recommendations. of the Mohtasib, by the relevant department or any of its officers, the Mohtasib may refer the matter directly to the President of Pakistan.
- The President will then have the discretion to direct the ministry or its concerned department to comply with the recommendations and communicate to the Mohtasib the actions taken regarding them.
- The Mohtasib shall cause a report of the defiance of recommendations to be included in the personal file or character roll of the public servant responsible for the defiance. However this will be done only after the public servant has been given an opportunity to be heard in the matter.

13 Special report to the President

On occasions where the Mohtasib feels that injustice to the complainant will not be remedied despite conducting an investigation, he may in his discretion, present a special report of the case in point to the President.

14 Reference by the Mohtasib

- If during or after an investigation proceeding, the Mohtasib is satisfied that a person is guilty of the alleged mal-administration he may refer the case for corrective and/or disciplinary actions to the relevant authority.
- The relevant authority shall inform the Mohtasib of the action taken within 30 days of the receipt of the reference.
- The Mohtasib may refer the matter to the President. if within the 30 days, no response from the authority is received by him.

15 Powers of the Mohtasib with reference to investigation proceedings

The Order vests the powers of the Civil Court with the Mohtasib for carrying out his duties and obligations with respect to certain matters. The Mohtasib himself can exercise these powers, or any person authorized by him in writing to do so and include the following:

- Summon and enforce attendance of persons/witnesses and examine them on oath.
 - Furnish information from any person.
 - Compel the production of documents
 - Receive evidence on affidavits.
-

- To enter and search premises

- Refer the matter to the relevant authority for disciplinary action against non-compliance of any order of the Mohtasib.
- Refer the matter to the relevant authority where the act complained of calls for criminal/disciplinary action.
- Cause the complainant to compensate the public servant/Agency if the complaint is found to be false or frivolous. Such compensation is recoverable as arrears of land revenue from the complainant.

16 Protection from Court Orders

- The Mohtasib and his team members are protected from all kinds of legal proceedings for any action taken during the discharge of their duties under the Establishment of the Wafaqi Mohtasib Order, 1983.
- No court has the authority to grant an injunction or to question the validity of any action taken in relation to any orders of the Mohtasib or any proceedings under this Act.

17 Annexure 1

Form A

[see regulations 3(3)(4)(6), 22(3) and 26(2)]

For use by the complainant.

(Detailed instructions are attached)

BEFORE THE WAFAQI MOHTASIB,

Islamabad/Lahore/Karachi/Peshawar/Quetta/Sukkur/Multan/Faisalabad and D. I. Khan
(Please tick the relevant)

1. Name and address of the complainant _____

2. National Identity Card No. _____

3. Telephone Nos., if any. _____

4. Name of the Agency complained against _____

5. Main grievances requiring redressal:-

(a)

(b)

(c)

(d)

(e)

(Detailed complaint is annexed)

6. Prayer _____

Addresses of the Offices of the Wafaqi Mohtasib :—

(a) Wafaqi Mohtasib Secretariat,
36 Constitution Avenue, G-5/2,
Islamabad
P.O. Box No: 1992
Tele Nos. Exchange: 051-9217206-10
Fax No: 051-9217224
E-mail: mohtasib@mohtasib.gov.pk

(b) Wafaqi Mohtasib Secretariat,
Regional Office,
3rd Floor, State Life Building,
15-A, Davis Road, Lahore
Tele Nos. Exchange: 042-99201017-
20
Fax No: 042-99201021
E-mail: wmsrol@mohtasib.gov.pk

(c) Wafaqi Mohtasib Secretariat,
Regional Office,
4-B, Federal Govt. Secretariat, Saddar,
Karachi
Tele No. Exchange: 021-99202106-7
Fax No: 021-99202121
E-mail: wmsrok@mohtasib.gov.pk

(d) Wafaqi Mohtasib Secretariat,
Regional Office,
1st Floor, Benevolent Fund Building,
Peshawar Cantt.
Tele No. Exchange: 091-9211570
Fax No: 091-9211571
E-mail: wmsrop@mohtasib.gov.pk

(e) Wafaqi Mohtasib Secretariat,
Regional Office,
Aram Bagh Gali, Opposit
A.G. Balochistan, Near Imdad
Hospital, Link Zarghoon Road, Quetta
Tele No. Exchange: 081-9202679
Fax No: 081-9202691
E-mail: wmsroq@mohtasib.gov.pk