



USAID FIRMS PROJECT

Legal Support for the Urban Sector in Khyber Pakhtunkhwa

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Legal Support for the Urban Sector in Khyber Pakhtunkhwa

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Abstract:

This report contains the result of legal analyses of four selected segments of the KPK Urban sector and draft enactments to plug gaps in regulation and governance in these areas. The four segments are: the urban tenancy framework, the physical planning and land use framework, the multi-storey building maintenance framework and the mass transit systems framework.

The analyses look at four key things: existence of regulatory frameworks, adequacy and comprehensiveness of frameworks, coordination arrangements between executive agencies and clarity and transparency in decision-making.

The draft Acts have been formulated on the basis of the result of the analyses, discussions with the Urban Unit and review of urban sector laws of Malaysia, Singapore and the United Kingdom which are generally considered to have good urban sector frameworks.

Acronyms

AD	Administrative Department
ADR	Alternative Dispute Resolution
AMEL	Airport Metro Express Line (Delhi)
BEE	Business Enabling Environment
CABE	Commission for Architecture and the Built Environment
DOL	Department of Law
DETR	(UK) Department of the Environment, Transport and Regions
DG	Director General
DOE	(UK) Department of Environment
FATA	Federally Administered Tribal Areas
GIS	Geographical Information System
GOP	Government of Pakistan
IT	Information Technology
KPK	Khyber Pakhtunkhwa
M&E	Monitoring and Evaluation
MoU	Memorandum of Understanding
SO	Strategic Objective
SOW	Scope of Work
TBD	To Be Determined
US	United States
USAID	United States Agency for International Development
WB	World Bank

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Executive Summary

Good urban sector legal frameworks are necessary for healthy, sustainable, equitable, economically productive and culturally enriching use of city spaces. While urban frameworks include things like physical planning and land use, building control and maintenance, solid waste collection and disposal, transport, water and sewerage, environmental protection etc., this Report in line with the request of the Planning and Development department only looks at four segments of the Urban sector in KPK and proposes drafts to remedy shortcomings and lacunae in the legal frameworks of these areas. These segments are: Urban tenancy, physical planning and land use, multi-storey building management and maintenance, and mass transit.

Result of the analyses is as follows:

The urban tenancy framework currently contained in the KP Rent Restriction Act is based on the ethos of 1950s. Key issues of the framework are that it restricts freedom of contract and allows parties to seek and/or continue to retain possession through the intervention of Rent controllers. The law also does not deal with a fraudulent practice whereby some tenants use their possession of the rented property to claim ownership.

The physical planning and land use framework contained in the Local Government Act 2012 is patchy and does not cover large areas of the subject thus creating gaping holes in the framework. For instance, the Act does not require any planning in rural areas and/or coordination between land uses, physical planning and building control decisions.

There is currently no statutory framework for multi-storey building management and maintenance. Similarly, there is no framework for developing, operating or managing mass transit systems.

The lacunae and issues in these frameworks are addressed by four draft Acts. Prominent features of these drafts are as follows:

The draft Urban Tenancy Act enacts the principle of freedom of contract. The law takes note of the fact that many tenancy agreements are poorly drafted and accordingly provides for situations, where contractual provisions are silent. It also put an end to the practice of using possession for frivolous and fake ownership claims. The draft Act prescribes a fast track process for adjudication of claims under urban tenancies.

The Physical Planning Act in line with the recommendations of the Urban Unit establishes local physical planning authorities in each district, and overseeing authorities at the divisional and provincial levels. It requires comprehensive land use mapping in the province and requires master plans to be based on this information. In the development of inbuilt space and change of existing land use it proposes a framework which takes into account the competing needs of existing homeowners, prospective homeowners, businesses and developers and the need to protect the environment.

The draft multi-storey building management and maintenance Act proposes a system of share allocations for determining the contribution to be paid by owners towards building maintenance. The duty of management has been placed on owners/developers initially and later on management corporations, the establishment of which is obligatory. The Institutional responsibility of the administration of the Multi-storey building law has been placed on the proposed Local Physical Planning Authority.

The draft Mass Transit Systems Act establishes a Mass Transit Authority and provides for the establishment of Mass Transit Companies to undertake the task of development and maintenance. On the development side it provides for special procedures to acquire land and payment of compensation for the same. On the operations side it provides procedures for protection of passengers and the use of the Mass Transit system. The draft Mass Transit Systems Act does not provide an alternate transport management arrangement in the province. It is an Act of limited applicability.

Lastly the Report explains the procedures for enactment of the four proposed enactments.

1. Introduction

1.1 Background

Regulating growth is a much wiser financial and managerial decision than managing and mitigating the impact of uncontrolled growth. However planning and building control regimes in many developing countries are often unable to control and regulate the urbanization process in their areas or are unable to address key facets of the urbanization process due to inadequacy and inequity of these frameworks and the ability of institutions to take and implement decisions in a non-discriminatory and transparent manner.

In order to address these issues, the KPK Planning and Development Department requested the FIRMS program to provide support for improving frameworks in four selected areas of the urban sector. These areas are: urban tenancy, physical planning and land use, multi-storey building management and maintenance and mass transit systems.

1.2 Methodology

The methodology used for this work includes

- Review of existing legislation (the KPK Local Government Act 2012),
- Review of comparative legal texts -
 - Punjab (the Punjab Rented Premises Act, 2009, the Parks and Horticulture Authority Act, 2012, the Punjab Metrobus Authority Act, 2012, the Punjab Land Use Rules 2009),
 - United Kingdom (the Town and Country Planning Act, 1990, the Greater London Authority Act 1999),
 - Malaysia (the Malaysia Town and Country Planning Act, 1976),
 - India (the Delhi Metro Rail Corporation Concession Contract AMEL-P1) and
 - Singapore (the Singapore Building Maintenance and Strata Management Act¹),
- Review of texts on urban planning and design², and
- Interviews with key stakeholders.

The proposed legislative frameworks take into account the recommendations of the Urban Unit.

¹ See Building Maintenance and Strata Management Act (Chapter 30C), AGC, Singapore

² See References

2. Review of the Existing Legal Framework

2.1 The Urban Sector Framework under review

While the urban sector includes a number of things - physical planning, building construction, land use, water and sanitation, solid waste disposal, building management and maintenance, transport etc this review in accordance with the TORs focuses on four things a) the Urban tenancy law b) Physical planning, development and land use, c) Multi-storey buildings and d) Mass transit systems.

2.2 Parameters of the Review

Urban framework can be looked at from a number of legal perspectives- existence of regulatory frameworks, adequacy and comprehensiveness of frameworks, coordination arrangements between urban agencies, clarity and transparency in decision-making etc. Accordingly we have looked at the identified four subsectors from the following aspects:

- Whether rights relevant to urban living are adequately defined?
- Whether decision-making processes are sufficiently provided?
- Whether decision-making processes are consultative?
- Does the law carry sufficient penalties to deter citizens from unlawful actions?
- Whether institutions that administer these laws exist and what is the quality of these institutional arrangements? In this regard we will also look for clarity of Institutional mandates, and equity and non-discrimination in the decision-making process³.

2.3 Urban Tenancy Law

The existing law regulating urban tenancies in KP is the KP Urban Rent Restriction Ordinance 1959. This law, based on the ethos of the 1950, is pro-tenant and allows contractual provisions to be overridden in the interest of fairness by judicial officers called Rent Controllers. Thus the enactment allows the Rent Controllers to determine fair rent and allow contracts to be terminated on the basis of needs of owners⁴.

The impact of the Rent restriction Ordinance has been disastrous for the rental market. The markets are majorly dysfunctional and landlords take a cautious approach to renting – they let out property on lesser rents to known people rather than renting to unknown customers. Other landlord concerns include infrastructural damage to property, tendency amongst unscrupulous tenants to claim ownership on the basis of forged agreements to sell, unauthorized use of property, subletting etc.

In addition to the above, issues and lacunae within the law have had indirect effects on urban life- most notably disputes on possession have often led to criminal actions and the resultant rent seeking by police and court functionaries. The overall effect of the current tenancy framework has been reduced investment on housing, lack of security of title and possession and unlawful use of properties.

³ The Land Governance Assessment Framework, World Bank, 2012, page 29-30

⁴ Section 4 and 13A, KP Rent Restriction Ordinance, 1959

2.4 Physical Planning and Land Use Regime

The Planning provisions that are in KP are contained in the Provincial Local Government Act, 2012. The regime is extremely thin and does not address key issues – the contents of plans, social, economic and environmental considerations that should inform plans and methods of consultations with communities and experts. It is in marked contrast to comprehensive frameworks in other more developed jurisdictions like Malaysia, Singapore and the United Kingdom. A key problem with the Planning framework, which must be mentioned, is the absence of dedicated planning and land use authorities.

Even within the existing institutional structure, physical Planning and land use regulation appears to be a low institutional priority. Local Government neglect it and Development Authorities use planning and land use permission powers to generate revenues – a classic case of regulatory authorities using their regulatory power to generate revenue for discharge of their non-regulatory functions.

The results of a poorly regulated landscape are apparent to anyone - poorly coordinated developments, poor services and degraded urban environments, and continual citizen complaints of poor or absent services and costly rehabilitation and upgradation schemes. Weak frameworks also have had a number of indirect impacts- for instance buildings in KPK are extremely energy inefficient and are therefore costly and difficult to maintain. Poor building control has also led to traffic problems and development of costly traffic management schemes funded by provincial taxes.

The existing set of legal provisions in the Local Government Act, 2012 are as follows:

Table 1: List of Physical Planning and Land Use Provisions in Existing Law

Area	Aspect	Statutory Provisions
Union Councils		
	Erection of buildings	S 81(b) (ix), LG Act, 2012
	Improvement of insanitary buildings	Nil
	Development of a Master Plan	Nil
	Laying of streets	Nil
	Site development schemes	Nil
	Regulation of building use	Nil
Municipal Committees		
	Erection of buildings	Section 107, LG Act, 2012
	Improvement of insanitary buildings	Section 84, LG Act, 2012
	Development of a Master Plan	Section 104, LG Act, 2012
	Laying of streets	Section 111, LG Act, 2012
	Site development schemes	Section 105, LG Act, 2012
	Regulation of building use	Section 109, LG Act, 2012

2.5 Multi-storey buildings

Currently there is no law, which regulates the maintenance and/or management of multi-storey buildings in KPK. Whatever maintenance and/or management takes place, takes place under

arrangements of developers owners. Even in situations where management associations or maintenance arrangements are present, which are very few, there is no mechanism for enforcing management and/or maintenance obligations. The results are obvious- unkempt, dirty, poorly maintained buildings; an avoidance of vertical living and a proliferation of standalone houses.

2.6 Mass Transit Systems

Special regulatory regimes for mass transit systems become necessary in countries where ordinary land acquisition procedures; safety provisions and public private partnering arrangements are incapable of addressing the specialized needs of mass movement systems. The situation in KPK is similar: the Land Acquisition Act does not support limited acquisition of rights in land; contractual statements of rights and duties are ineffectual because courts are generally unable to quickly enforce terms of contracts and contractually laid down standards of service are less potent than statutory standards of service. Thus, a regulatory regime is necessary for both development and operation of mass transit systems.

3. An Overview of Legal Support

3.1 Key features of the proposed Urban Tenancy Law

The draft urban tenancy law improves freedom of contract by removing the interventionist powers of rent controllers and by confining their role to enforcers of contracts and/or statutory provisions designed to plug gaps in tenancy contracts. The draft law makes all contractual agreements subject to land use and building maintenance provisions. The overall effect is to make the urban tenancy law regime clearer and transparent.

On the enforcement side, the draft proposes the establishment of rent tribunals with a fast track resolution process. It follows the procedures prescribed by the Punjab Rented Premises Act in this regard. This shortened procedure requires the submission of a leave to contest and its acceptance before allowing the defendant the right to present oral evidence⁵. In order to reduce time delays in rent cases it disallows the taking into consideration of oral amendments to registered urban tenancy agreements⁶.

3.2 Key features of the proposed Physical Planning Act

The proposed law introduces the concept of urban design and promotes interventions for improvement of areas with poor urban design⁷. Urban design is an integrated concept and key to urban planning frameworks.

Latest research in use of urban spaces and the built environment has shown that good urban design adds enormous economic, social and environmental value⁸. Economic value is added by: a) Producing high returns on investments (good rental value and enhanced capital values, b) Placing developments above local competition at little cost; c) Responding to occupier demand; d) Helping to deliver more lettable area (higher densities), e) Reducing management, maintenance, energy and security costs, f) Creating an urban regeneration and place marketing dividend, g) Differentiating places and raising their prestige) Opening up investment opportunities, and i) Reducing the cost to the public purse of rectifying urban design mistakes amongst others. Good design adds social and environmental value by a) Creating well connected, inclusive and accessible new places, b) Delivering mixed-use environments with a broad range of facilities and amenities available to all, c) Enhancing the sense of safety and security within and beyond developments, d) Returning inaccessible or run down areas and amenities to beneficial public use, e) Boosting civic pride and enhancing civic image , f)

Urban design is the 'relationship between different buildings; the relationship between buildings and the streets, squares, parks and waterways and other spaces, which make up the public domain; the nature and quality of the public domain itself; the relationship of one part of a village, town or city with other parts; and the patterns of movement and activity which are thereby established; in short the complex relationship between all the elements of built and un built space¹'.

⁵ See section 21(4) of the Draft Urban Tenancy Act

⁶ See section 5(3) of the Draft Urban Tenancy Act

⁷ See section 31 of the Draft Physical Planning Act

⁸ The value of urban design, Research commissioned by CABE and DETR

Creating more energy efficient and less polluting development and g) Revitalizing urban heritage. It is therefore clear that good urban design needs to be supported and promoted. The public sector can perform this role through a number of ways most notably by appropriate investments, and by issuing quality regulatory frameworks⁹.

Evidence from the UK and the US shows that tight local planning constraints are to a good extent responsible for extra ordinarily high house prices¹⁰. In London this is attributed to the inordinate political power of house owners. In Lahore on the other hand loose planning controls are responsible for low house prices in many central locations and consequently low investments in the urban sector.

On the institutional side, the proposed law brings together the responsibility for land use and building control. In line with discussions with the Urban Unit, it establishes one single authority for planning, building control and land use in the district, and supervisory authorities at the divisional and provincial levels¹¹. The provincial authority has been charged with developing policy guidelines and standards and to ensure coordination amongst various regional plans.

The proposed law takes a pragmatic and realistic approach to master planning and requires master plans to be based on existing land use patterns. However, it does not support status quo and requires a gradual improvement of urban infrastructure through a system of infrastructure upgradation schemes. In the development of un built space and change of existing land use it takes into account the competing needs of existing homeowners, prospective homeowners, businesses and developers and the need to protect the environment and calls for assessing the need for change before sanctioning major land use changes¹².

The law accepts mixed land use where a particular land use is compatible with infrastructure and other uses. The types of proposed land use categories are: residential, commercial industrial, agricultural, green areas, mining areas, concentrated public sector use and mixed land use.

3.3 Key features of the proposed Multi-Storey Building Act

The multi-storey building maintenance and management framework uses the overall framework of the Singapore Building Maintenance and Strata Management Act (BMSMA). This is so because the BMSMA is very detailed, can be used as a stand-alone legislation and is very relevant to the situation in Pakistan in general and KPK in particular.

The draft Multi-Storey Building Act proposes a system of allocation shares to lot owners where shares represent both ownership and the amount of contribution to be paid by owners/occupiers for maintaining common areas of buildings except in mixed developments where the type and extent of usage is also a factor in consideration¹³. The draft Act also makes special provisions for maintenance and management of developments undertaken on a time-deferred basis (staged developments)- and hence the lengthiness of the proposed law. The duty of management has been placed on owners/developers initially and later, on management corporations, the establishment of which is obligatory. The Institutional responsibility of the administration of the Multi-storey building law has been placed on the proposed Local Physical Planning Authority¹⁴.

⁹ See page 10, The Value of Urban design

¹⁰ Christian Hilber, London School of Economics, June 2013

¹¹ See section 5 and 6 of the Draft KPK Physical Planning Act

¹² See section 16 of the Draft KPK Physical Planning Act

¹³ See section 6 of the Draft Multi-Storey Building Act

¹⁴ See section 3 of the Draft Multi-Storey Building Act

3.4 Key features of the proposed Mass Transit Systems Act

The proposed Mass Transit law establishes a Mass Transit Authority and provides for the establishment of Mass Transit Companies to undertake the task of development and maintenance. It promotes public private partnerships in the operation of the Mass Transit System through concessionaires. On the development side it provides for special procedures to acquire land for mass transit systems and payment of compensation procedures. On the operations side it provides procedures for protection of passengers and the use of the Mass Transit system.

4. Enactment Methods

4.1 Rules of Business

Legislation can be enacted either as Bills or Ordinance. The procedures to be followed in each case is as follows:

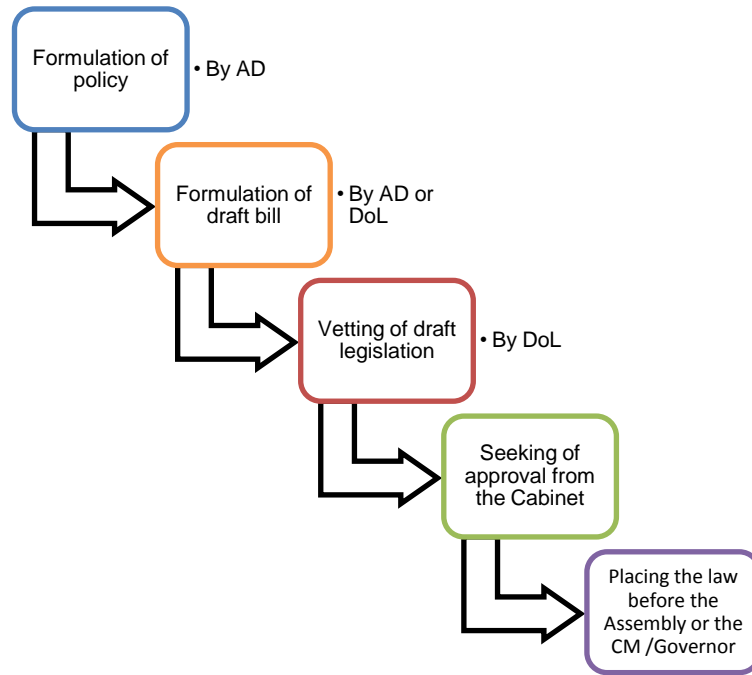
Bills: Steps to be taken

- The Administrative Department shall consider the desirability of legislation and all points connected therewith and shall thereafter present a memorandum to the Law Department indicating the precise lines on which it is proposed to legislate which shall include a statement in the form of series of propositions detailing the provisions required to be made or *preferably a draft bill*
- The Law Department shall apart from giving shape to the draft legislation advise the Administrative department whether any sanction is required and whether any further legal requirements are to be complied with
- The Administrative department shall after obtaining the approval of the Cabinet in terms of rule 19 return the draft legislation to the Law Department for further action in terms of Rule 29
- After approval has been obtained the Administrative Department shall forward to the Law Department, the draft legislation in its final form with a statement of objects and reasons duly signed by the Minister in Charge (Rule 29(1))
- The Law Department shall obtain the previous consent of the Government to the introduction of the bill
- The Law Department shall arrange to include the bill in the official business of the Assembly (Rule 29)

Ordinances: Steps to Be Taken

- The Administrative Department shall consider the desirability of legislation and all points connected therewith and shall thereafter present a memorandum to the Law Department indicating the precise lines on which it is proposed to legislate which shall include a statement in the form of series of propositions detailing the provisions required to be made or *preferably a draft bill*
- The Law Department shall apart from giving shape to the draft legislation advise the Administrative Department whether any sanction is required and whether any further legal requirements are to be complied with
- The Administrative Department shall after obtaining the approval of the Cabinet in terms of rule 19 return the draft legislation to the Law Department for further action in terms of Rule 29
- After approval has been obtained Administrative Department shall forward to the Law Department, the draft legislation in its final form with a statement of objects and reasons duly signed by the Minister in Charge (Rule 29(1))
- On approval from the cabinet the proposal shall be submitted to the Chief Minister for rendering of advice to the Governor.

Figure 1: Enactment Procedures



5. Conclusion and Recommendations

The recommendations are obvious. Broadly speaking

- The provincial Government should enact a comprehensive legal regime (on the lines proposed in this Report) for regulating developments in all parts of the province- not just urban areas. The planning authorities established under this law should not be charged with development work since this conflict of interest results in non-transparent and biased planning and building control policies.
- The physical planning authorities should be properly resourced and provided with technology (GIS etc) to implement their mandates.
- Gradual removal of slum and insanitary buildings/urban rehabilitation should be undertaken once planning law and authorities are established.
- A special Housing Act should be enacted to regulate construction and use of housing units.
- A specialized multi-storey building maintenance and management framework (on the lines proposed in Annex 3 of this document) to support vertical development should be enacted for cities with a chronic shortage of land.

6. Annexure

Annex 1: Draft KPK Urban Tenancies Act

THE KPK Urban Tenancies Act 2014 (Act XX of 2014)

[31 May 2014]

An Act to regulate tenancies with respect to urban properties

Whereas it is expedient to regulate tenancy agreements with respect to urban properties and to provide a mechanism for settlement of the disputes between landlord and tenants in an expeditious and cost effective manner, it is hereby enacted as follows:-

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—

- 1) This Act may be cited as the KPK Urban Tenancies Act 2014
- 2) It shall extend to the whole of the KPK.
- 3) The Act shall apply to all properties not subject to the Tenancy Act, 1887
- 4) It shall come into force at once.

2. Definitions.— In this Act

- a) “building” means a building or part thereof, together with all fixtures and fittings therein, if any, and includes any garage, garden, godown, out house and open space attached or appurtenant thereto, let out for residential or non residential purpose, whether actually being used for that purpose or not, but does not include a room in a hotel, hostel, boarding house, guest house or any place of religious worship
- b) “final order” means a final order passed by a Rent Tribunal culminating the proceedings including an order in respect of adjustment of *pagri*, advance rent, security, arrears of rent, compensation or costs but shall not include an order passed in an execution proceedings;
- c) “Government” means the Government of Khyber Pakhtunkhwa;
- d) “landlord” means the owner of a premises and includes a person for the time being entitled or authorized to receive rent in respect of the premises;
- e) “*pagri*” includes any amount received by a landlord at the time of grant or renewal of a tenancy except advance rent or security
- f) “premises” means a building or rented land not being an agricultural land or land subservient to agriculture

- g) “prescribed” means prescribed by the rules made under the Act
 - h) “rent” includes arrears of rent, a utility bill and any amount that may be payable by a tenant in relation to the tenancy
 - i) “rented land” means any land or open space let out for the purpose of business or trade
 - j) “Rent Tribunal” means a Rent Tribunal established under the Act
 - k) “Rent Judge” means a Rent Judge appointed under the Act
 - l) “tenant” means a person who undertakes or is bound to pay rent as consideration for the occupation of a premises by him or by any other person on his behalf and includes;
 - (i) a person who continues to be in occupation of the premises after the termination of his tenancy for the purpose of a proceeding under this Act;
 - (ii) legal heirs of a tenant in the event of death of the tenant who continue to be in occupation of the premises; and
 - (iii) a sub-tenant who is in possession of the premises or part thereof with the written consent of the landlord; and
- 3. Exemption.**– The Government may, for reasons to be recorded in writing and by notification in the official Gazette, direct that all or any of the provisions of this Act shall not apply to any class of premises or to any premises in any specified area.
- 4. Act to override other laws.**– The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

CHAPTER II CREATION OF TENANCY

5. Registered Tenancy Agreements

- 1) A written tenancy agreement may be registered with the Rent Registry.
- 2) Where a tenancy agreement has been duly registered with the Rent Registry a certified copy of the agreement will be sufficient to prove the agreement and its terms and conditions.
- 3) Where a tenancy agreement has been registered, no Court or tribunal shall take into consideration any agreement modifying or adding to the same unless the additional agreement is duly registered with the Rent Registry.

6. Unregistered Tenancy agreements

- 1) Notwithstanding any admission or proof to the contrary no court shall give effect to a tenancy under an unregistered tenancy agreement beyond a period of 11 months
- 2) Except as provided by this Act the terms and conditions of an unregistered tenancy agreement shall have to be proved before a Rent Court.

7. Conditions of tenancy agreements

- 1) Notwithstanding any agreement to the contrary, the following shall be the terms and conditions of every tenancy agreement:
 - a. The tenant shall not use the premises for any purpose not sanctioned by law or rules
 - b. The tenant shall not cause a nuisance to his neighbors
- 2) In the absence of any provision to the contrary, the following shall be the terms and conditions of every tenancy agreement:
 - a. The tenant shall pay or tender the rent to the landlord not later than the 5th day of the following month
 - b. The tenant shall not make any alterations or changes in the building
 - c. The landlord shall keep the rented premises in a state of repair
 - d. The landlord shall pay the taxes or charges levied on the rented premises
 - e. The tenant shall pay the utility bills pertaining to the demised property
 - f. The tenant shall not sublet the premises
 - g. A set-off shall not be claimed in respect of rent

8. Effect of Tenancy agreement on agreements to sell etc. – An agreement to sell or any other agreement entered into between the landlord and the tenant, after the execution of a tenancy agreement, in respect of premises and for a matter other than that provided in the tenancy agreement, shall not affect the relationship of landlord and tenant unless the tenancy is revoked through a written agreement entered before the Rent Registrar.

9. Identification of person to whom rent is due:

- 1) Where two or more persons claim the right to rent the tenant shall pay the rent to the person from whom he obtained the tenancy unless ordered otherwise by the Rent Tribunal
- 2) Where the rent tribunal is of the view that there is a genuine dispute regarding the ownership of the demised premises it shall direct the parties to approach the civil court.

Chapter III: Dispute resolution

10. Applications to the Rent Tribunal

- 1) A landlord or tenant may file an application in a Rent Tribunal for
 - a. Determining the terms and conditions of an unwritten tenancy agreement
 - b. Enforcement of terms and conditions of a tenancy agreement

11. Content of Applications: Every application for enforcement of terms and condition of a tenancy agreement shall state

- a. The term and conditions of the tenancy agreement
- b. The rent payable to the landlord and the amount paid till the date of filing

- c. The violation
- d. The relief sought

12. Reliefs

- 1) A landlord may seek the following reliefs:
 - a. Payment of rent
 - b. Eviction of the tenant or a person claiming under the tenant
 - c. Payment of compensation for damages
 - d. Reimbursement of expenses required to be incurred by the tenant
 - e. Grant of injunction to stop a violation
 - f. Declare the terms and conditions of the tenancy agreement
- 2) A Tenant may seek the following reliefs
 - a. Provision of receipt of payment
 - b. Permission to deposit rent in court
 - c. Payment of compensation for damages
 - d. Reimbursement of expenses required to be incurred by the landlord
 - e. Grant of injunction to stop a violation
 - f. Declare the terms and conditions of the tenancy agreement

13. Reimbursement of expenses

- 1) If a landlord fails to pay a tax, fee or charge relating to the premises, the concerned authority may direct the tenant to pay the tax, fee or charge
- 2) The tenant shall pay the tax, fee or charge relating to the premises and defray the amount from the rent or file an application against the landlord in the Rent Tribunal for the recovery of the amount of tax, fee or charge paid by him.

14. Grounds for eviction.– A landlord may seek eviction of the tenant if–

- a. the period of tenancy has expired
- b. the tenant has failed to pay or tender the rent within a period of thirty days after the expiry of the period stipulated in section 8
- c. the tenant has committed a breach of a term or condition of the tenancy agreement;
- d. the tenant has used the premises for a purpose which is different from the purpose for which it has been let out;

CHAPTER IV

ESTABLISHMENT OF RENT TRIBUNAL AND PROCEDURE

15. Establishment of Rent Tribunal

- 1) The Government shall establish a Rent Tribunal.
- 2) A Rent Tribunal shall consist of one or more Rent Judges to be appointed by the Government in consultation with the High Court.
- 3) Subject to this Act, the High Court may empower a civil judge or a judicial magistrate to act as Rent Judges.
- 4) The Rent Tribunal shall exercise exclusive jurisdiction over a case under this Act.
- 5) If there are more than one Rent Judges in a district, the High Court shall designate one of the judges as the Administrative Judge of the Tribunal

16. Rent Registry

- 1) The Government shall establish a Rent registry in every district with one or more offices as the case may be
- 2) Every Rent Registry shall be headed by the District Rent Registrar
- 3) The District Rent Registrar shall maintain a register to enter particulars of a tenancy agreement, agreement to sell or any other agreement in respect of rented premises.

17. Staff and establishment.– The Government may appoint staff of a Rent Tribunal to perform such functions as may be prescribed.

18. Filing of application

- 1) An application in respect of a rented premises shall be filed in the Rent Tribunal of the district
- 2) If an application is filed under sub-section (1), the Administrative Judge may take cognizance of the case or entrust the same to any other Rent Judge
- 3) An application under sub-section (1) shall contain a concise statement of facts, the relief claimed and shall be accompanied by copies of all relevant documents in possession of the applicant
- 4) If the application is for eviction of a tenant, the landlord shall submit his affidavit and affidavits of not more than two witnesses along with the eviction application.

19. Application for deposit of rent.

- 1) Where a tenant files an application in the Rent Tribunal for deposit of the rent the Rent Tribunal shall, without prejudice to the rights of the landlord, allow the tenant to deposit the rent for the period for which the landlord has refused to receive the rent
- 2) The Rent Tribunal shall inform the landlord of the deposit of rent by the tenant and may pass an order permitting the landlord to collect the same.

20. Appearance of parties and consequences of non-appearance

- 1) If an application under this Act other than application for deposit of rent is filed, the Rent Tribunal shall issue notice to the respondent in the form prescribed in the Schedule, for appearance of the respondent on a date not later than ten days through process server, registered post acknowledgement due and courier service.
- 2) A notice under sub-section (1) shall be accompanied by copies of the application and the documents annexed with the application

- 3) If the respondent fails to appear and the Rent Tribunal is satisfied that–
 - a. the notice has not been served on the respondent or the respondent is willfully avoiding the service of the notice, the Rent Tribunal may direct service of the notice by
 - i) affixing a copy of the notice at some conspicuous part of the rented premises or residence of the respondent; or
 - ii) publication in the press, electronic media or any other mode; and
 - (b) the notice has been served, the Rent Tribunal may proceed *ex-parte* and pass the final order.
- 4) If an *ex-parte* order is passed against a respondent, the respondent may, within ten days from the date of knowledge, apply to the Rent Tribunal for setting aside the *ex-parte* order along with an application for leave to contest.
- 5) If the respondent shows a sufficient cause for his non appearance, the Rent Tribunal may set aside the *ex-parte* order on such terms as it may deem fit
- 6) The parties may appear in person or through a recognized agent in the Rent Tribunal
- 7) If on a date fixed, the applicant fails to appear, the Rent Tribunal may dismiss the application.
- 8) If an application has been dismissed in default of the appearance of an applicant and an application for restoration of the same is made within thirty days of the dismissal order, the Rent Tribunal may restore the application on such terms, as it may deem appropriate.

21. Leave to contest:

- 1) A Rent Tribunal shall not allow a respondent to defend the application unless he obtains leave to contest
- 2) Subject to this Act, a respondent shall file an application for leave to contest within ten days of his first appearance in the Rent Tribunal.
- 3) An application for leave to contest shall be in the form of a written reply, stating grounds on which the leave is sought and shall be accompanied by an affidavit of the respondent, copy of all relevant documents in his possession and, if desired, affidavits of not more than two witnesses
- 4) The Rent Tribunal shall not allow leave to contest to a respondent unless the application discloses sufficient grounds for production of oral evidence.
- 5) The Rent Tribunal shall decide the application for leave to contest within a period of fifteen days from the date of its filing.
- 6) If the leave to contest is refused or the respondent has failed to file application for leave to contest within the stipulated time, the Rent Tribunal shall pass the final order.

22. Written reply.– If the leave to contest is granted, the Rent Tribunal shall treat the application for leave to contest as a written reply.

23. Payment of rent and other dues pending proceedings.–

- 1) If an eviction application is filed, the Rent Tribunal, while granting leave to contest, shall direct the tenant to deposit the rent due from him within a specified time and continue to deposit the same in accordance with the tenancy agreement or as may be directed by the Rent Tribunal in the bank account of the landlord or in the Rent Tribunal till the final order

- 2) If there is a dispute as to the amount of rent due or rate of rent, the Rent Tribunal shall tentatively determine the dispute and pass the order for deposit of the rent in terms of sub-section (1).
- 3) In case the tenant has not paid a utility bill, the Rent Tribunal shall direct the tenant to pay the utility bill
- 4) If a tenant fails to comply with a direction or order of the Rent Tribunal, the Rent Tribunal shall forthwith pass the final order.

24. Recording of evidence.

- 1) At the time of grant of leave to contest, the Rent Tribunal shall direct a party to produce his evidence on a date fixed.
- 2) The Rent Tribunal shall treat an affidavit filed by a party as evidence and—
 - (a) may, of its own motion, order the attendance of deponent for cross examination; and
 - (b) shall, if so requested by a party, direct production of the deponent for cross examination.
- 3) The Rent Tribunal shall not grant more than two opportunities to a party for production of the evidence
- 4) The Rent Tribunal shall not grant an adjournment for cross examination of a witness except for a sufficient cause and on payment of the costs to the witness as it may deem fit.
- 5) After recording the evidence of the parties, if any, and hearing the arguments, the Rent Tribunal shall pass the final order.

25. Rent Tribunal to exercise powers of Civil Court

- 1) A Rent Tribunal may exercise the powers of a Civil Court to enforce the attendance of a person, compel the production of evidence, inspect a premises or issue commission for examination of a witness or local inspection
- 2) A proceeding before a Rent Tribunal shall be deemed to be judicial proceedings and the Rent Tribunal shall be deemed to be a Civil Court within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860) and sections 476 and 480 of the Code of Criminal Procedure, 1898 (Act V of 1898)
- 3) A Rent Tribunal may pass an interlocutory order at any stage of a proceeding before the final order.

26. Period for disposal of application

- 1) The Rent Tribunal shall pass a final order on an application as expeditiously as possible but not later than four months from the date of filing of the application.
- 2) If the final order is not passed on an application within the period of four months, the Rent Tribunal shall conduct the proceedings on day-to-day basis.

27. Appeal

- 1) A person aggrieved by a final order may, within thirty days, prefer an appeal in writing to the District Judge of the district
- 2) No appeal shall lie against an interlocutory order passed by a Rent Tribunal.
- 3) If an appeal under this section is preferred, the District Judge may hear and dispose of

the same or entrust it for disposal to an Additional District Judge of the district or the area.

- 4) The District Judge or the Additional District Judge may, after providing an opportunity of hearing to the appellant, dismiss the appeal without notice to the respondent
- 5) The District Judge or the Additional District Judge may, where the circumstances so require, suspend the operation of the final order
- 6) The District Judge or the Additional District Judge may exercise any or all the powers of a Rent Tribunal under this Act
- 7) The District Judge or the Additional District Judge shall decide an appeal within a period of two months from the date of filing of the appeal.
- 8) No appeal shall lie against an order passed by a District Judge or an Additional District Judge under this Act.

CHAPTER V MISCELLANEOUS

28. General power of transfer

- 1) The District Judge of the district may, on the application of a party to the proceedings under this Act, and after notice to the other party, withdraw the proceedings pending before a Special Judge (Rent) or an Additional District Judge and transfer it, for disposal to any other Special Judge (Rent) or Additional District Judge competent to try and dispose of the same.
- 2) The High Court may, at any stage, withdraw an appeal pending under this Act before a District Judge or an Additional District Judge and transfer the same to any other Court competent to dispose of the same.

29. Transfer of ownership

- 1) If the ownership of rented premises has been transferred, the new owner shall send a written intimation of the transfer, by registered post or a courier service to the tenant and shall apply to the Rent Registrar for entering his name in the register as the landlord of the premises
- 2) The Rent Registrar shall inform the tenant through a notice, at the expense of the landlord, about the transfer of ownership of the premises and the tenant shall not be deemed to have defaulted in the payment of the rent if the rent due is paid or tendered to the new landlord within a period of thirty days from the date when the notice should in normal course have reached the tenant.

30. Execution of orders— A Rent Tribunal shall execute an order passed under this Act by a Rent Tribunal or a District Judge or an Additional District Judge as a decree of a Civil Court and for this purpose, the Rent Tribunal may exercise any or all the powers of a Civil Court.

31. Indemnity— No suit or other legal proceedings shall lie against a Special Judge (Rent) or any person or authority acting under an order of the Special Judge (Rent) in respect of anything done or intended to be done in good faith under this Act.

32. Power to make rules

- 1) The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.
- 2) In particular and without prejudice to the generality of the foregoing power, the rules may

prescribe a model tenancy agreement, a draft application form and a notice under this Act.

Provisions of Qanun-e-Shahadat Order and Code of Civil Procedure not to apply.– Save as otherwise expressly provided under this Act, the provisions of the Qanun-e-Shahadat Order, 1984 (P.O. No.10 of 1984), and the Code of Civil Procedure, 1908 (Act V of 1908) shall not apply to the proceedings under this Act before a Rent Tribunal, District Judge or Additional District Judge.

33. Repeal and savings

- 1) The KP Urban Rent Restriction Ordinance, 1959 (VI of 1959), is hereby repealed
- 2) Notwithstanding the repeal of the Ordinance VI of 1959
 - a. a proceeding pending before a Rent Controller shall stand transferred to the Rent Tribunal of the relevant district and the same shall be decided by the Rent Tribunal in accordance with the provisions of the repealed Ordinance
 - b. an appeal may be filed against an order passed under the repealed Ordinance in accordance with the provisions of the repealed Ordinance
 - c. an appeal pending under the repealed Ordinance may be decided in accordance with the provisions of the repealed Ordinance; and
 - d. a Rent Controller appointed under the repealed Ordinance shall exercise and perform the functions of a Rent Tribunal and a Rent Registrar till the appointment of Rent Judges and a Rent Registrar for the district under this Act.

SCHEDULE

{See sub-section (1) of section 20}

(Name of the Rent Tribunal)

(Title of the application)

To

_____ (Name, description and place of residence)

Whereas _____ (name of the applicant) has filed application for _____ (nature of the application) against you under the Punjab Rented Premises Act, 2009 for _____ (nature of the prayer), of which a copy is hereto annexed and is fixed for _____ (date).

You are hereby directed to obtain leave to contest the application from the Rent Tribunal described above within ten days of the date of hearing/appearance mentioned above. In default whereof, the Rent Tribunal may pass a final order in favor of the applicant.

Leave to contest may be obtained on an application in the form of written reply and specifying a ground(s) on which the leave is sought, accompanied by your affidavit and, copies of all the relevant documents in your possession and, if so desired, affidavits of not more than two witnesses.

Given under my hand and the seal of the Rent Tribunal on this _____ day of _____.

Rent Judge

Annex 2: Draft KPK Physical Planning Act

KHYBER PAKHTUNKHWA PHYSICAL PLANNING ACT, 2014

An Act for the proper control, regulation and improvement of physical planning in Khyber Pakhtunkhwa

Part I: Preliminary

2. Short Title and Commencement:

- (1) This Act shall be called the KP Physical Planning Act, 2014
- (2) It shall come into force at once.
- (3) It shall apply to all parts of Khyber Pakhtunkhwa

3. Definitions

- a) 'Commercial uses' means uses of land/buildings for purpose of retail merchandising, provision of services, and small scale processing.
- b) 'Commissioner' means the Commissioner of a revenue division
- c) 'Designated area' means an area designated as residential, commercial, industrial or other such category in a Physical Plan.
- d) 'Development' includes building construction/reconstruction, road and bridge construction/reconstruction and land leveling
- e) 'Developed Areas' means built areas
- f) 'Deputy Commissioner' means the chief executive officer of a district.
- g) 'Government' means the Government of KPK
- h) 'Industrial uses' means use of land/building for production, manufacturing, bulk storage and large scale processing
- i) 'Existing Planned Areas' mean i) Areas forming part of approved housing schemes, ii) Areas forming part of national parks, sanctuaries, forest or game reserves, national and provincial highways, iii) Agricultural areas, and iv) Areas where the physical environment follows approved standards of roads width, water and sanitation services and building control and can be categorized as planned but does not include areas which have suffered marked deterioration.
- j) 'Land Use Regulation' means a Land Use Regulation issued under section 36 of the Act.
- k) 'Notified' means notified by the relevant Planning Authority.
- l) 'Physical assets' includes buildings and land
- m) 'Planning application' means an application for planning permission
- n) 'Planning control decisions' means a decision regulating building construction, land development and/or land use. A Planning permission is a planning control decision.
- o) 'Prescribed' means prescribed under rules issued under this Act
- p) 'Public Agency' means any agency or department of the Government

- q) 'Sub type' means a subtype laid down in a Land Use regulation issued under section 36
- r) 'Unauthorized land use' means land use otherwise than in accordance with a land use permission or without a land use permission where required.
- s) 'Urban Design' means the relationship between different buildings; the relationship between buildings and the streets, squares, parks and waterways and other spaces, which make up the public domain; the nature and quality of the public domain itself; the relationship of one part of a village, town or city with other parts; and the patterns of movement and activity which are thereby established; in short the complex relationships between all the elements of built and unbuilt space.
- t) 'Country and Town' stand for Rural / Regional and Urban areas, respectively.

Part 2: Policy and Administration

4. Provincial Physical Planning Council

(1) There shall be a Provincial Physical Planning Council consisting of the following persons:

- i. Chief Minister - Chairman
- ii. Minister for Housing - Deputy Chairman
- iii. Minister for Local Government - member
- iv. Minister for Finance - member
- v. Chief Secretary, Government of KPK - member
- vi. Additional Chief Secretary (Planning), Government of KPK - member
- vii. Finance Secretary, Government of KP - member
- viii. Secretary Housing and Physical Planning, Government of KPK - member
- ix. A transportation expert appointed by the Government - member
- x. A environmental expert appointed by the Government - member
- xi. A physical planning expert appointed by the Government - member
- xii. An architecture expert appointed by the Government - member
- xiii. DG of the Provincial Planning Authority – secretary

(2) The functions of the Council shall be

- i. to formulate a policy for the improvement of the physical environment
- ii. to consider and approve physical planning standards
- iii. to consider and approve policy guidance notes
- iv. to monitor progress with regard to implementation of the policy

(3) The Council shall meet every four months and whenever it is convened by the Chairman

(4) The Council shall determine its own procedure.

5. Provincial Physical Planning Authority

- (1) As soon as may be after the commencement of this Act Government shall declare the Urban Policy and Planning Unit of the Planning and Development Department as the Provincial Planning Authority.
- (2) The Authority shall comprise of a Director General and such other officers as the Government may appoint from time to time.
- (3) The Director General shall be responsible for the administration of the Authority.
- (4) The Authority shall be a body corporate.
- (5) The functions of the Authority shall be:
 - a) to conduct, promote and coordinate research in relation to different aspects of town and country planning
 - b) to publish reports, statistics, monographs and other publications relating to town and country planning and its methodology
 - c) to provide information and education to the public regarding town and country planning
 - d) to formulate physical planning standards
 - e) to formulate policy guidance notes
 - f) to issue regulations
 - g) to report and advise the Council upon matters concerning the use of town and country planning in the conservation, use and development of land.

6. Divisional Physical Planning Authority

- (1) There shall be a Divisional Physical Planning Authority for every civil division
- (2) The Commissioner shall be the head of the Divisional Physical Planning Authority
- (3) The Authority shall comprise of other officers and staff as the Government may appoint from time to time
- (4) The functions of a Divisional Physical Planning Authority shall be
 - a) To formulate Divisional Physical Plans
 - b) To regulate, control and plan the development and use of all lands and buildings within its area
 - c) To publish reports, statistics, monographs and other publications relating to town and country planning and its methodology
 - d) To supervise and monitor the Local Planning Authorities

7. Local Physical Planning Authorities

- (1) There shall be a Local Physical Planning Authority in each district comprising of the Deputy Commissioner, the District Planning Officer, Local Planning officers and Planning Inspectors
- (2) A Local Planning Authority shall be responsible to the Divisional Planning Authority for discharge of its functions
- (3) A Local Planning Authority shall be a body corporate.

- (4) The functions of a Local Planning Authority shall be
- a) To conduct surveys of land use
 - b) To formulate Local Physical Plans
 - c) To take planning control decisions in accordance with the provisions of this Act.
 - d) To publish reports, statistics, monographs and other publications relating to town and country planning and its methodology
 - e) To perform any other duty or function imposed by any other law for the time being in force

Part 3: Physical Plans

8. Land Use and Building Surveys

- (1) As soon as may be after the commencement of this Act, every Local Planning Authority shall conduct a survey to determine physical infrastructure and land use in its area of jurisdiction.
- (2) The Local Planning Authority shall conduct or cause to be conducted the survey in the following manner and order:
- a) Determine the extent of the Existing Planned Area (EPA).
 - b) Designate the remaining area as Non Planned Area (NPA).
 - c) Cause GIS and physical surveys to determine
 - i) For EPA: The Urban design of the Area, the permissions if any for deviations in each case, the size and composition of the population of the area, projected population once the area is fully developed, transport links, sanitary and environmental conditions, open and green spaces, the nature and type of buildings and the standard of facilities including health, education and transport.
 - ii) For NPA – land use patterns, the size and composition of the population of the area, transport links, sanitary and environmental conditions, open and green spaces, the nature and type of buildings and the standard of facilities including health, education and transport.

9. Land uses: Depending on the results of the survey, the Local Planning Authority shall categorize and classify its area into one or more of the following Land use types

- i. Residential Area (RA)
- ii. Commercial Area (CA)
- iii. Industrial Area (IA)
- iv. Green Area (GA)
- v. Mining Area (MA)
- vi. Agricultural Area (AA)
- vii. Concentrated Public Sector Area (PSA)
- viii. Mixed Land Use Area (MLUA)

10. Subtypes:

- (1) Every Area shall be further categorized into subtypes.

- (2) Categorization of areas into subtypes shall be done with due regard to physical markers like roads, railway lines, rivers and escarpments.

11. Publication of Survey results:

- (1) Within 60 days of the finalization of the survey, the Local Planning Authority shall publish the result of the survey along with a detailed map.
- (2) When publishing the results of the survey the Local Planning Authority shall also invite objections to categorization if any.
- (3) The Local Planning Authority shall formulate a report on each objection within 15 days and transmit the same to the Divisional Planning Authority, which shall hear and decide the same not later than 30 days.

12. Formulation of Local Physical Plans:

- (1) Keeping in view the results of the surveys published under section 10, a local planning authority shall formulate a draft physical plan for its area with a view to gradually improve the physical environment and urban design.
- (2) A draft physical plan shall contain or be accompanied by such diagrams, illustrations and descriptions as the Local Planning Authority may consider appropriate or the Provincial Planning Authority may direct.
- (3) A draft Local Physical Plan shall rank different areas in terms of excellence of the urban design.
- (4) The Local Planning Authority shall also seek the views and observations of the relevant environment, transport and municipal authorities on the draft plan.
- (5) A draft Local physical plan shall contain
 - a) A description of prevalent building types for each area
 - b) Land use types and subtypes
 - c) Coverage of water, sewerage and waste disposal services
 - d) The minimum plot size in an area which may not be further subdivided
 - e) The major roads and physical markers
 - f) Description and measurement of open and green spaces,
 - g) Traffic flows
 - h) Such other things as may be prescribed

13. Approval of the Local physical Plan:

- (1) The draft Local Physical plan shall be placed on the website of the Local, Divisional and Provincial Planning Authorities and notices shall be published in the local newspapers regarding its inspection.
- (2) Every publication shall be accompanied by a date for submitting representations and/suggestions for improvement.
- (3) Every representation, observation and submission shall be considered by the Local Planning Authority and response submitted to the Divisional Planning Authority.
- (4) The Divisional Planning Authority shall approve local physical plans with such modifications, as it may deem appropriate. While approving a local physical plan the

Divisional Planning Authority shall take into consideration, plans of all Local Planning Authorities.

- (5) Once approved the local physical plans shall be placed on the website of the Local Planning Authority and notified.

14. Formulation of the Divisional Plan:

- (1) Keeping in view the various local plans the Divisional Physical Planning Authority shall formulate a draft Divisional Physical Plan for its area
- (2) A draft Divisional Physical Plan shall contain or be accompanied by such diagrams, illustrations and descriptions as the Divisional Planning Authority may consider appropriate or the Provincial Planning Authority may direct. A divisional plan shall however not contain information about sub categorization, description of building types and plot sizes.

15. Approval of the Divisional Plan:

- (1) The Provincial Planning Authority shall approve every Divisional Physical Plan with such modifications, as it may deem appropriate. While approving a Divisional physical plan the Provincial Planning Authority shall take into consideration plans of all Divisional Planning Authorities
- (2) Once approved the Divisional Physical Plans shall be placed on the website of the Provincial Planning Authority and notified.

16. Procedure for modification of Physical plans by Planning Authorities

- (1) Where a Local Planning Authority itself or on the directions of the Government proposes to change the land use of a designated area, it shall formulate proposals for change in the approved Local physical plan, the need for the proposed changes and the measures that will be put into place to deal with them.
- (2) A notice regarding the planning change shall be published in two newspapers and shall be placed on the website of the Local Planning Authority.
- (3) The notice shall also invite objections and/or suggestions of the residents and others concerned.
- (4) Every objection shall be heard and decided by the Divisional Planning Authority within 30 days of the publication of the notice.
- (5) Once the objections have been attended to, the modified plan will be notified by the Local Planning Authority and relevant changes shall be made in the Divisional and Provincial Physical Plans

17. Procedure for modification of Local Physical Plans on application of private persons

- (1) Where one or more private persons want to change the land use of a designated area he or they may submit a proposal to the Planning Authority for change in the approved Local physical plan along with the need for the proposed changes.
- (2) A need for the proposed change includes a general shortage of building stock for particular uses and/or absence of green areas
- (3) Where the Planning Authority under sub section (1) receives a proposal for land use change it shall cause a study to be made regarding the need for change at the cost of the applicants.

- (4) Where there is a clear and present need for change, the Planning Authority shall formulate a proposal for change and the measures that will be put into place to deal with them.
- (5) Once a proposal has been formulated the procedures prescribed in sub section 2), 3) and 4) shall be followed.

18. Changes in Local Plans not to take effect till measures are put in place

- (1) A change in the Local Plan shall not be put into effect till measures to deal with the change are implemented through a development scheme.
- (2) A development scheme shall deemed to be an improvement proposal under Part 6 of this Act and shall be approved and implemented in like manner.

Part 4: Planning Control

19. Types of Planning Permissions: A planning permission may be a

- a) Development permission, or
- b) Land use permission, or
- c) Joint development and land use permission.

20. Prohibition on development without permission:

- (1) No person including a government agency shall commence, undertake or carry out any development unless development permission in respect of the development has been granted to him
- (2) Notwithstanding subsection 1) no development permission shall be required
 - a) For the carrying out of such works as are necessary for the maintenance, improvement or other alteration of a building that affect only the interior of the building and do not
 - I. involve any change in the use of the building or the land to which it is attached
 - II. materially affect the external appearance of the building
 - III. involve any increase in the height or floor area of the building

21. Prohibition on development contrary to permission

No person shall commence, undertake or carry out any development otherwise than in conformity with the development permission granted to him in respect of the development or with the conditions of the development permission

22. Use of land and buildings:

- (1) No person shall use any Land or building except in accordance with a land use permission issued under this Act.
- (2) Notwithstanding subsection 1) no land use permission shall be required for permitted uses under this Act.

23. Applications for planning permissions

- (1) An application for planning permission shall be made to the Local Planning Authority and shall be in such form and shall contain such particulars and be accompanied by such documents, plans and fees as may be prescribed.

- (2) If the applicant is not the owner of the land, the written consent of the owner of the land to the proposed development shall be obtained and endorsed on the application
- (3) Where the planning involves the erection of a building the application shall be accompanied by a building plan and a building maintenance plan.
- (4) Where the plan involves change of land use, the application shall contain the average number of visitors that will frequent the property.
- (5) Where land use requires an environmental assessment under any law for the time being in force, the environmental assessment.

24. Preparation of Plan etc., by a qualified person: All plans, particulars, layout plans and other documents required to be submitted under this Act shall be prepared by a qualified person.

25. Objections and suggestions:

- (1) The Local Planning Authority shall within 15 days of receiving a planning permission application place a notice at or near the property indicating the proposed development/land use change and inviting objections and/or suggestions if any.
- (2) The objections and/or suggestions shall be submitted to the Local Planning Control Officer.
- (3) Where the planning application pertains to development of a multi-storey building or housing estate or other such large development, the Planning Authority shall place a notice in two newspapers inviting objections and/or suggestions if any at the cost of the applicant.

26. Report of Planning Control Officer

- (1) On the completion of 15 days the Planning Control officer shall assess the proposed development/change in land use and determine its impact on the local urban design and formulate a report for the consideration of the Local Planning Authority.
- (2) The Planning Control Officer shall finalize its report within 30 days of the receipt of the planning application
- (3) While formulating a report the Planning Control Officer shall take into consideration
 - a) The views of the neighbors
 - b) The likely increase in traffic
 - c) The likely increase in noise levels
 - d) The impact on the value of adjacent properties, and
 - e) The impact on the physical infrastructure

27. Treatment of applications

- (1) As soon as possible after the receipt of the report of the Planning Control Officer under section 25(3), the Local Planning Authority shall decide on the application for permission.
- (2) In dealing with an application for planning permission, the Local Planning Authority shall take into consideration such matters are in its opinion expedient or necessary for proper planning and in particular
 - a) The provisions of the Development plan submitted with the application

- b) The provisions of the Local Physical Plan
- c) The report of the Planning Control Officer
- d) The objections if any

28. Planning permission to accord with Local Plans: No planning control decision shall be inconsistent with a Local Physical Plan

29. Power to grant general development permission:

- (1) Notwithstanding anything contained in this Act, the Authority may require that buildings in a specified area on plots of 2500 square yards or less shall be made to a standardized plan.
- (2) Where an order under subsection 1) has been made, no application for development permission shall be made by any person with regard to plots and locations specified in the order unless a modified permission is required.

30. Matters to be provided in planning permissions:

- (1) A planning permission involving development shall provide for the following matters:
 - a) The building design
 - b) The external façade of the building
 - c) The maximum number of residents that may occupy the building
 - d) Actions to be taken to make the building energy efficient
- (2) A planning permission involving land use change shall provide for the following matters:
 - a) The nature of the use
 - b) Arrangement for loading and unloading goods in commercial and industrial establishments.
- (3) Notwithstanding anything contained above every planning permission shall also provide for:
 - a) The extent of the Curb to be maintained along roadsides
 - b) The places where the Curb may be lowered, if any
 - c) Arrangements for environmentally safe disposal of sewerage water/sludge and solid waste

Part 5: Improvement of Physical Infrastructure

31. Areas with poor urban design

- (1) Where the residents of an area are of the view that its urban design is poor and it needs improvement, they may submit an application to the Local Planning Authority to inquire into the matter and formulate an improvement proposal.
- (2) Where an application is received under sub section 1) or where the Authority is itself of the view that the urban design of an area is poor, it shall inquire into the matter and formulate a detailed report.
- (3) A report under subsection 2) shall contain information and assessment regarding the following:

- a) Prevailing environmental conditions
- b) Availability of clean water, sewerage and solid waste disposal services
- c) Availability of open/green spaces
- d) Availability of transport services, and
- e) Quality of existing Physical infrastructure

32. Improvement proposal:

- (1) Where a report under section 29(3) indicates the need for improvement, the Local Planning Authority shall formulate an improvement proposal.
- (2) An improvement proposal shall outline the
 - a) Improvements that shall be made,
 - b) Cost of the development,
 - c) Changes that may be required in developments and /or ownership, and the
 - d) Steps that shall be taken for a smooth and orderly transition to planned development.
- (3) An improvement proposal may include a program for temporary relocation of residents and reallocation of land rights in the area under improvement.

33. Consultation

- (1) As soon as an improvement proposal is final the Local Planning Authority shall invite objections and suggestions regarding the same through public notice.
- (2) The Authority shall consider the objections and suggestions and formulate a report on the same.
- (3) Within 30 days of the formulation of report under sub section 2) the Local Authority shall finalize the improvement proposal and submit it to the Divisional Physical Planning Authority.

34. Treatment of improvement proposal

- (1) As soon as possible after the receipt of an improvement proposal the Divisional Planning Authority shall decide on the improvement proposal.
- (2) In dealing with an improvement proposal, the Divisional Planning Authority shall take into consideration such matters as are in its opinion expedient or necessary for proper planning and in particular
 - a) The provisions of the improvement proposal
 - b) The provisions of the Local Physical Plan
 - c) The report of the Local Planning Authority

35. Power to implement an improvement proposal

- (1) The Local Planning Authority shall have the power to take all necessary measures to implement an improvement proposal.
- (2) Without prejudice to the generality of the power contained in sub section 1, the Local Planning Authority may undertake one or more of the following actions to implement an improvement proposal:

- a) Prepare and execute scheme(s)
- b) Direct a Government agency to prepare and execute scheme(s)
- c) Direct that buildings shall be constructed to a standardized plan
- d) Acquire land
- e) Enter into public private partnership
- f) Propose and implement a proposal to reallocate rights in land and buildings with the prior approval of the Government
- g) Support the establishment of a Real Estate Investment Trust for allocation of shares to persons having rights in land and buildings located in the area under improvement.

36. Betterment fee

- (1) In order to implement an improvement proposal the Local Planning Authority may charge a betterment fee with the prior approval of the Government.
- (2) A betterment fee shall be charged on the basis of ownership of physical assets
- (3) Betterment fee may be recovered as arrears of land revenue
- (4) Betterment fees may cover the whole or part of the cost of an improvement proposal.

37. Development Charge

- (1) Where a public agency improves an area by the building or widening of roads, improving building stock and/or development of parks without charging betterment fee or only charges some amount of the cost of the improvement or development, the Local Authority may levy a development Charge on the owners of physical assets who have benefited by the development.
- (2) A development charge shall be payable when a physical asset is sold or given on lease exceeding 11 months
- (3) A development fee shall bear a direct correlation to the cost of the development spread over a period of 5 years.
- (4) A development fee shall be charged with the previous approval of the Government
- (5) Development fee may be recovered as arrears of land revenue.

Part 6: Regulations

38. Responsibility to issue regulations:

- (1) As soon as may be after the commencement of this Act but not later than six months the Provincial Planning Authority shall issue regulations for
 - a) Providing pedestrian ways in urban areas
 - b) Maintaining building lines
 - c) Providing and maintaining waste water treatment plants in populated areas
 - d) Reducing dust and noise pollution due to developments
 - e) Drawing water from aquifers
 - f) Cutting of trees for purposes of development

- g) Drainage of waste water
 - h) Removal and disposal of solid waste
 - i) Land use
 - j) Removal of obstructions on public pathways including utility poles, electricity wires and telephone lines
 - k) Protecting and conserving historic or period buildings
 - l) Keeping buildings safe, sanitary, environmentally friendly, energy efficient and aesthetically pleasing
 - m) Display of advertisements and hoardings on buildings and open spaces.
- (2) Land Use Regulation shall clearly indicate whether a use is permissible or permitted within the meaning of section 21
- (3) Every Regulation issued under this section shall
- a) be consistent with the provisions of this Act
 - b) incorporate relevant international standards
 - c) provide for consultation with person affected by decisions
 - d) be issued with the prior approval of the Government
- (4) Every planning control decision shall be taken in accordance with the relevant provisions of this Act and Land Use Regulations issued under this section.

Part 7: Enforcement

39. Planning Control Officers

- (1) The Local Planning Authority shall appoint one or more planning control officers for every area.
- (2) Every Planning Control Officer shall be responsible for assessing and evaluating applications for planning permission.
- (3) A Planning Control Officer shall do such other work as is assigned to him under this Act.

40. Planning Control Inspectors

- (1) The Local Planning Authority shall appoint one or more planning control inspectors for every area.
- (2) Every Planning Control Inspector shall be responsible for determining and prosecuting unauthorized land use and development.
- (3) Where a Planning Control Inspector finds a contravention or violation of this Act he shall formulate a contravention report and submit to the Planning Authority.

41. Power of Planning Control Officers and Inspectors

- (1) A Planning Control Officer and inspector shall have the power to enter and examine any premises in order to obtain information for the purposes of this Act
- (2) A Planning Control Officer and inspector shall give due notice to the occupier of premises to enter and examine premises in order to obtain information for the purposes of this Act.

42. Power of Local Planning Authority

- (1) A Local Planning Authority may take any action that is necessary to undo a violation including demolition or reconstruction of a building.
- (2) A Local Planning Authority may
 - a) Stop a building from being constructed in violation of a development permission
 - b) Stop land use being undertaken, in violation of land use permission or, without land use permission.
- (3) A Local Planning Authority may take action under sub section 2) prior to the filing of a prosecution.

43. Complaints

- (1) Any person may submit a written application for violation or contravention of this Act to the Local Planning Authority in the prescribed format
- (2) The Local Planning Authority shall receive every application when it is accompanied by the prescribed fee and shall cause it to be investigated.
- (3) The result of the investigation shall be made available to the applicant
- (4) Notwithstanding anything contained in subsection 2) the Local Planning Authority may order an investigation on its own.
- (5) Where as a result of an investigation, a contravention of this Act is determined the Planning Control Inspector shall formulate a contravention report and submit to the Planning Authority.

44. Prosecution:

- (1) On receipt of every contravention or violation report the Planning Authority shall serve notice on the owner and/or occupier of the premises directing him to stop or remedy the violation in a period not exceeding 30 days and the fine that he is liable to pay for the violation.
- (2) Where the violator does not cease to commit the violation or does not undo the violation within the stipulated time, the Planning Authority shall file a prosecution before a Special Magistrate.

45. Special Magistrate

- (1) As soon as may be after commencement of this Act, the Government shall appoint for every local area, one or more planning magistrates with the prior approval of the High Court.
- (2) Every Special Magistrate shall have the powers of the Magistrate of the first class
- (3) Every Special Magistrate shall file a monthly return of information as may be prescribed.

46. Offences and contraventions

- (1) A person who commences, undertakes or carries out any development without a development permission shall be punishable with fine which may extend to one million rupees.
- (2) A person who commences, undertakes or carries out any development otherwise than in conformity with a development permission shall be punishable with fine which may extend to Rupees five hundred thousand.

- (3) A person who uses land or building otherwise than in conformity with the provisions of this Act shall be punishable with fine which may extend to Rupees two hundred thousand.
- (4) A person who obstructs any person who is acting on behalf of the Authority for the removal of an unauthorized building or stop unauthorized land use shall be punished with imprisonment, which may extend to thirty days or with fine, which may extend to five hundred thousand rupees or with both.
- (5) A person who, without any lawful cause, refuses or willfully neglects to provide to any authorized officer of the Authority with the means necessary for entering into any premises for purposes of collecting any information or making an examination or enquiry for purposes of the Act, shall be punishable with imprisonment which may extend to thirty days or with fine which may extend to one hundred thousand rupees or with both.

Part 8: Miscellaneous

47. Overriding effect: This Act shall have effect notwithstanding anything contained in any law for the time being in force.

48. Annual report:

- (1) Every Planning Authority shall within three months of the end of a financial year, formulate an annual performance report enumerating actions taken to fulfill its mandate including formulation of plans and regulation of planning during the previous financial year.
- (2) The Authority shall publish the report for public information and submit the same to the Government.

49. Immunity: No suit, prosecution or any other legal proceedings shall lie against any Authority, the Director General, any member, officer or servant of the Authority in respect of anything done or intended to be done in good faith under the Act.

50. Power to make rules: The Government may, by notification in the official gazette, make rules for carrying out the purposes of this Act.

Annex 3: Draft Multi-Storey Building Act

MULTI-STOREY BUILDINGS ACT, 2014

Chapter 1: Preliminary

1. Short Title and Commencement:

- 1) This Act may be called the Khyber Pakhtunkhwa Multi-Storey Buildings Act, 2014
- 2) It shall come into force on the date notified
- 3) It shall apply to the whole of Khyber Pakhtunkhwa

2. Interpretation: In this Act, unless the context otherwise requires:

- a. 'Authority' means a Local Planning Authority established under the Khyber Pakhtunkhwa Physical Planning Act, 2014
- b. "By-law", in relation to a development means any by-law prescribed by the relevant management corporation after approval of the Local Planning Authority
- c. 'Common property' in case of non-staged development means such part of the land and building that is not comprised in any lot or proposed lot or used or capable of being used or enjoyed by two occupiers of 2 or more lots or proposed lots. In case of staged developments 'common property' means land and building that is not comprised in any lot at any given stage other than any area proposed to be developed during the subsequent stages.
- d. 'Common expenses' means expenses
 - i) relating to the common property and any movable held by or on behalf of a management corporation or subsidiary management corporation
 - ii) required to meet any other purpose of obligation of a management corporation or subsidiary management corporation
 - iii) required to meet any other purposes or obligations of a management corporation or subsidiary management corporation
- e. 'Development' means a parcel of land on which any building is constructed, is being constructed or proposed to be constructed, and it include individual lots.
- f. 'Executive committee' in relation to a subsidiary management corporation, means the executive committee of that subsidiary management corporation
- g. "Flat" means a horizontal stratum of any building or part thereof, whether such stratum is on one or more levels or is partially or wholly below the surface of the ground, which is used or intended to be used as a complete and separate unit for the purpose of habitation or business or for any other purpose, and may be comprised in a lot, or in part of any subdivided building not shown in a registered strata title plan;
- h. 'Lot' means a part of a multi-storey development with rights of permanent exclusive use or which is intended to be used as a complete and separate unit for the purpose of habitation or business or for any other purpose; and is shown as a lot in the title plan
- i. "Exterior feature" means the outer facade of a building
- j. "Future development lot", in relation to any staged development, means a lot or proposed lot or any other area reserved for future development in the staged

development

- k. “Immediate family member”, in relation to any person, means a spouse, child, adopted child, step-child, sibling or parent of that person;
- l. “Initial period”, in relation to a management corporation or subsidiary management corporation, means a period starting from the day on which the management corporation or subsidiary management corporation, as the case may be, is constituted and ending 12 months later; or on the day when the first annual general meeting of the management corporation or (as the case may be) subsidiary management corporation is held, whichever first occurs;
- m. “Limited common property” means such part of the common property in a parcel that is (a) in the case of common property to be comprised in a multi-storey building, designated in the sale and purchase agreement of any proposed lot in the parcel for the exclusive benefit of the purchasers of any 2 or more (but not all) of those proposed lots in the parcel; or (b) in the case of common property comprised in a multi-storey building plan, designated in the multi-storey building title plan for the exclusive benefit of the subsidiary proprietors of 2 or more (but not all) lots in that strata title plan, but does not include — i) the foundations, columns, beams, supports, walls, roofs of, and any window installed in any external wall of, any building within that parcel; and (ii) any chute, pipe, wire, cable, duct and other facility for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, not comprised in any lot or proposed lot and necessary for the common use of the occupiers of all lots or proposed lots in that parcel;
- n. “Maintenance fund”, in relation to a development, means any maintenance fund established under section 15 by the owner developer of the development for the common property or limited common property, as the case may be, of that development;
- o. “Management corporation”, means the management corporation constituted in respect of a Multi-storey title plan
- p. “Managing agent” means a managing agent appointed under this Act;
- q. “Mediation” means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute;
- r. “Non-strata lot” means any stratum that —(a)is within any land or building not comprised or not to be comprised in a strata title plan; and (b)is used or intended to be used as a complete and separate unit for the purpose of habitation or business or any other purpose
- s. “Owner” includes an owner developer and (a) in relation to a building, means the person for the time being receiving the rent of the building, whether on his own account or as agent or trustee or as receiver, or who would receive the same if the building were let to a tenant; (b) in relation to any common property or limited common property not comprised in a strata title plan, means the person receiving any rent or charge for the maintenance of that common property or limited common property, or (c) in relation to any common property or limited common property comprised in a strata title plan, means the management corporation or subsidiary management corporation, as the case may be, having control of the common

- property or limited common property;
- t. “owner developer” means any person who, immediately before the constitution of a management corporation for any parcel comprised in a strata title plan, is registered as the proprietor of the parcel shown in the strata title plan, and includes any administrator, executor, mortgagee in possession, liquidator, successor in title or assign of such person;
 - u. “parcel” means the whole of any land, building and common property comprised or to be comprised in a strata title plan;
 - v. “person responsible”, in relation to an exterior feature means the person responsible for the maintenance of the exterior feature or where no person is responsible for the same, the owner of the building or that part of the building.
 - w. “planning permission” has the same meaning as the Land Use Act
 - x. “proposed lot” means any stratum in a development on a parcel to be comprised in a strata title plan and which (a) is intended to be used as a complete and separate unit for the purpose of habitation or business or for any other purpose; and (b) is to be shown as a lot on the strata title plan for that development;
 - y. “proprietor”, in relation to land comprised in a strata title plan, means the person who was the proprietor of the land the subject of the strata title plan immediately before the registration of the strata title application for that plan
 - z. “purchaser” means a person, other than an owner developer, who enters into an agreement to purchase a lot or proposed lot but to whom the lot or proposed lot has not been conveyed or assigned;
 - aa. “Schedule of strata units”, in relation to any parcel, means the schedule of strata units showing the share values for each lot or proposed lot in that parcel, and includes any amended schedule of strata units;
 - bb. “share value”, in respect of a lot or proposed lot, means the share value of that lot or proposed lot as shown in the schedule of strata units;
 - cc. “staged development” means any development of a parcel comprised or to be comprised in a strata title plan consisting of (a) the progressive improvement of the parcel in stages by the construction of buildings or the carrying out of works (or both) on a lot, proposed lot or future development lot therein or such lots therein; and (b) the subsequent subdivision under any written law of each future development lot therein and the consequential adjustments of share values of lots or proposed lots within that strata title plan;
 - dd. “staged development contract” means a staged development contract within the meaning of this Act.
 - ee. “strata subdivision” includes a subdivision of land to comprise one or more lots, whether or not any lot is on the same level as any other lot;
 - ff. “strata title plan” means a multi-storey building plan
 - gg. “stratum” means any part of land which consists of a space of any shape below, on or above the surface of the land, or partly below and partly above the surface of the land, the dimensions of which are delineated;
 - hh. “subdivided building” means any one or more buildings comprised in a strata subdivision plan approved by the relevant authority;

- ii. 'subsidiary proprietor' means the owner of a Lot
- jj. "building" includes –(a) any building partially completed;(b) where applicable, any building to be erected within a stratum shown or specified in any strata subdivision plan submitted to the relevant authority for approval; or
- kk. "provisional lot" means a lot within which one or more buildings or parts of any building are to be erected or completed and is shown as a provisional lot in a strata title plan
- ll. "registered lease" means a lease registered under the provisions of the KP Urban Tenancies Act
- mm. "registered lessee", in relation to any subdivided building not comprised in a strata title plan, means the registered proprietor of a leasehold estate in registered land comprising a flat which is shown in a plan annexed to a registered lease, having an unexpired term of not less than 21 years as at the date of the lodgment of an application
- nn. "relevant authority" means any one or more Government or statutory authorities empowered to approve plans for development or subdivision of any land or plans relating to the construction of any building under the Planning Act
- oo. "schedule of units", in relation to any land or building, means the schedule of strata units accepted by the Authority under section 11 for that land or building
- pp. "share value" means
- qq. "strata subdivision" includes a subdivision of land to comprise one or more strata units whether or not any strata unit is on the same level as any other strata unit;
- rr. "strata title plan" means a plan of registered land which (a) is described in the title or heading thereto as a strata title plan; b) shows the whole or any part of the land comprised therein as being divided into 2 or more strata, whether or not any stratum is divided into 2 or more lots; and includes a strata title plan for redevelopment of any lot in a strata title plan registered under this Act;
- ss. "stratum" means any part of land consisting of a space of any shape below, on or above the surface of the land, or partly below and partly above the surface of the land, the dimensions of which are delineated;
- tt. "subdivided building" means any one or more buildings comprised in a strata subdivision plan approved by the relevant authority
- uu. "subsidiary management corporation" means a subsidiary management corporation established under
- vv. "temporary occupation permit" means a temporary occupation permit granted by the Authority
- ww. "wall" includes a door, window or other structure forming part of the wall;
- xx. "warranted development" means any proposed development in a staged development that the owner developer thereof warrants will be carried out and may be compelled to carry out under the staged development contract for that staged development. All windows of a lot, proposed lot or non-strata lot that are located on any exterior wall of the lot, proposed lot or (as the case may be) non-strata lot, being either louvers, casement windows, sliding windows or windows with any movable part, shall be part of the lot, proposed lot or (as the case may be) non-strata lot and

not common property; and all other windows of a lot, proposed lot or non-strata lot that are located on any exterior wall of the lot, proposed lot or (as the case may be) non-strata lot shall be common property, unless otherwise described in a strata title plan.

Chapter 2: Administration

- 3. Local Planning Authorities to administer the Act.** - The Local Planning Authority shall be responsible for administration and enforcement of this Act in its area of jurisdiction

Chapter 3: Common property and maintenance

4. Categories of buildings:

- 1) The Local Planning Authority shall categories every multi-storey building, proposed multi-storey building or development in one of the following two categories:
 - a) Non-staged development: Where a property shall not be developed further than that mentioned in the development or construction proposal
 - b) Staged development: Where a property shall be developed at specified intervals with a final stated stage.
- 2) Every owner developer shall submit to the Authority when it so requires by public notice, the information which it may require to categories buildings for the purposes of subsection 1)

5. Apportionment of shares

- 1) In case of non-staged development, the owner developer shall allocate shares to buyers or owners of lots in each development at the outset.
- 2) In case of staged developments, the owner developer shall allocate shares to buyers or owners at every stage with shares becoming final at the last stage.
- 3) A share allocation proposal shall not become final till it is approved by the Authority

6. Shares to represent ownership in common property and duties

- 1) Every share shall represent the title of the owner in the common property and limited common property.
- 2) Every share shall separately indicate the cost to be paid by the owner of the share towards maintenance and management of the property. The share of cost to be paid in mixed developments shall depend on the extent and type of usage.

7. Authority may require building owner, etc., to carry out repairs, etc.

- 2) Where, in the opinion of the Authority
 - a) any building or any common property or limited common property (whether or not an exterior feature) has not been kept or maintained in a state of good and serviceable repair or in a proper and clean condition; or
 - b) any exterior feature of a building has not been kept or maintained in such manner as to be securely fixed to the building and as will prevent any collapse of such exterior feature or its support,

the Authority may, by notice in writing, require such repairs, work or alteration to the building, exterior feature, common property or limited common property, as the case

may be, as it thinks fit to be carried out.

- 3) A notice under sub section 1) shall specify
 - a) the manner in which the repairs, work or alteration specified in the notice is to be carried out;
 - b) the time within which the repairs, work or alteration shall commence;
 - c) the time within which the repairs, work or alteration shall be completed; and
 - d) that the repairs, work or alteration shall be carried out with due diligence to the satisfaction of the Authority.
- 4) A notice under sub section 1) shall be made in respect of any building or any exterior feature thereof, any common property or limited common property, and shall be served
 - a) on the owner of the building, common property or limited common property, as the case may be, or the person responsible for that exterior feature; or
 - b) where that owner is not known or cannot be found by reasonable inquiry, on every occupier of the building or, in the case of any common property or limited common property, on the persons on whose behalf the common property is or is to be managed; or for whose exclusive benefit the limited common property is designated, as the case may be.
- 5) If a notice under subsection 1) is not complied with to his satisfaction, the Authority may
 - a) carry out or cause to be carried out all or any of the repairs, work or alteration specified in that notice; and
 - b) recover all expenses reasonably incurred by him in the exercise of his powers under this section from the person in default.
- 6) Without prejudice to the right of the Authority to exercise the powers under subsection 4) if any person on whom a notice under sub section 1) is served fails, without reasonable excuse, to comply with the requirements of that notice, that person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Rs 100,000 and, in the case of a continuing offence, to a further fine not exceeding Rs 5,000 for every day or part thereof during which the offence continues after conviction.

8. Deposit by building owner, etc

- 1) Without prejudice to section 7(4) , where a notice under section 7(1) is not complied with to its satisfaction, the Authority may issue a direction to the person on whom the notice was served to deposit such amount with the Authority as it considers necessary for the purpose of executing the repairs, work and alteration specified in that notice, and that amount shall be deposited with the Authority within such period, not being less than 7 days from the service of the direction, as the Authority may specify
- 2) The Authority may refund the deposit or any part thereof, after deducting any costs and expenses incurred by him, if the repairs, work and alteration required to be executed by the notice under section 7(1) has been executed to his satisfaction.

9. Appeal against notice to repair

- 1) Any person on whom a notice under section 7(1) is served may, within 21 days after the date of receipt of the notice, appeal in writing to the Government against the notice in the prescribed manner.
- 2) Notwithstanding that an appeal is lodged under subsection 1) the notice appealed against shall take effect and be complied with unless otherwise ordered by the Government.
- 3) The Government may determine an appeal under this section by confirming, varying or cancelling the notice of the Authority under subsection 1)

10. Offences of keeping exterior of building in state of disrepair: Any person responsible for an exterior feature of a building who, without reasonable excuse, fails to keep or maintain the exterior feature shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Rs 500,000 or to imprisonment for a term not exceeding 3 months or to both

Chapter 4: Dealings in multi-storey buildings

11. Schedule of Units

- 1) The owner developer of any multi-storey building shall not sell any lot or proposed lot in the development unless a schedule of units or an amended schedule of units as the case may be showing the share value of the lot or proposed lot, is filed and accepted by the Authority
- 2) Every schedule of units and amended schedule of units shall be filed with the Authority in the prescribed form and manner and be accompanied by the prescribed fee. A schedule of units shall contain the time schedule for completing the development.
- 3) In the case of staged development the schedule of units to be filed with the Authority shall also include
 - a) The proposed share value of each lot or proposed lot in the first stage of development
 - b) The aggregate provisional share value for all future developments in each subsequent stage of the staged development
 - c) A description of the parcel of land, identifying the future development lots therein.
 - d) The proposed staged development contract subject to which the staged development shall be carried out.
 - e) The time of completion of the development

12. Amended Schedule of Units: Where a schedule of units for development has been filed and accepted by the Authority under section 11, the owner developer shall not make any change to any share value in the schedule of units, the area of any proposed lot in the development or any part of the common property or limited common property, if any unless he has filed an amended schedule of units with the Authority and the Authority accepts that amended schedule of units

13. Occupation permission:

- 1) No occupation shall be allowed in any development unless an occupation permission

is issued by the Authority

- 2) Occupation permission shall not be issued till the lot is supplied with the necessary conveniences and it is safe to occupy the lot. Occupation permission may be denied till the whole of the development can be occupied.

14. Completion of Buildings: A building shall be completed not later than the time schedule for completion unless an amended time schedule is filed and accepted by the Authority.

Chapter 5: Management of multi-storey buildings

15. Management by owner developer before management corporation constituted

- 1) The owner developer shall be responsible for the management and maintenance of a multi-storey building till such time as a management corporation is constituted.
- 2) For purposes of management and maintenance, the owner developer of a development shall establish maintenance funds in accordance with this section within 30 days of the date the first occupation permission is issued in respect of any lot or proposed lot in the development or, in the case of a staged development, the date the first occupation permission is issued in respect of any lot or proposed lot comprised in the initial stage of the staged development on completion thereof
- 3) The owner developer of every such development shall establish a general maintenance fund, which shall be used for the following purposes only
 - a. To pay for cleaning services for the common property
 - b. To pay for security services and amenities for the occupiers of the lots or proposed lots in that development; and
 - c. To pay for such other services necessary for maintaining the common property in a state of good repair;
 - d. To pay for maintenance, repair and renew fixtures and fittings (including lifts) in that development, not being fixtures and fittings installed in a lot or proposed lot sold or intended for sale to a purchaser
 - e. To pay for maintenance, repair and renew sewers, pipes, wires, cables and ducts used or capable of being used in connection with the enjoyment of 2 or more lots or proposed lots in, or the common property of, that development
 - f. To pay for any premium for the insurance of that development against damage by fire and other risks
 - g. To pay for rent and rates, if any
 - h. To pay any fee for the auditing of the maintenance fund; an
 - i. To pay all charges reasonably incurred for the administration of the maintenance fund and the common property of that development.
- 4) Where any such development comprises any limited common property, the owner developer shall, in addition, establish a separate special maintenance fund, which shall be used for the purposes listed in sub section (3) to the extent of the limited common property only
- 5) Any owner developer who contravenes subsection 1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Rs100,000 and, in the case

of a continuing offence, to a further fine not exceeding Rs 10,000 for every day or part thereof during which the offence continues after conviction.

16. Duties of owner developer as regards maintenance fund

- 1) Subject to subsection 2) the owner developer of the development shall
 - a. In respect of every lot or proposed lot in the development sold,
 - i. Pay into the relevant maintenance fund an amount equal to the amount of maintenance charges which would have been payable by the purchaser until such maintenance charges are due and payable; and
 - ii. Collect all maintenance charges due and payable from the purchaser of every lot or proposed lot in that development and pay all such maintenance charges into the relevant maintenance fund established under section 15 for that development;
 - b. in respect of every lot or proposed lot in the development not yet sold, pay into the relevant maintenance fund an amount equal to the amount of maintenance charges which would have been payable by a purchaser of such lot or proposed lot if sold; and
 - c. pay all income derived from the common property and limited common property, if any, of that development into the relevant maintenance fund for that development.
- 2) All moneys in any maintenance fund for a development shall be held by the owner developer of the development on trust
 - a. in the case of a general maintenance fund established under section 15(2) for all the purchasers of lots or proposed lots in that development; and
 - b. in the case of a special maintenance fund established under section 15(3) respect of any limited common property, for all the purchasers of such lots or proposed lots in that development for whose exclusive benefit that limited common property has been designated under their sale and purchase agreements with the owner developer
- 3) The moneys in any maintenance fund established under section 15 shall be deposited only with a bank which is licensed under the Banking Companies Act and shall not be invested
- 4) The owner developer of a development shall
 - a. cause proper books of accounts to be kept in respect of all sums of money received for and all payments out of every maintenance fund established under section 15 the development, specifying the matters in relation to which the receipts and expenditure take place
 - b. Appoint an auditor to audit every such maintenance fund annually
 - c. cause the accounts of every such maintenance fund to be audited within 4 months after the management corporation for that development is constituted;
 - d. file with the Authority a certified true copy of the audited accounts within 28 days after the accounts of every such maintenance fund have been audited
 - e. permit the Authority, or any person authorized by him to act on his behalf, at

- all reasonable times full and free access to the accounts and other records of every maintenance fund and permit the Authority or the authorized person to make copies of or make extracts from those accounts or other records; and
- f. furnish a certified true copy of the accounts of every maintenance fund to the Authority at such intervals as may be required by the Authority
 - g. within 28 days after the accounts of every such maintenance fund have been audited, make available for a period of 2 weeks such accounts for inspection by any purchaser of any lot or proposed lot in the development or his agent without payment of any fee; and
 - h. at any other time, permit the purchaser of any lot or proposed lot in the development or his agent to inspect the accounts and other records of any such maintenance fund, and to make copies of or make extracts from those accounts or other records, at such time and place as may be agreed between the parties and after payment of a prescribed fee.

17. Register of purchasers:

- 1) The owner developer of a development shall maintain a register of purchasers in such form as the Authority may require, containing the following particulars in respect of the lots or proposed lots in the development:
 - a. the share value assigned or to be assigned to each lot or proposed lot shown in the schedule of units or (as the case may be) amended schedule of strata units filed with the Authority under section 11
 - b. the floor area of each lot or proposed lot
 - c. if the development comprises limited common property, the lots or proposed lots for whose exclusive benefit that limited common property has been designated;
 - d. the name, address and other identification particulars of the purchaser of each lot or proposed lot and, an address in Pakistan to which notices may be served on the purchaser; and
- 2) The owner developer of a development shall, within 14 days of a request being made by the Authority, forward to the Authority a true copy of the register of purchasers for that development
- 3) Any owner developer who contravenes the provision of this section shall be liable on conviction to a fine not exceeding Rs 100,000 and, in the case of a continuing offence, to a further fine not exceeding Rs 10,000 for every day or part thereof during which the offence continues after conviction.

18. No collection of maintenance charges without Authority's approval

- 1) No owner developer of a development shall collect any charges for the management and maintenance of the development or any common property or limited common property comprised in the development from the purchasers of any lot or proposed lot except with the prior written approval of the Authority
- 2) Any owner developer who contravenes sub section 1) shall be guilty of an offence punishable with fine which may extend to Rs 100,000 and/or imprisonment which may extend to 15 days

- 3) For the avoidance of doubt, this section shall not prevent any management corporation or subsidiary management corporation from collecting contributions under this Chapter.

19. Authority may appoint managing agent for development

- 1) If the Authority is satisfied after due inquiry by it or a person appointed by it that the management and maintenance of a development or part thereof is not carried out satisfactorily by the owner developer thereof, the Authority may, by order appoint one or more persons as a managing agent to manage and maintain the development, the limited common property of the development, the limited common property of the development or all as the case may be
- 2) A managing agent appointed by the Authority under sub section 1) shall be entitled to such remuneration or fees as may be determined by the Authority and such remuneration or fees shall be charged
 - a. in the case of a management agent appointed in respect of the development or the common property of the development to the general maintenance fund referred to in section 15(3)
 - b. in the case of a managing agent appointed in respect of the limited common property to the special maintenance fund referred to in section 15(4)
- 3) The Authority shall not exercise his powers under this section unless it has given not less than 14 days' notice in writing to the owner developer concerned, specifying his intention to appoint a managing agent under sub section 1) and to consider the representations (if any) made by the owner developer within 14 days of the date of service of the notice
- 4) Any owner developer who is aggrieved by an order made by the Authority under subsection 1) respect of his development may, at any time within 21 days after the date of publication of that order in the *Gazette*, appeal in writing to the Government
- 5) Notwithstanding that an appeal has been made under subsection 4), an order made by the Authority under sub section (1) shall have effect unless otherwise ordered by the Government
- 6) The Government may determine an appeal under this section by confirming, varying or cancelling the Authority's order under subsection (1)
- 7) The Authority may at any time revoke any appointment made under sub section (1) for any development and appoint another person as managing agent for the development.

20. Powers and duties of managing agent appointed by Authority

- 1) Where a managing agent has been appointed by the Authority under subsection 19(1) the managing agent shall have control over the moneys in the relevant maintenance fund of the development, but shall have no power to invest such moneys.
- 2) Once a managing agent has been appointed under section 19 (1) for a development, no moneys shall be paid out of the relevant maintenance fund of that development except on the authority of the managing agent.

- 3) Subject to the general control and direction of the Authority, a managing agent appointed under section 19(1) shall have all the powers and duties of the owner developer as regards the management and maintenance of the common property or (as the case may be) limited common property of that development
- 4) Without prejudice to the generality of subsection 3) a managing agent appointed by the Authority under section 19(1) in respect of a development shall have the power
 - a. to manage the relevant maintenance fund of the development;
 - b. to issue any written demand in the name of the owner developer to the purchasers of lots or proposed lots in the development for the payment of maintenance charges due from them
 - c. to receive all charges payable to the owner developer by purchasers of lots or proposed lots in the development for the maintenance of the common property or (as the case may be) the limited common property of the development, and to give a valid discharge therefor
 - d. to receive all charges payable by the owner developer to the relevant maintenance fund in respect of those lots or proposed lots which have not been sold and for which temporary occupation permits have been issued
 - e. to institute proceedings in the name of the owner developer to recover maintenance charges payable by the purchasers of the lots or proposed lots in the development; and
 - f. to bring any action in his own name to recover moneys due to the relevant maintenance fund from the owner developer or any other person
- 5) It shall be the duty of a managing agent appointed by the Authority to pay all moneys received by him in his capacity as managing agent for a development into the relevant maintenance fund
- 6) As soon as practicable after his appointment by the Authority, but in any case not later than 2 months after his appointment, a managing agent shall prepare and submit to the Authority a statement showing as at the date of his appointment
 - a) the moneys standing to the credit of every maintenance fund of the development;
 - b) the amounts due and owing by the purchasers of the lots or proposed lots in the development as charges payable for the maintenance of the common property and any limited common property, if any, of the development;
 - c) any income derived from the common property and limited common property, if any, of the development which are due to be paid to the relevant maintenance fund; and
 - d) any expenditure incurred for the maintenance for the development which is authorized by section 15 as the case may be, to be paid out of the relevant maintenance fund and which remains unpaid.
- 7) Any person appointed by the Authority as a managing agent for a development shall not act as a managing agent unless he has lodged with the Authority a bond in the form approved by the Authority and for the prescribed amount given by a bank, a finance company or an insurer and which binds the bank, finance company or insurer to make good any loss caused by the managing agent as a result of his failure to

duly account to the purchasers of a development for moneys received or held by him.

21. Owner developer not to be relieved of his obligations to carry out repairs, etc: The appointment under section 19 of any managing agent to manage the maintenance fund or funds of a development shall not relieve the owner developer of that development of any of his obligations under this Act or any other law

- a) towards the purchasers of the lots or proposed lots in the development to carry out repairs to the common property and limited common property, if any, of the development, or to make good any defect in the common property or limited common property, as the case may be, of the development
- b) to carry out repairs and/or additional works to ensure that the development is constructed in accordance with the specifications and plans approved by the Authority; and
- c) to carry out repairs and/or additional works to comply with the requirements of any relevant authority prior to the issue of the certificate of statutory completion for the development.

22. Failure by purchaser to pay maintenance charge

- 1) Where any charges payable by the purchaser of a lot or proposed lot in a development under the sale and purchase contract for the maintenance of the common property or limited common property of the development remain unpaid at the end of a period of 28 days after service of a written demand by the owner developer, the charges outstanding and any interest accrued thereon shall constitute a debt owing to the owner developer
- 2) For the purposes of this section, a written demand sent by an owner developer to a purchaser shall be deemed to have been served on the purchaser of a lot or proposed lot (whether it is actually received or not) if it is sent by registered post to the purchaser at his last known address
- 3) Where a managing agent has been appointed by the Authority under section 19 to manage and maintain a development, a notice sent by the managing agent shall be deemed to have been a notice sent by the owner developer of that development.

23. Owner developer's duties on constitution of management corporation

- 1) When a management corporation is constituted for any development, the owner developer of the development shall
 - a) Immediately open a bank account in the name of the management corporation and pay into that account all balances of moneys in the general maintenance fund established under section 15(2) for the maintenance of the building and the common property of that development
 - b) cause to be prepared such accounts and other records as will sufficiently explain the transactions and financial position of the management corporation and enable true and fair profit and loss accounts and balance-sheets and any document required to be attached thereto to be prepared for the period starting from the date the management corporation is constituted for the development and ending on a date not earlier than 4 months before the first annual general meeting of the management corporation; and
- 2) When a subsidiary management corporation is constituted for any development by

- the owner developer thereof, the owner developer shall also
- a) immediately open a bank account in the name of the subsidiary management corporation and pay into that account all balances of moneys in the special maintenance fund established under section 15(3) for the maintenance of the limited common property of that development;
 - b) cause to be prepared such accounts and other records as will sufficiently explain the transactions and financial position of the subsidiary management corporation and enable true and fair profit and loss accounts and balance-sheets and any document required to be attached thereto to be prepared for the period starting from the date the subsidiary management corporation is constituted for the development and ending on a date not earlier than 4 months before the first annual general meeting of the subsidiary management corporation; and
- 3) An owner developer of a development shall exercise and perform the duties of the council of a management corporation; and where the development comprises any limited common property, the executive committee of the subsidiary management corporation, from the time the management corporation or (as the case may be) subsidiary management corporation is constituted until a council of the management corporation or an executive committee of the subsidiary management corporation is elected at the first annual general meeting of the management corporation or subsidiary management corporation, as the case may be
- 4) Within one week after the first annual general meeting of the management corporation or the subsidiary management corporation, the owner developer shall
- a) Transfer control of the management corporation's or the subsidiary management corporation's money to its newly elected council or executive committee; and
 - b) deliver to that newly elected council or executive committee all keys and other means of access that the owner developer possesses for the purposes of exercising the powers and performing the duties of the council or executive committee, as the case may be
- 5) For a period of 2 years following the transfer of control under subsection 4(a) the owner developer shall
- a) keep all financial records that relate to the management corporation's and (if any) subsidiary management corporation's finances during the period before the transfer of control;
 - b) at the request of the management corporation or subsidiary management corporation, make any of the records referred to in paragraph a) available for inspection free of charge by the management corporation or subsidiary management corporation, as the case may be; and
 - c) allow the management corporation or subsidiary management corporation, as the case may be, to copy or audit those records at its own expense
- 6) Before the first annual general meeting of a management corporation, the owner developer shall appoint the auditor of the management corporation, and any auditor so appointed shall hold office until the conclusion of the first annual general meeting of the management corporation.
- 7) Before the first annual general meeting of a subsidiary management corporation after

it is constituted (other than pursuant to a comprehensive resolution), the owner developer shall appoint the auditor of the subsidiary management corporation, and any auditor so appointed shall hold office until the conclusion of the first annual general meeting of the subsidiary management corporation.

24. Constitution of management corporation

- 1) For every development the owner developer shall constitute a management corporation comprising the proprietors of lots or portions of the property
- 2) The Management Corporation shall be called the Management corporation of the relevant building
- 3) The Management Corporation shall be a body corporate capable of suing and being sued and shall have perpetual succession and a common seal
- 4) A management corporation constituted in respect of a Multi-storey building shall have the powers, duties and functions conferred or imposed on it by or under this Act, or by the by-laws in respect of the parcel comprised in that development plan and, subject to this Act, shall have the control, management and administration of the common property comprised in that development title plan.

25. First annual general meeting of management corporation

- 1) The owner developer of any development on a parcel comprised in a strata title plan (whether or not he is also a subsidiary proprietor) shall hold the first annual general meeting of the management corporation constituted in respect of that strata title plan no later than the earlier of the following dates
 - a) a date that is one month after the end of the initial period for the management corporation; or
 - b) a date that is 6 weeks after the owner developer receives a written request from the subsidiary proprietors of at least 10% of the total number of lots comprised in that strata title plan asking for the first annual general meeting to be held
- 2) Subject to subsection (6) the chairperson of the first annual general meeting shall be the owner developer acting personally or through an agent.
- 3) The agenda for the first annual general meeting of a management corporation constituted in respect of a strata title plan comprising any development shall consist of the following
 - a) to elect a council in accordance with section 44 where there are more than 3 subsidiary proprietors
 - b) to determine the amount to be raised for the management fund and the sinking fund
 - c) to decide whether effected by the owner developer of the development should be varied or extended
 - d) to decide the matters that shall be determined only by the management corporation at a general meeting
 - e) to appoint a managing agent, if the management corporation so desire, and to determine the powers, duties or functions of the management corporation to be delegated to the managing agent; and
 - f) to receive and, if considered fit, to adopt the audited annual accounts of the

management corporation for the period starting from the date the management corporation is constituted and ending on a date not earlier than 4 months before the first annual general meeting.

- 4) At or within 2 weeks after convening the first annual general meeting of the management corporation constituted in respect of a strata title plan comprising any development, the owner developer of the development shall
 - a) place before the meeting and deliver to the management corporation copies of all the following:
 - i. all plans that were required to obtain the temporary occupation permit and certificate of statutory completion (where applicable) for all buildings in the development, (including amendments to such plans) that have been filed with the Authority
 - ii. any document in the owner developer's possession that indicates, as far as practicable, the actual location of any pipe, wire, cable, chute, duct or other facility for the passage or provision of systems or services, if the owner developer has reason to believe that the pipe, wire, cable, chute, duct or other facility is not located as shown on a plan or amended plan filed with the Authority
 - iii. all contracts entered into by or on behalf of the management corporation
 - iv. a copy of the strata title plan
 - v. the names and addresses of such contractors, subcontractors and persons who supplied labor or materials to the development during construction as may be prescribed;
 - vi. all warranties, manuals, schematic drawings, operating instructions, service guides, manufacturer's documentation and other similar information respecting the construction, installation, operation maintenance, repair and servicing of any common property or limited common property, including any warranty information provided to the owner developer by any person referred to subparagraph v)
 - vii. all records required to be prepared or retained by the management corporation under this Act; and
 - viii. any other records as may be prescribed; and
 - b) place an annual budget before the meeting for approval, which shall be for a period of 12 months starting on the first day of the month following the date of the first annual general meeting
- 5) If the owner developer contravenes subsection 4(a) and the management corporation is required to pay any person to obtain a document referred to in that provision, the amount so paid shall be deemed to be a debt owing to the management corporation by the owner developer.
- 6) If the owner developer does not hold the first annual general meeting as required by subsection 1) any subsidiary proprietor of any lot comprised in the development or any mortgagee in possession of such lot may apply to the Authority to appoint a person to convene the first annual general meeting of the management corporation for that development

- 7) The Authority may, on receiving any application under subsection 6) by order
 - a) appoint a person to convene the first annual general meeting of the management corporation of a development within such time and at such place as may be specified in the order; and
 - b) include such ancillary or consequential instructions as the Authority thinks fit to facilitate the holding of the meeting by such person, and any such meeting so convened by that person shall be the first annual general meeting of the management corporation
- 8) Where an order is made under subsection 7)
 - a) the person appointed under that order to convene the meeting shall preside at the meeting and while so presiding, he shall be deemed to be the chairperson of the management corporation; and
 - b) notice of the meeting may be given in such manner as may be specified in the order
- 9) Any owner developer who, without reasonable excuse, fails to comply with subsection 1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Rs 100,000 and, in the case of a continuing offence, to a further fine not exceeding Rs 5000 for every day or part thereof during which the offence continues after conviction.

26. Meetings, other than first annual general meeting, of management corporation

- 1) After the first annual general meeting has been held, an annual general meeting of a management corporation shall be held in each calendar year and not more than 15 months after the holding of the last preceding annual general meeting.
- 2) A meeting of the management corporation, which is not an annual general meeting, shall be held whenever it is convened by the council and shall be an extraordinary general meeting
- 3) Where after the holding of an annual general meeting of a management corporation
 - a) no annual general meeting of the management corporation is next held in accordance with subsection 1)
 - b) the next annual general meeting of the management corporation is held after the time limited by subsection 1) for its holdingthe chairperson and the secretary of the management corporation shall each be guilty of an offence.
- 4) Where any person is charged with an offence under subsection 3) it shall be a defence to prove that he took all reasonable steps and exercised all due diligence to secure compliance with this section.

27. Management corporation's address:

- 1) Every management corporation shall ensure that an address for the time being for service of notices is displayed on a notice board at a conspicuous place within the common property
- 2) Every Management Corporation shall also a post box at a prominent place near the entry of the premises it manages for receiving communication

28. Duties and powers of management corporation in respect of property

- 1) Except as otherwise provided in subsection 3) it shall be the duty of a management corporation
 - a) to control, manage and administer the common property for the benefit of all the subsidiary proprietors constituting the management corporation
 - b) to properly maintain and keep in a state of good and serviceable repair (including, where reasonably necessary, renew or replace the whole or part thereof)
 - i) the common property
 - ii) any fixture or fitting (including any pipe, pole, wire, cable or duct) comprised in the common property or within any wall, floor or ceiling the centre of which forms a boundary of a lot, not being a fixture or fitting (including any pipe, pole, wire, cable or duct) that is used for the servicing or enjoyment of any lot exclusively;
 - iii) any fixture or fitting (including any pipe, pole, wire, cable or duct) which is comprised within a lot and which is intended to be used for the servicing or enjoyment of the common property
 - iv) each door, window and other permanent cover over openings in walls where a side of the door, window or cover is part of the common property; and
 - v) any movable property vested in the management corporation
 - c) to effect insurance according to this Act
 - d) when so directed by a special resolution, to install or provide additional facilities or make improvements to the common property for the benefit of the subsidiary proprietors constituting the management corporation
 - e) to comply with any notice or order made by any relevant authority or public authority requiring the abatement of any nuisance on the common property or ordering repairs or other work to be done in respect of the subdivided building or common property;
 - f) to pay the rent, if any, on the land on which the subdivided building is erected;
 - g) to cause proper records to be kept of notices given to the management corporation under this Act or any other written law, or of any orders made by a court, a Board or other tribunal and served on the management corporation; and
 - h) to convene annual general meetings
- 2) Except as otherwise provided in subsection 3) a management corporation may —
 - a) enter into an agreement, upon such terms and conditions (including terms for the payment of consideration) as may be agreed upon by the parties thereto, with a subsidiary proprietor or occupier of a lot for the provision of amenities or services by it to the lot or to the subsidiary proprietor or occupier thereof; and
 - b) do all things reasonably necessary for the performance of its duties under this Part and for the enforcement of the by-laws
- 3) Notwithstanding sub section 1) and 2) but subject to sub section 4) where a strata

title plan comprises common property and any limited common property, the management corporation constituted shall, upon the creation of the limited common property perform the duties and exercise the powers referred to in sub section 1) and 2) respectively, only in respect of common property that is not limited common property; and

- 4) Notwithstanding any other provision of this Act, a management corporation constituted for common property within a strata title plan may manage and maintain any limited common property within that strata title plan upon such terms and conditions as may be agreed between the subsidiary management corporation for that limited common property and the management corporation.

29. Powers of management corporation to carry out work

- 1) Where a notice has been served on the subsidiary proprietor of a lot by a public authority requiring that subsidiary proprietor to carry out any work on or in relation to that lot and the notice is not complied with, the management corporation may carry out the work
- 2) Where a subsidiary proprietor, mortgagee in possession, lessee or occupier of a lot fails or neglects to carry out any work
 - a) required to be carried out by him under a term or condition of a by-law.
 - b) necessary to remedy a breach of the duty imposed on him by this law
 - c) to rectify any defect in any water pipe or sewer pipe within his lot or any cracks in the wall or floor within his lot; or
 - d) necessary to rectify any contravention of this law
 the management corporation may carry out that work.
- 3) Where the management corporation carries out any work on or in relation to a lot or common property under subsection 1) or 2) it may recover the cost of so doing, as a debt from the subsidiary proprietor, mortgagee in possession, lessee or occupier referred to in subsection 1) or 2) or where the work is carried out under sub section 1) or 2(b) or(c) from any person who, after the work is carried out, becomes the subsidiary proprietor of the lot on or in relation to which the work was carried out; or under subsection 2) (a) from any person who, after the work is carried out, becomes the subsidiary proprietor of the lot in respect of which the by-law referred to in subsection (2)(a) was made
- 4) Where
 - a) any part of a building comprised in a lot contains any structural defect which affects or is likely to affect the support or shelter provided by that lot for another lot in that building or the common property; or
 - b) any defect occurs in any pipes, wires, cables or ducts
 and the defect is not due to any breach of the duty imposed on any person by this Act the management corporation shall carry out such work as is necessary to rectify the defect and may recover the cost of such work from any person who has a duty to remedy the defect as a debt in any court of competent jurisdiction.
- 5) Where the management corporation incurs any expenditure or performs any repairs, works or acts that it is required or authorized by this Part or by any other written law to perform (whether or not the expenditure was incurred or the repairs, works or acts

were performed consequent upon the service on it by the Government or any statutory authority of any notice or order) and the expenditure or the repairs, works or acts were rendered necessary by reason of any willful or negligent act or omission on the part of, or breach of any provision of its by-laws by any person or his tenant, lessee, licensee or invitee, the amount of that expenditure expended by it in performing the repairs, works or acts shall be recoverable by it from that person as a debt in an action in any court of competent jurisdiction.

30. Powers of entry of management corporation

- 1) For the purpose of carrying out pursuant to any work required to be carried out by a management corporation the management corporation may, by its agents, employees or contractors, enter upon any part of the parcel for the purpose of carrying out the work in the case of an emergency — at any time; or in any other case — at any reasonable time on notice being given to any occupier of that part of the parcel.
- 2) Any person who obstructs or hinders a management corporation in the exercise of any power under this section shall be guilty of an offence.

31. By-laws for common property

- 1) Every management corporation and subsidiary management corporation shall make by-laws for the purpose of controlling and managing the use or enjoyment of the property comprised in a multi-storey building, including all or any of the following purposes:
 - a) safety and security measures
 - b) details of any common property of which the use is restricted;
 - c) Provision of privacy
 - d) the keeping of pets;
 - e) parking;
 - f) garbage disposal;
 - g) behavior
 - h) architectural and landscaping guidelines to be observed by all subsidiary proprietors;
 - i) such other matters as are appropriate to the building
- 2) Any by-laws made, and any amendment of, or addition to or repeal of the by-laws made under this section shall have no force or effect until a copy of the by-laws or the amendment of, or addition to or repeal, as the case may be, has been lodged with the Authority.
- 3) A copy of every by-law made by the management corporation under this section and every addition, amendment or repeal of any such by-law for the time being in force, certified as a true copy under the seal of the management corporation, shall be lodged by the management corporation with the Authority within 30 days of the passing of the resolution by the management corporation approving the making of such by-law or any amendment, addition to or repeal of any existing by-law.
- 4) Without limiting the operation of any other provision of this Act, the prescribed by-laws and any by-laws made under this section for the time being in force shall bind

- the management corporation and the subsidiary proprietors and any mortgagee in possession, lessee or occupier of a lot
- 5) No by-law made under this section shall be capable of operating
 - a) to prohibit or restrict the devolution of a lot or a transfer, lease, mortgage or other dealing of a lot; or
 - b) to destroy or modify any easement expressly or impliedly created by or under this Act
 - 6) The management corporation or subsidiary proprietor, mortgagee in possession, lessee or occupier of a lot shall be entitled to apply to the court for an order to enforce the performance of or restrain the breach of any by-law; or to recover damages for any loss or injury to person or property arising out of the breach of any by-law from any person bound to comply therewith, the management corporation or the managing agent.

32. Dispositions and additions to, etc., common property

- 1) A management corporation may, pursuant to a special resolution, and subject to approval from the relevant authority, accept a grant or transfer of any land (not being a lot within the parcel), which abuts the parcel, free from any encumbrances (except those created by statute and subsisting easements) for the purpose of creating additional common property.
- 2) A management corporation may approve the subdivision of a lot or the amalgamation of 2 or more lots resulting in the creation of any additional or new common property.

33. Improvements and additions to lots

- 1) Except pursuant to an authority granted under subsection 2) no subsidiary proprietor of a lot that is comprised in a strata title plan shall effect any improvement in or upon his lot for his benefit which increases or is likely to increase the floor area of the land and building comprised in the strata title plan
- 2) A management corporation may, at the request of a subsidiary proprietor of any lot comprised in its strata title plan and upon such terms as it considers appropriate, by 90% resolution, authorize the subsidiary proprietor to effect any improvement in or upon his lot referred to in subsection 1).
- 3) Except pursuant to an authority granted under subsection 4) no subsidiary proprietor of a lot that is comprised in a strata title plan shall effect any other improvement in or upon his lot for his benefit which affects the appearance of any building comprised in the strata title plan.
- 4) A management corporation may, at the request of a subsidiary proprietor of any lot comprised in its strata title plan and upon such terms as it considers appropriate, authorize the subsidiary proprietor to effect any improvement in or upon his lot referred to in subsection 3) if the management corporation is satisfied that the improvement in or upon the lot
 - a) will not detract from the appearance of any of the buildings comprised in the strata title plan or will be in keeping with the rest of the buildings; and
 - b) Will not affect the structural integrity of any of the buildings comprised in

the strata title plan.

34. Management funds and sinking funds

- 1) A management corporation shall establish and maintain a fund as its management fund
- 2) A management corporation shall pay into its management fund
 - a) all moneys received by it in respect of contributions determined under section
 - b) the proceeds of the sale or other disposal of any movable property of the management corporation
 - c) any fee received by the management corporation under section x
 - d) any amounts paid to the management corporation by way of discharge of insurance claims; and
 - e) Interest received on any investment belonging to the management fund.
- 3) A management corporation shall not disburse any moneys from its management fund otherwise than for the purpose of
 - a) meeting its liabilities referred to in section 35(1)
 - b) carrying out its powers, authorities, duties or functions under this Act; or
 - c) Transferring moneys therein not required to meet the liabilities of the management fund to the sinking fund.
- 4) A management corporation shall also establish and maintain a fund as its sinking fund.
- 5) In addition to any moneys transferred under subsection (3)(c) a management corporation shall pay into its sinking fund
 - a) all moneys received by it in respect of contributions determined under section 35(2)
 - b) any amount paid to the management corporation by way of discharge of insurance claims and not paid to the management fund;
 - c) all other amounts received by the management corporation and not paid or payable into the management fund; and
 - d) Interest received on any investment belonging to the sinking fund.
- 6) A management corporation shall not disburse any moneys from its sinking fund otherwise than for the purpose of
 - a) meeting its liabilities referred to in section 35 (2), or
 - b) Carrying out its powers, authorities, duties or functions under this Act.
- 7) A management corporation may only invest any moneys in its management fund or sinking fund in Government securities
- 8) A management corporation shall pay any moneys in its management fund or sinking fund that are not otherwise invested in accordance with subsection 7) into an account established with a financial institution in the name of the management corporation.

- 9) A management corporation may borrow moneys and secure the repayment thereof and of any interest in such manner as may be agreed upon by the management corporation and the lender, otherwise than by charging the repayment on the common property.
- 10) A management corporation shall
 - a) cause proper books of account to be kept in respect of moneys received or expended by the management corporation showing the items in respect of which the moneys were received or expended; and
 - b) cause to be prepared, from the books referred to in paragraph a) a proper statement of accounts of the management corporation in respect of each period commencing on the date the management corporation was constituted or the date up to which the last previous such statement was prepared and ending on a date not earlier than 4 months before each annual general meeting.

35. Management corporation to determine contributions by subsidiary proprietors

- 1) The management corporation shall, from time to time at a general meeting, determine the amounts which are reasonable and necessary to be raised by contributions for the purpose of meeting its actual or expected liabilities incurred or to be incurred within the period (not exceeding 12 months) specified in the determination in respect of
 - a) the regular maintenance and keeping in good and serviceable repair pursuant to section 28 of parts of the parcel being the common property, fixtures, fittings and other property (including movable property) held by or on behalf of the management corporation;
 - b) the common expenses of the management corporation (except those in subsection (2)(a) to (d)
 - c) the payment of insurance premiums; and
 - d) all other liabilities incurred or to be incurred during that period by or on behalf of the management corporation in carrying out its powers, authorities, duties and functions under this Act other than liabilities referred to in subsection (2)
- 2) The management corporation shall, also from time to time at a general meeting, determine the amounts which are reasonable and necessary to be raised by contributions for the purpose of meeting its actual or expected liabilities incurred or to be incurred in respect of
 - a) painting or treating of any part of the common property which is a structure or other improvement for the preservation and appearance of the common property
 - b) major repairs and improvements to, and maintenance of, the common property and boundary wall;
 - c) the renewal or replacement pursuant to section 28 of parts of the parcel being the common property, fixtures, fittings and other property (including movable property) held by or on behalf of the management corporation;
 - d) the acquisition of movable property; and

- e) such other liabilities expected to be incurred at a future time where the management corporation determines in a general meeting that the whole or part thereof should be met from its sinking fund
- 3) If the management corporation becomes liable to pay any moneys that it is unable to pay immediately, the management corporation shall determine that amount to be raised by contributions
- 4) A determination made by a management corporation under subsection (1) or (2) may specify that the amounts to be raised for the purposes therein referred to shall be raised by such regular periodic contributions as may be specified in the determination.

36. Contributions by subsidiary proprietors

- 1) A management corporation may levy the contributions determined by it in accordance with section 35(1) or (2), and the contributions referred to in section 35(1), by serving on the subsidiary proprietors notice in writing of the contributions payable by them in respect of their respective lots.
- 2) The contributions levied by a management corporation in respect of each lot shall be payable by the subsidiary proprietors in shares proportional to the share value of their respective lots
- 3) If, at the time a person becomes a subsidiary proprietor of a lot, another person is liable in respect of the lot to pay a contribution levied under this section, the subsidiary proprietor shall, be jointly and severally liable with the other person for the payment of the contribution and interest on the contribution.
- 4) A person who has ceased to be a subsidiary proprietor of the lot shall only be liable to pay the contribution levied under this section and which was unpaid at the time he ceased to be a subsidiary proprietor, plus the interest accruing on the unpaid contribution until such time as it is paid
- 5) Without affecting the liability of the subsidiary proprietor of a lot in respect of any contribution levied under this section, where a mortgagee is in possession (whether by himself or any other person) of a lot, he shall be liable jointly and severally with the subsidiary proprietor of the lot which he is in possession
- 6) Any contribution levied under this section
 - a) shall become due and payable to the management corporation without any deduction whatsoever in accordance with the decision of the management corporation to make the levy
 - b) if not paid within 30 days when it becomes due and payable, shall bear interest at the rate determined by the management corporation and such interest shall accrue from the expiry of 30 days after the date when the contribution becomes due and payable unless the management corporation determines in a general meeting (either generally or in a particular case) that any unpaid contribution shall bear no interest; and
 - c) may, together with such interest due, be recovered as a debt by the management corporation in any court of competent jurisdiction.
- 7) Any interest paid under subsection (6) shall form part of the fund to which the contribution belongs.

- 8) Any contribution levied by a management corporation under this section shall be deemed to be money payable under a contract for the provision of services and a management corporation may lodge a claim for the payment of such contribution
- 9) Without prejudice to subsection (8), a subsidiary proprietor who fails to pay any contribution or interest due and owing to a management corporation within 14 days from the date of service of any written demand referred to in subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Rs 25,000 and, in the case of a continuing offence, to a further fine not exceeding Rs 1000 for every day or part thereof during which the contribution or interest or both remain unpaid after conviction.
- 10) The court before which a conviction for an offence under subsection (9) is made may, in addition to such fine, order the subsidiary proprietor to pay to the management corporation the amount of any contribution together with any interest thereon or any interest certified by the management corporation to be due from such person at the date of his conviction, and such amount shall be recovered according to any written law for the time being in force for the recovery of fines.

37. Contributions when due: Contributions pertaining to a lot shall be due when the lot is fit for occupation and a temporary occupation permit has been issued with respect to that lot.

38. Recovery of contribution from sale of lot:

- 1) Where an amount is recoverable by the management corporation from the subsidiary proprietor of a lot and such amount or contribution remains unpaid on the expiry of a period of 30 days after the management corporation has served a written demand for the amount or contribution, that amount or contribution, including any interest thereon (if any), shall constitute a charge on the lot in favor of the management corporation upon lodgment of an instrument of charge by the management corporation with the Authority
- 2) Upon lodgment of the instrument of charge the Authority shall cause the charge to be entered in the register of purchasers and authenticate the same.

39. Liability of members for debts of management corporation

- 1) The payment of any expenditure lawfully incurred by a management corporation in the course of the exercise of any of its powers or functions or the carrying out of its duties or obligations shall, by virtue of this section, be guaranteed by the persons who, for the time being and from time to time, comprise the management corporation.
- 2) The subsidiary proprietor of a lot shall be liable only to pay the amount, which he would have to pay if contributions were levied by the management corporation to raise the necessary sum for the payment of the expenditure

40. Audit of accounts of management corporation

- 1) Books and accounts of every management corporation in respect of each financial year of the management corporation shall be audited
- 2) The audit of the books and accounts of a management corporation shall be carried out only by a person who is a public accountant within the meaning of the Companies Ordinance, 1984
- 3) The auditor shall be appointed by

- a) the management corporation at its annual general meeting; or
 - b) the council of the management corporation within 90 days after the annual general meeting is concluded if no auditor is appointed during that annual general meeting,
- 4) The auditor shall hold office until the conclusion of the next annual general meeting of the management corporation.

41. Register of Subsidiary proprietors

- 1) A management corporation shall prepare and maintain a Register in accordance with this section.
- 2) The Register shall be kept in the form of a book (either bound or loose-leaf) which shall contain one or more pages in respect of each lot in the subdivided building
- 3) The management corporation shall record the following information in the Register
 - a) the share value of the lot, as shown on the schedule of strata units accepted by the Authority under section 11
 - b) the name and address of the subsidiary proprietor as shown in the Register of purchasers
 - c) the discharge, transfer, assignment or sub mortgage of any mortgage with regard to a lot
 - d) the name and address of the transferee, assignee or mortgagee
 - e) the date of entry into possession of the lot by a subsidiary proprietor, transferee, assignee or mortgagee as the case may be

42. Supply of information, etc., by management corporations

- 1) A management corporation shall, upon application made to it in writing in respect of a lot which is the subject of the subdivided building concerned by a subsidiary management corporation, or by a subsidiary proprietor or mortgagee or prospective purchaser or mortgagee of that lot or by a person authorized in writing by such a subsidiary proprietor or mortgagee and on payment of the prescribed fee, do any one or more of the following things as are required of it in the application
 - a) inform the applicant of the name and address of the chairperson, secretary and treasurer of the management corporation and of any person who has been appointed under section 54 as managing agent
 - b) make available for inspection by the applicant or his agent
 - i. The Register of subsidiary proprietors
 - ii. The plans, specifications, certificates, diagrams and other documents delivered under section 25(4)
 - iii. The minutes of general meetings of the management corporation and of the council
 - iv. The books of account of the management corporation
 - v. a copy of the statement of accounts of the management corporation last prepared by the management corporation in accordance with section 34(10); and

- vi. any other record or document in the custody or under the control of the Management corporation
- c) certify, as at the date of the certificate, in respect of the lot in respect of which the application is made
 - i. the amount of any regular periodic contributions determined by the management corporation under section 35(1) and (2) and the periods in respect of which those contributions are payable
 - ii. whether there is any amount unpaid of any contribution determined under section 35(1) and (2) and, if so, the amount thereof and the date on which any such contribution was levied
 - iii. whether there is any amount unpaid of any contribution levied under section 36 and, if so, the amount thereof and the date on which it was levied
 - iv. whether there is any amount recoverable from the subsidiary proprietor of that lot under section 29 and, if so, the amount thereof;
 - v. any interest payable under section 36(6)(b) in respect of any unpaid contribution referred to in that subsection; and
- 2) a certificate given under subsection (1)(c) by a management corporation in respect of that lot shall be conclusive evidence, as at the date of the certificate, of the matters stated therein.
- 3) A person entitled to inspect a document made available under subsection (1)(b) may take extracts from, or make a copy of, the document but may not, without the consent of the management corporation, remove the document from the custody of the management corporation for the purpose of inspecting the document, taking extracts therefrom or making a copy thereof.

43. Records, etc., of management corporation

- 1) A person who has possession or control of
 - a) any records, books of account or keys belonging to a management corporation
 - b) the Register of Subsidiary Proprietors kept by a management corporation; or
 - c) any other property of a management corporation,

Shall, within 7 days after service on him of notice of a resolution of the council requiring him to do so, deliver those records, books of account and keys and that strata roll and other property to a member of the council specified in the notice.

- 2) Every management corporation shall retain all its records, books of account and such other documents relating to any of its transactions for a period of at least 7 years after the completion of that transaction.
- 3) Any management corporation which, without reasonable excuse, fails to comply with subsection (2) shall be guilty of an offence.

44. Council of management corporation

- 1) Subject to this section, after the first annual general meeting, every management corporation shall have a council which shall consist of such number of persons as the management corporation may determine in a general meeting, but in no case exceeding a total of 14 natural persons (inclusive of any member of an executive committee of a subsidiary management corporation in section 60(3) and these persons shall be elected or appointed in accordance with this Act as follows:
 - a) a chairperson
 - b) a secretary;
 - c) a treasurer; or
 - d) a member of the council,all of whom shall be natural persons elected or appointed in accordance with this Act.
- 2) Notwithstanding subsection 1) where a management corporation has not more than 3 subsidiary proprietors, the council of the management corporation shall consist of each subsidiary proprietor (if any) who is a natural person or the subsidiary proprietor's nominee, together with the nominee of each subsidiary proprietor (if any) which is a company.
- 3) Where a management corporation has only one subsidiary proprietor, the sole subsidiary proprietor may make any decision that a duly convened council may make under this Act, and any such decision shall be deemed to be a decision of the council of the management corporation
- 4) All the members of the council of a management corporation shall be elected at each annual general meeting of the management corporation.
- 5) The members of the council of a management corporation shall retire from office at the conclusion of the next annual general meeting of the management corporation, but a retiring member of the council shall (subject to the provisions of this Act) be eligible for re-election.
- 6) A person shall not be eligible for election as a member of the council of a management corporation unless he is an individual of at least 21 years of age and who
 - a) is a subsidiary proprietor of a lot
 - b) is nominated for election by a subsidiary proprietor of a lot which is a company; or
 - c) is not a subsidiary proprietor but is a member of the immediate family of a subsidiary proprietor and is nominated for election by that subsidiary proprietor.
- 7) Notwithstanding subsection (6), an individual referred to in that subsection shall not be eligible for election as a member of the council of a management corporation if, on the third day before the date of election
 - a) where he is a subsidiary proprietor of a lot, all or any part of the contributions and any other moneys levied or recoverable by the management corporation under this Act in respect of that lot are in arrears;

- b) where he is nominated for election by a subsidiary proprietor of a lot which is a company, all or any part of the contributions and any other moneys levied or recoverable by the management corporation under this Act in respect of that lot are in arrears; or
 - c) Where he is a member of the immediate family of a subsidiary proprietor of a lot and is nominated for election by that subsidiary proprietor, all or any part of the contributions and any other moneys levied or recoverable by the management corporation under this Act in respect of that lot are in arrears.
- 8) Notwithstanding subsection 6) and without prejudice to subsection 7) the following persons shall also not be eligible for election as a member of the council:
- a) an individual who is a joint subsidiary proprietor of a lot with another subsidiary proprietor, if that other subsidiary proprietor is also a candidate at that election or has nominated another person for that election; and
 - b) an individual who is nominated for election by a subsidiary proprietor who owns 2 or more lots, if that subsidiary proprietor together with any of his nominees
 - i. nominated at the same election; or
 - ii. elected or appointed to the council at the same or other election or such of his nominees, exceed the threshold number for that subsidiary proprietor determined in accordance with subsection 9)
- 9) For the purposes of determining the eligibility of any subsidiary proprietor's nominee for election as a member of a council under subsection 8(b) the threshold number for that subsidiary proprietor shall be
- a) the number of council members that is proportional to the subsidiary proprietor's share value, ignoring any fraction; or
 - b) 49% of the number of council members determined under subsection 1) ignoring any fraction,

whichever number is lower.

45. Vacation of office of member of council

- 1) A person who is the chairperson, secretary or treasurer or a member of a council shall vacate his office as such a member
- a) if the person was a subsidiary proprietor at the time of his appointment or election and he ceases to be a subsidiary proprietor;
 - b) if the person was the nominee of a subsidiary proprietor and the subsidiary proprietor who nominated him
 - i. ceases to be a subsidiary proprietor; or
 - ii. notifies the management corporation in writing that the person's office as a member of the council is vacated;
 - c) if the person fails to attend 3 consecutive meetings of the council without having first obtained from the council permission to be or to remain absent therefrom, the granting of which shall not be

- unreasonably withheld;
- d) upon the receipt by the management corporation from the person of a notice in writing of the person's resignation
 - e) at the end of the next annual general meeting at which a new council is elected by the management corporation or upon the election at a general meeting of another person to that office, if earlier;
 - f) where he is a member under section 44(2) or (3) and the number of subsidiary proprietors increases to more than 3, upon the election of the members of the council at the first annual general meeting held after that increase
 - g) if the management corporation removes him from his office
 - h) if the person is convicted, on or after the date of commencement of this section, by a court in Pakistan or elsewhere of an offence involving fraud or dishonesty.
- 2) A management corporation may remove a member of its council from office
- a) without a general meeting
 - i. where he is a subsidiary proprietor at the time of his appointment or election, if all or any part of his contributions or any other moneys levied or recoverable by the management corporation under this Act in respect of his lot are in arrears for more than 3 months; or
 - ii. where he is a nominee of a subsidiary proprietor, if all or any part of that subsidiary proprietor's contributions or any other moneys levied or recoverable by the management corporation under this Act in respect of the subsidiary proprietor's lot are in arrears for more than 3 months; or
 - b) by ordinary resolution at a general meeting in any other case, including on any of the following grounds:
 - i. misconduct;
 - ii. neglect of duty; or
 - iii. Incapacity or failure to carry out satisfactorily the duties of his office.
- 3) Upon the occurrence of a vacancy in the office of the chairperson, secretary or treasurer or other member of the council, otherwise than by reason of subsection 1(e) or (f), the council may appoint a person eligible for election as such to fill the vacancy, and any person so appointed shall hold that office for the balance of his predecessor's term of office.
- 4) The members for the time being of the council shall constitute a quorum at a meeting of the council for the purpose only of appointing a person under subsection 3) or convening a general meeting of the management corporation for that purpose.

46. Duties of secretary of council: The duties of the secretary of the council of a management corporation shall include the following:

- a) to prepare and distribute minutes of meetings of the management corporation and submit a motion for confirmation of the minutes of any

- meeting of the management corporation at the next such meeting
- b) to give on behalf of the management corporation and of the council the notices required to be given under this Act
 - c) to maintain the Register of subsidiary proprietors
 - d) to enable the inspection of documents on behalf of the management corporation in accordance with section xx
 - e) to answer communications addressed to the management corporation;
 - f) to convene meetings of the council and (apart from its first annual general meeting) of the management corporation; and
 - g) to attend to matters of an administrative or secretarial nature in connection with the exercise, by the management corporation or the council, of its functions.

47. Duties of treasurer of council: The duties of the treasurer of the council of a management corporation shall include the following

- a) to notify subsidiary proprietors of any contributions levied in accordance with this Act
- b) to receive, acknowledge, bank and account for any money paid to the management corporation
- c) to prepare any certificate applied for under section 42(1)(c); and
- d) to keep the accounting records and prepare the financial statements of the management corporation.

48. Council's decisions to be decisions of management corporation

- 1) Subject to the provisions of this Act, the decision of a council on any matter, other than a restricted matter, shall be the decision of the management corporation
- 2) Notwithstanding that a council holds office, the management corporation may in a general meeting continue to exercise or perform all or any of the powers, duties and functions conferred or imposed on the management corporation by this Act or the by-laws.
- 3) A council shall not make a decision on any matter if, before the decision is made, notice in writing has been given to the secretary of the council by subsidiary proprietors who altogether own not less than one-third of the lots in the subdivided building concerned that the making of the decision is opposed by those subsidiary proprietors, and any decision, if made by the council, shall have no force or effect
- 4) In subsection 1) "restricted matter", in relation to a council of a management corporation, means
 - a) any matter a decision on which may, in accordance with any provision of this Act or the by-laws, only be made by the management corporation pursuant to a unanimous resolution, special resolution, 90% resolution, comprehensive resolution, resolution by consensus or in a general meeting of the management corporation, or only by the council at a meeting; and
 - b) any matter referred to in section 49 and specified in a resolution of that

management corporation passed for the purposes of that section.

49. Restrictions imposed on council by management corporation: A management corporation may in a general meeting decide what matters or class of matters, if any, shall be determined only by the management corporation in a general meeting and not by the Council

50. Disclosure of interests in contracts, property, offices, etc

- 1) Subject to subsection 2) and 3) if a member of a council has a pecuniary interest, direct or indirect, in any contract, proposed contract or other matter which is before any meeting of the council or management corporation, he shall at that meeting
 - a) Declare the interest
 - b) Withdraw from the meeting during the consideration or discussion unless asked by the council to be present to provide information.
- 2) The requirements of subsection 1) shall not apply in any case where the interest of the member of a council consists only of being a member or creditor of a public limited company which is interested in a contract or proposed contract with the management corporation
- 3) Any member of a council who fails to comply with any provision of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Rs 100,000 or to imprisonment for a term not exceeding 12 months or to both.

51. Duty and liability of council members and officer

- 1) A member of a council shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office
- 2) A member of a council, or an officer or an agent or a managing agent of a management corporation, shall not use his position as a member of the council or as an officer, an agent or a managing agent of the management corporation to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the management corporation
- 3) Any person who commits a breach of any provision of this section shall
 - a) be liable to the management corporation for any profit made by him or for any damage suffered by the management corporation as a result of the breach of any such provision; and
 - b) be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.
- 4) This section shall be in addition to and not in derogation of any other written law or rule of law relating to the duty or liability of members of a council
- 5) In this section
 - a) "agent" includes a banker, a solicitor or an auditor of a management corporation and any person who at any time has been a banker, a solicitor or an auditor of the management corporation
 - b) "officer" includes a person who at any time has been an officer of a management corporation.

Chapter 6 — Subsidiary proprietors and occupiers**52. Share values**

- 1) The share value of a lot as shown in a schedule of strata units shall determine
 - a) the voting rights of the subsidiary proprietors of that lot;
 - b) the quantum of the undivided share of the subsidiary proprietor of that lot in the common property comprised in that strata title plan; and
 - c) the amount of contributions that may be levied by a management corporation on the subsidiary proprietor of the lot.
- 2) Except as provided in this Act the share value of any lot shall not be altered in any manner on or after the date of constitution of the management corporation.

53. Duties of subsidiary proprietors and other occupiers of lot: A subsidiary proprietor, mortgagee in possession (whether by himself or any other person), lessee or occupier of a lot shall not

- a) do anything or permit anything to be done on or in relation to that lot so that
 - i. any support or shelter provided by that lot for another lot or common property is interfered with; or
 - ii. the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services (including telephone, radio and television services) through or by means of any pipe, wire, cable or duct for the time being in the lot is interfered with
- b) use or enjoy that lot, or permit that lot to be used or enjoyed, in such a manner or for such a purpose as to cause a nuisance or hazard to the occupier of any other lot (whether that person is a subsidiary proprietor or not);
- c) use or enjoy the common property in such a manner or for such a purpose as to interfere unreasonably with the use or enjoyment of the common property by the occupier of any other lot (whether that person is a subsidiary proprietor or not) or by any other person entitled to the use and enjoyment of the common property; or
- d) use or enjoy the common property in such a manner or for such a purpose as to interfere unreasonably with the use or enjoyment of any other lot by the occupier of the lot (whether that person is a subsidiary proprietor or not) or by any other person entitled to the use and enjoyment of that lot.

Chapter 7: Managing Agents**54. Appointment of managing agent of management corporation**

- 1) Subject to subsection 3) a managing agent for a management corporation may be appointed
 - a) by the management corporation by ordinary resolution; or
 - b) by the council of the management corporation without a general

- meeting if duly authorized to do so by the subsidiary proprietors at the last preceding general meeting of the management corporation.
- 2) Any managing agent appointed under subsection 1) by a management corporation shall hold office until
 - a) the conclusion of the third annual general meeting of the management corporation after his appointment;
 - b) the expiry of the term of his appointment; or
 - c) the termination of his appointment in accordance with this section,whichever first occurs.
 - 3) The fees and expenses of a managing agent shall be fixed
 - a) where the managing agent is appointed under subsection 1) a) — by the management corporation at a general meeting or, if so authorized by the subsidiary proprietors at the last preceding general meeting, by the council of the management corporation;
 - b) Where the managing agent is appointed under subsection 1) b) or (c) — by the council of the management corporation without a general meeting.
 - 4) A managing agent who is in any way, directly or indirectly, related to a subsidiary proprietor of a lot in the subdivided building concerned shall declare in writing the nature of his relationship prior to his appointment
 - 5) A managing agent who retires from office shall be eligible for reappointment.
 - 6) A management corporation may terminate the appointment of its managing agent under this section at any time in accordance with the terms of the appointment
 - a) if authorized by ordinary resolution at a general meeting; or
 - b) Without a general meeting if authorized by its subsidiary proprietors at the last preceding general meeting.

55. Delegated duty and liability of managing agent

- 1) Subject to subsection 2) a management corporation may, by instrument in writing, delegate to its managing agent appointed under section 54
 - a) all of its powers, duties and functions;
 - b) any one or more of its powers, duties and functions specified in the instrument; or
 - c) All of its powers, duties and functions except those specified in the instrument.
- 2) A management corporation shall not under this section delegate to a managing agent its power to make
 - a) a delegation under this section;
 - b) a decision on any matter which may, in accordance with any provision of this Act or the by-laws, only be made by the management corporation pursuant to a unanimous resolution, a special resolution, a 90% resolution, a resolution by consensus or at a general meeting of the

- management corporation; or
- c) any matter referred to in section 49 and specified in a resolution of that management corporation passed for the purposes of that section.
- 3) Where an ordinary resolution of the management corporation so provides, a managing agent shall have and may exercise the powers and perform all the duties and functions of the chairperson, secretary or treasurer or the council of the management corporation or such of those powers, duties and functions as may be specified in the resolution.
- 4) A power, duty or function, the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the delegation.
- 5) A delegation under this section may be made subject to such conditions or such limitations as to the exercise or performance of all or any of the powers, duties or functions, or as to time or circumstances, as may be specified in the instrument of delegation.
- 6) Notwithstanding any delegation made under this section, a management corporation or, in the case of a delegation under subsection 3) the chairperson, secretary or treasurer or the council of the management corporation may continue to exercise or perform all or any of the delegated powers, duties or functions
- 7) Any act or thing done or suffered by a managing agent while acting in the exercise of a delegation under subsection 1) shall have the same force and effect as if it had been done or suffered by the management corporation; and be deemed to have been done or suffered by the management corporation
- 8) Any act or thing done or suffered by a managing agent while acting in the exercise of a delegation under subsection 3) shall have the same force and effect as if it had been done or suffered by the chairperson, secretary, treasurer or council of the management corporation, as the case may be; and be deemed to have been done or suffered by the chairperson, secretary, treasurer or council of the management corporation, as the case may be.
- 9) Where a contravention by a management corporation of a provision of this Act or any written law that imposes a duty on the management corporation is an offence under this Act or that other written law; and the performance of the duty has been delegated to a managing agent, the provision shall, while the delegation remains in force, be construed as if a reference therein to the management corporation were a reference to the managing agent.

56. Prohibited activity for managing agent

- 1) Subject to this Act, no managing agent shall, whether personally or in the person of his employee or agent
- a) by word, message, writing or in any other manner endeavor to persuade any person to give, or to dissuade any person from giving, his vote (by proxy or in person) in any particular way at any election of members of the council of a management corporation or executive committee of a subsidiary management corporation;
- b) visit any person entitled to vote at that election at his home or place of work for the purposes of any candidate's election at that election; or

- c) conduct any other activity for the purposes of any candidate's election at that election.
- 2) Any managing agent who contravenes subsection 1) shall be guilty of an offence.

Chapter 8 — Insurance

57. Insurance of subdivided buildings

- 1) Unless otherwise directed by a resolution by consensus, the management corporation constituted in respect of a strata title plan shall insure every subdivided building shown in the strata title plan and keep the building insured under a damage policy
- 2) A damage policy may provide that, instead of the work and the payments specified in the definition of "damage policy" in section 69 being carried out or made upon the occurrence of any of the events specified in that definition, the liability of the insurer shall, upon the occurrence of any such event, be limited to an amount specified in the policy that is not less than an amount calculated in the prescribed manner.
- 3) In addition to insurance effected by a management corporation under subsection (1), the management corporation shall effect insurance
 - a) in respect of any occurrence against which it is required by law to insure, including any insurance required to be effected by reason of the provisions of the Workmen's Compensation Act 1890;
 - b) in respect of damage to property, death or bodily injury occurring upon the common property for which the management corporation could become liable in damages; and
 - c) against the possibility of the subsidiary proprietors becoming jointly liable by reason of a claim arising in respect of any other occurrence against which the management corporation pursuant to a special resolution decides to insure.
- 4) Insurance effected under subsection (1) (b) shall be for a cover of such amount as the management corporation determines that is not less than an amount prescribed by the regulations.
- 5) A management corporation may insure any property which it is not required to insure under this Act and in which it has an insurable interest
- 6) For the purposes of a policy of insurance effected under subsection (1) (b) the common property shall be deemed to be vested in the management corporation
- 7) Regulations made under this Act may vary the amount of minimum cover required by subsection (2) for insurance effected under subsection 1(b)
- 8) A subsidiary proprietor may bring against the management corporation of which the subsidiary proprietor is a member any action that the subsidiary proprietor may have brought against the management corporation if the subsidiary proprietor had not been a member of the management corporation
- 9) Where an insurer of a management corporation admits a claim by the management corporation based on an act or omission by a subsidiary proprietor who is a member of the management corporation, the insurer shall not have a right of subrogation in relation to the subsidiary proprietor based on that act or omission unless it was proved that the act or omission is willful.

58. Rebuilding: Subject to any order made by the Authority, where a management corporation receives payment of moneys from an insurer in respect of destruction of or damage to a subdivided building, those moneys shall immediately be applied by the management corporation in rebuilding, replacing, repairing or restoring the subdivided building, as the case may require.

Chapter 9: Subsidiary Management Corporation

59. Subsidiary management corporation and its functions

- 1) The subsidiary management corporation constituted by this Act for any limited common property comprised in a strata title plan shall
 - a) comprise the subsidiary proprietors from time to time of all lots comprised in that strata title plan for whose exclusive benefit the limited common property is designated on that strata title plan
 - b) be a body corporate capable of suing and being sued and having perpetual succession and a common seal; and
 - c) be called “The Subsidiary Management Corporation No. _____ — Strata Title Plan No. _____” (the number to be specified being the number of the strata title plan).
- 2) After the creation of any limited common property, the management corporation shall retain its powers and duties in matters concerning common property
- 3) The subsidiary management corporation shall have the same powers and duties as the management corporation with respect to any matter that relates solely to the limited common property designated for the exclusive benefit of all subsidiary proprietors comprising the subsidiary management corporation except the powers under section 32(1) (a), (3) and (5), 33, 41 and 64 and Division 6 of this Part, and unless expressly otherwise provided, the provisions of this Part shall apply, with the necessary modifications, to subsidiary management corporations as they apply to management corporations.
- 4) Without prejudice to the generality of subsection 3) the subsidiary management corporation shall
 - a) establish its own management fund and sinking fund for the common expenses of its limited common property, including expenses related to its limited common property;
 - b) require subsidiary proprietors of lots in the subsidiary management corporation to pay contributions and levies for expenditure the subsidiary management corporation authorizes;
 - c) enforce by-laws relating to its limited common property; and
 - d) otherwise have the control, management and administration of its limited common property.
- 5) A subsidiary management corporation shall not enter into any contract or sue in the name of the management corporation and the management corporation shall have no liability for contracts made or debts or legal costs incurred by the subsidiary management corporation
- 6) A subsidiary management corporation may obtain insurance only against risks that are not insured by the management corporation; or for amounts that are in excess of

amounts insured by the management corporation

- 7) For the purposes of subsection 6) a subsidiary management corporation shall have the same insurable interest in its limited common property as the management corporation has in property contained within common property.
- 8) Notwithstanding any other provisions of this Act, a subsidiary management corporation for any limited common property comprised in a strata title plan may manage and maintain
 - a) any common property within that same strata title plan; or
 - b) any other limited common property of another subsidiary management corporation within that strata title plan, upon such terms and conditions as may be agreed between the subsidiary management corporation and the management corporation or other subsidiary management corporation, as the case may be.

60. Administration of subsidiary management corporation

- 1) The eligible subsidiary proprietors who constitute a subsidiary management corporation may call and hold meetings and pass resolutions in the same manner as eligible subsidiary proprietors of a management corporation.
- 2) Subject to subsection 3) each subsidiary management corporation shall elect an executive committee for the subsidiary management corporation, and the executive committee of a subsidiary management corporation shall have the same powers and duties with respect to the subsidiary management corporation as the council of a management corporation has with respect to the management corporation.
- 3) At least one member of the executive committee of a subsidiary management corporation shall be a member of the council of the management corporation.
- 4) The provisions pertaining to the Council of the management corporations shall apply, with the necessary modifications, to the executive committee of a subsidiary management corporation and its officers as they apply to the council of a management corporation and its officers.

61. Expenses of subsidiary management corporation: The expenses of a subsidiary management corporation that relate solely to its limited common property shall be shared by the subsidiary proprietors from time to time of all lots entitled under this Division to the exclusive use of the limited common property, and each lot's share of contribution shall be calculated as follows:

$A \times C/B$ where A is the share value of a lot; B is the aggregate share value of all lots entitled under this Division to the exclusive use of the limited common property; and C is the total contributions determined by the subsidiary management corporation as payable by subsidiary proprietors of all lots entitled under this Division to the exclusive benefit of the limited common property.

62. By-laws for limited common property

- 1) A management corporation's by-laws shall apply to the limited common property managed and maintained by a subsidiary management corporation unless the by-laws have been otherwise expressly amended —
 - a) by the subsidiary management corporation pursuant to a special resolution passed at a general meeting of the subsidiary management

- corporation; and
- b) in respect of any matter that relates solely to that limited common property or subsidiary management corporation.
- 2) A subsidiary management corporation may make by-laws relating to the limited common property designated for the exclusive use of all the lots in the subsidiary management corporation.
 - 3) Without limiting the operation of any other provisions of this Act, any by-laws made by a subsidiary management corporation under this section for the time being in force shall bind the subsidiary management corporation and the subsidiary proprietors of lots constituting that subsidiary management corporation, and any mortgagee in possession (whether by himself or any other person), lessee or occupier of such a lot to the same extent as if the by-laws
 - a) had been signed and sealed by the subsidiary management corporation, and each such subsidiary proprietor and each such mortgagee, lessee and occupier, respectively; and
 - b) Contained mutual covenants to observe, comply and perform all the provisions of these by-laws.
 - 4) Section 31 shall apply, with the necessary modifications, to the by-laws of a subsidiary management corporation as they apply to the by-laws of a management corporation.

Chapter 10: Termination of Management corporation etc

63. Termination of management corporation, etc

- 1) A management corporation in respect of a multi-storey building shall stand terminated when the building ceases to be .
- 2) A subsidiary management corporation for a limited common property comprised in a strata title plan may be dissolved and the designation of its limited common property abolished if
 - a) by majority resolution, the management corporation constituted in respect of the same strata title plan resolves that the subsidiary management corporation be dissolved
 - b) by comprehensive resolution, the subsidiary management corporation concerned resolves that it be dissolved and its limited common property ceases to be designated as limited common property but be part of the common property comprised in that strata title plan; and

64. Management corporation's power to take proceedings as agent for subsidiary proprietor in case of structural defects: Where the condition of any lot in a parcel affects or is likely to affect the support or shelter provided by that lot for another lot in the same building or the common property; and the subsidiary proprietor of the lot in that condition has neglected or refused within a reasonable time to take any proceedings for the purpose of exercising any right or enforcing any remedy available to him to have that condition rectified, the management corporation may, as agent for the subsidiary proprietor of the lot in that condition but at its own expense, take any of the proceedings referred to above.

65. Breaches of obligations by management corporation

- 1) If a management corporation or subsidiary management corporation commits a breach of any provision of this Part, or makes default in complying with any requirement of, or duty imposed on it by, any provision of this Part, a subsidiary proprietor or mortgagee in possession or occupier of a lot shall be entitled to apply to the court
 - a) for an order to restrain the breach of any such provision by; or
 - b) to recover damages for any loss or injury to the subsidiary proprietor, mortgagee in possession, or occupier or property arising out of the breach of any such provision from the management corporation or subsidiary management corporation, as the case may be.
- 2) The court may make such order against any such person, the management corporation or the members of its council, or subsidiary management corporation or its executive committee, or the managing agent, as the court thinks fit.
- 3) Where a requirement or duty is imposed on a management corporation or subsidiary management corporation by this Part, any person for whose benefit, or for the benefit of whose lot that requirement or duty is imposed on the management corporation or subsidiary management corporation, as the case may be, may apply to the court for an order compelling the management corporation or subsidiary management corporation, as the case may be, to carry out the requirement or perform the duty and, on such an application being made, the court may make such order as it thinks proper.
- 4) A person who contravenes any order (including an interim order) made under this Part or to do or refrain from doing a specified act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Rs 100,000 or to imprisonment for a term not exceeding 6 months or both

Chapter 11: Staged Developments

66. Staged development contracts

- 1) Every staged development shall be carried out subject to a staged development contract accepted by the Authority under this section.
- 2) For the purposes of this Act, the Authority shall not accept a contract which does not describe or adequately describe the concept plan for the entire staged development, the stages of development and the time for each stage of development
- 3) No amendment to a staged development contract accepted under this Act by the Authority in relation to any staged development referred to in subsection (1) shall be valid unless the amendment is accepted by the Authority

67. Staged development regulations

- 1) The Authority may make regulations on any matter which by this Act is required or permitted to be prescribed for or in relation to staged developments
- 2) Every regulation made under subsection (1) shall be issued with the prior approval of the Provincial Planning Authority.

Chapter 12: General

68. Corporate offenders and unincorporated associations

- 1) Where an offence under this Act committed by a body corporate is proved to have

- been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate, the officer as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly
- 2) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
 - 3) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association or a member of its governing body, the officer or member as well as the association shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly
 - 4) In this section
 - a) 'Officer' in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body or person purporting to act in any such capacity; or
 - b) in relation to an unincorporated association (other than a partnership), means the president, the secretary and members of the committee of the association and includes persons holding positions analogous to those of president, secretary or member of a committee
 - c) "Partner" includes a person purporting to act as a partner.

69. Powers of Authority

- 1) The Authority may by notice require an owner developer of a development, the relevant member in the council of any management corporation or the executive committee of any subsidiary management corporation
 - a) to produce for inspection by the Authority or a person authorized by the Authority any such books, registers, documents or other records relating to the maintenance of any development or the management of the management corporation or (as the case may be) subsidiary management corporation as the Authority may reasonably require for the purposes of the carrying out of his functions under this Act; or
 - b) to furnish the Authority, or a person authorized by the Authority, with such information or explanation relating to the maintenance of any development or the management of the management corporation or (as the case may be) subsidiary management corporation as the Authority may reasonably so requireAnd to do so within such reasonable time as is specified in the notice
- 2) The Authority or a person authorized by him may without fee
 - a) make copies of or extracts from, or records of any information contained in, any books, registers, documents or other records produced under subsection(1)(a); or

- b) make copies of or extracts from or records of any information or explanation furnished under subsection(1)(b)
- 3) The Authority or a person authorized in writing by the Authority may, for the purposes of the carrying out of his functions under this Act, enter at any reasonable time any premises occupied by an owner developer, or a management corporation or subsidiary management corporation, as the case may be, and having entered any such premises may
 - a) inspect any book, register, document or other records relating to the management or the income and expenditure of the management corporation or subsidiary management corporation; and
 - b) make copies of, or records of any information contained in, any such books, registers, documents or other records
- 4) Where any such records as are mentioned in subsection (1) or (3) are kept in electronic form, then
 - a) the power of the Authority under subsection(1) to require any such records to be produced for inspection includes power to require a copy of the records to be made available for inspection in legible form (and subsection (2)(a) shall accordingly apply in relation to any copy so made available); and
 - b) the power of any person (referred to in this subsection as the inspector) under subsection (3) to inspect any such records includes power to require any person on the premises in question to give the inspector such assistance as the inspector may reasonably require to enable him to inspect and make copies of the records in legible form or to make records of information contained in them; or to inspect and check the operation of any computer, and any associated apparatus or material, that is or has been in use in connection with the keeping of the records
- 5) In addition to the powers conferred on him by subsections (1) and (2), the Authority or a person authorized by him may require, by order in writing, the attendance before the Authority or authorized person of
 - a) an owner developer of any development or an employee thereof within the limits of Pakistan who, from any information given or otherwise obtained by the Authority, appears to be acquainted with the circumstances of the case; or
 - b) the relevant member in the council of any management corporation or the executive committee of any subsidiary management corporation, any managing agent, or any employee thereof, who, from any information given or otherwise obtained by the Authority, appears to be acquainted with the circumstances of the case
- 6) Any person who
 - a) refuses to give access to, or assaults, obstructs, hinders or delays, the Authority or a person authorized under this section in the discharge of the duties by the Authority or such person under this Act;
 - b) without reasonable excuse, refuses to give any information or produce any book, register, document or copy thereof required of him by the

Authority or such person under subsection(1); or

- c) without reasonable excuse, fails to comply with a lawful demand of the Authority or such person in the discharge by the Authority or such person of his duties under this section,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Rs 100,000 or to imprisonment for a term not exceeding 3 months or to both.

70. Supply of false or misleading information to Authority

- 1) Any person who knowingly or recklessly provides the Authority with information which is false or misleading in a material particular shall be guilty of an offence if the information is provided
 - a) in purported compliance with a requirement imposed by or under this Act; and
 - b) otherwise than as mentioned in paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Authority for the purpose of discharging his functions under this Act
- 2) Any person who alters, suppresses, conceals or destroys; or causes or permits the alteration, suppression, concealment or destruction of, any document or other record relating to the financial affairs or transactions of an owner developer, a management corporation or subsidiary management corporation with the intention of falsifying the document or record or enabling that organization or individual to evade any provision of this Act shall be guilty of an offence.
- 3) Any person guilty of an offence under this section shall be liable on conviction to a fine not exceeding Rs 500,000 or to imprisonment for a term not exceeding 6 months or to both.

71. General penalties: Any person guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding Rs 300,000

72. Service of notices

- 1) Unless otherwise expressly provided in this Act, a notice that is required or authorized by this Act to be given to or served on a person may be given to or served on that person
 - a) by posting it or sending it by facsimile transmission to his address for service or to his last known place of residence or business;
 - b) by leaving it at his address for service or at his last known place of residence or business; or
 - c) in the case of a subsidiary proprietor, by affixing the notice on the front door of his lot.
- 2) A summons or other legal process may be served on a management corporation or subsidiary management corporation by leaving it with the chairperson or secretary of the management corporation or subsidiary management corporation or of the council or with any member of the council thereof.
- 3) A document other than a document referred to in subsection (2) may be served on a

management corporation or subsidiary management corporation by leaving it with any person referred to in subsection (1) or in the post box provided by the management corporation or subsidiary management corporation under section 27(2); or by sending it, by registered post, to the management corporation at its address recorded on the folio of the land-register comprising the common property.

73. Jurisdiction of court: Notwithstanding any provision to the contrary in the Code of Criminal Procedure, a Magistrate's Court shall have jurisdiction to try any offence under this Act and shall have power to impose the full penalty or punishment in respect of the offence

74. Composition of offences

- 1) The Authority may, in his discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding Rs 200,000
- 2) The Government may make regulations to prescribe the offences, which may be compounded.
- 3) All sums collected under this section shall be paid to the Local Planning Authority.

75. Protection from liability: No action shall lie against the Authority or any officer appointed under this Act or any person acting under the direction of the Authority or that officer in respect of any matter or thing done in good faith for the purpose of carrying out the provisions of this Act.

76. Act to Apply to Government: This Act shall bind the Government but nothing in this Act shall render the Government liable to prosecution for an offence.

77. Exemption: The Government may, by order published in the *Gazette*, exempt any person or building, or any class of persons or buildings, from all or any of the provisions of this Act, subject to such terms or conditions as may be prescribed.

78. Regulations:

- 1) The Provincial Planning Authority may make regulations for carrying out the purposes and provisions of this Act.
- 2) Without prejudice to the generality of subsection (1), the Provincial Authority may make regulations for or with respect to all or any of the following matters:
 - a) providing for proper standards of management and maintenance in respect of buildings, any common property and limited common property
 - b) the nomination and election of members of the council of a management corporation or the executive committee of a subsidiary management corporation;
 - c) the minimum amount of contributions payable by subsidiary proprietors towards any sinking fund of a management corporation or subsidiary management corporation;
 - d) the investment of moneys belonging to a sinking fund of a management corporation or subsidiary management corporation;
 - e) the provision of parking places for the exclusive use of residents of lots in subdivided buildings used for both residential and commercial

purposes

- f) the fees to be paid to management corporations or subsidiary management corporations for anything to be done under this Act
 - g) the fees to be paid in respect of any matter or thing required for the purposes of this Act, including approvals, permits or licenses required under this Act and the refund and remission, whether in whole or in part, of such fees;
 - h) any other matter which by this Act is required or permitted to be prescribed or is necessary or convenient to be prescribed for carrying out or giving effect to any provision of this Act
- 3) Regulations made under this section may make different provisions for different types of buildings, common property and limited common property
- 4) The Authority may, in making any regulations under subsection (1), provide that any contravention of any provision of the regulations shall be an offence punishable with a fine not exceeding Rs 100,000

Governor of Khyber Pakhtunkhwa

Annex 4: Draft KP Mass Transit Systems Act

THE KP URBAN MASS TRANSIT SYSTEMS ACT, 2014

An Act to provide for the establishment and regulation of mass transit systems in large cities of Khyber Pakhtunkhwa

Whereas it is expedient to provide for the establishment and regulation of mass transit system in large cities of Khyber Pakhtunkhwa, it is hereby enacted as follows:-

Chapter I – Preliminary

1. Short title, extent and commencement.–

- 1) This Act may be called the KP Urban Mass Transit Systems Act, 2014
- 2) It shall come into force at once.
- 3) It shall extend to the whole of Khyber Pakhtunkhwa.

2. Definitions.– In this Act unless the context provides otherwise:

- a) 'Building' means a building or any part thereof, together with all fixtures and fittings and its subterranean structure
- b) 'Close Area' means a part of the Mass Transit System Area which may not be accessed by a member of the public without possession of a valid ticket
- c) 'Company' means a Mass Transit Company established under section 10
- d) 'Concession' means a Concession granted to a Concessionaire by a Mass Transit Company for performance of one or more functions and duties licensed to it.
- e) 'Fare' includes all monies received or receivable for the conveyance of passengers
- f) 'Government' means the Government of Punjab
- g) 'Land' includes and may, where the context so requires, have any one or more of the following means
 - i) Land of any tenure and so much of the space above the surface as may be reasonably used or enjoyed by an owner thereof and all substances under the surface, whether or not held apart from the surface'
 - ii) The whole or part of any building or other erection or fixtures in Land
- h) 'Mass Transit Area' means an area to be served by a mass transit system
- i) 'Mass Transit System Area' means land forming part of a notification under section 14
- j) 'Operator' includes a Company and a concessionaire.
- k) 'Prescribed' means prescribed by the rules made under the Act
- l) 'Property' means any movable or immovable property and includes:
 - i. Any right, interest, title, claim, chose-in-action, power, privilege, whether present or future and whether vested or contingent, in relation to any property
 - ii. Any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing off immoveable property

Chapter II – Mass Transit Authority

3. Establishment of KP Urban Mass Transit Authority

- 1) As soon as may be after the commencement of this Act, the Government shall establish an Urban Mass Transit Authority.
- 2) The Authority shall be a body corporate, with perpetual succession and a common seal.
- 3) The Authority shall consist of the following:
 - i) Chairman
 - ii) Vice-Chairman
 - iii) Additional Chief Secretary
 - iv) Secretary of the Transport Department
 - v) Secretary of the Finance Department
 - vi) Director General

4. Functions of the Authority

- 1) The Mass Transit Authority shall perform such functions and exercise such powers as may be conferred by this Act or any other law for the time being in force.
- 2) The functions of the Authority shall be
 - i) To determine need for mass transit systems
 - ii) To develop mass transit plans and systems
 - iii) To grant licenses and concessions to Operators
 - iv) To enforce and monitor enforcement of licenses and concessions
 - v) To ensure safety of users
 - vi) To ensure safety and cleanliness of mass transit systems
 - vii) To ensure safety of buildings in the mass transit system area
 - viii) To regulate charging of fares

5. Director General

- 1) The Government shall appoint a Director General to be the chief executive officer of the Authority.
- 2) The Director General shall be responsible for the administration of the Authority
- 3) The Government shall appoint such other officers and officials as may be required for the functioning of the Authority

6. Manner of decision making.—In exercising its functions and powers, the Authority shall ensure that:

- a) All its decisions and determinations are made promptly, in an open, equitable, non-discriminatory, consistent and transparent manner and after due diligence.
- b) The person affected by its decisions or determinations are given due notice and where practicable are provided an opportunity of being heard.
- c) The interests of users of the Mass Transit System are duly safeguarded and

protected.

7. Budget of the Authority

- 1) In the month of June each year, the Authority shall submit to the Government a statement of estimated receipts and expenditures in respect of the forthcoming financial year
- 2) The Government shall within thirty days of the receipt of the statement approve the budget with or without modification and convey its approval to the Authority.

8. Mass Transit Fund

- 1) The Authority shall establish a Mass Transit Fund for each Mass Transit Area
- 2) The Mass Transit Fund shall be non-lapsable
- 3) The Fund shall be financed by:
 - a) Fees and other amounts received by the Authority
 - b) Grants obtained from the Government or any other local body
 - c) Loans obtained from the Government, or a bank
 - d) Foreign aid and loans obtained or raised by the Authority with the sanction of the Government
 - e) Proceeds of all charges, income from sale of assets and any recovery made under this Act
 - f) Any and all other sums as may be received by the Authority

9. Accounts.- The Authority shall maintain complete and accurate accounts and other related records in such form and in such manner as may be prescribed by rules made in consultation with the Auditor General.

10. Audits.- The Authority shall maintain complete and accurate accounts and other related records in such form and in such manner as may be prescribed by rules made in consultation with the Auditor General

Chapter III – Mass Transit Companies and Concessionaires

11. Establishment of Mass transit Companies

- 1) As soon as may be after the commencement of this Act, Government shall establish one or more Mass Transit companies.
- 2) A Mass Transit Company shall be established under the Companies Ordinance, 1984
- 3) The Government shall nominate persons to subscribe to the Memorandum and Articles of Association of a Mass Transit Company.
- 4) A Mass Transit Company shall be fully owned by the Government.

12. Functions of the Company

- 1) The Company shall perform such functions and responsibilities associated with the Mass Transit System as may be specified in a license granted by the Authority.
- 2) A license granted under sub-section 1) may include the performance of the following functions and responsibilities:
 - a) Develop/construct a mass transit system

- b) Maintain a mass transit system
 - c) Operate a mass transit system
 - d) Ensure security of a mass transit system
 - e) Collect fares
- 3) Subject to approval by the Authority, a Company may grant concessions to perform one or more of its functions and responsibilities under a license.

13. Qualifications of concessionaires

- 1) A concessionaire shall be a company registered under the Companies Ordinance, 1984
- 2) No person who holds any office in the Authority or a Company shall have any interest in the affairs of a Concessionaire.

14. Powers of Company

- 1) Notwithstanding anything contained in any other law, a company shall have all the powers to perform functions and responsibilities specified in a license.

Chapter IV: Development of mass transit systems

15. Formulation of mass transit plan

- 1) The Authority shall formulate a mass transit plan when so directed by the Government.
- 2) The Plan shall include the following:
 - a) Existing and projected traffic counts,
 - b) Existing and future transport requirements,
 - c) Existing planning requirements
 - d) Existing patterns of land use,
 - e) Recommended solutions for traffic management
 - f) Arrangements for coordination with other transport services
 - g) Costing
 - h) Project management arrangements

16. Consultations with land owners

- 1) As soon as a Mass Transit Plan is formulated, the Authority shall inform the owners of land affected thereby and obtain their views with regard to the alignment of the operating lines, the location of stations and buildings, if any.
- 2) A public notice shall be sufficient for the purposes of subsection 1)
- 3) The Authority shall consider the objections and any other suggestions that may be made to it with regard to the Mass Transit Plan and make such modifications in the Plan as it may deem appropriate.
- 4) The Authority shall submit the finalized Mass Transit Plan to the Government for consideration and decision.

17. Land for Mass Transit System

- 1) As soon as the Government approves the Mass Transit Plan, the Authority shall notify

the Mass Transit System Area. The area shall indicate

- i. Land, the surface and substrate of which is not to be acquired, but used in its subterranean or over flight reaches,
 - ii. Land which is to be acquired in its totality
 - iii. Land other than that mentioned above, which shall be subject to the orders of the Authority for purposes of building control and land use with a view to protect the mass transit system, the safety of the inhabitants of buildings and users of the mass transit system
- 2) The Authority shall then cause the land to be measured and marked in the appropriate way and cause public notice to be given at convenient places on or near the Land stating that the Authority intends to take possession of the land or wants to use the subterranean or over flight reaches of land as the case may be and that claim to compensation for all interests in such land and/or rights attached thereto may be made to the Authority.
- 3) No land or rights thereto shall be acquired except as stated in the notification under section 14(1)

18. Compensation to be paid

- 1) Where any land or its subterranean or over flight reaches are required under this Act or its land use is curtailed under this Act, the Authority shall pay to the landowners such compensation as may be fair and just.
- 2) Compensation shall be determined and awarded by a Land Acquisition Collector appointed by the Government
- 3) In determining compensation to be awarded the Collector shall take into consideration
 - i. the market value of the Land acquired on the basis of two years average sale price of land similarly situated and put to similar use preceding the date of notification under section 14(1)
 - ii. the damage, if any, that may be sustained by the person interested at the time of taking possession of the land or its subterranean or over flight reaches, by reasons of such use or acquisition
 - iii. the restriction in lawful use, if any, that may be sustained by the person interested at the time of taking possession of the land or its subterranean or over flight reaches, by reasons of such use or acquisition
 - iv. the damage, if any, sustained by the person interested at the time of taking possession of the Land, by reason of the acquisition injuriously affecting his other immoveable property
 - v. If in the consequences of the acquisition of the Land or use thereof the person interested is compelled to change his residence or place of business, the reasonable expenses if any
 - vi. the benefit to business or value of the property that may occur as a consequence of the development of the mass transit system.

19. Possession of Land

Following an award of compensation the Government or the Authority shall have the power

- i. to enter upon and take possession of the acquired land which shall thereupon vest in the Government or the Authority if so specified by the Government
- ii. to use the subterranean or over flight reaches of land specified in the notification under section 14 and for the said purpose enter upon the land and take such measures as may be necessary for securing its use
- iii. to take such measures for protection of buildings and/or residents in the mass transit system area.
- iv. to regulate the use of buildings in the mass transit system area

20. Powers of the Authority in relation to mass transit system area:

- 1) The Authority may by notification in the official gazette direct that no building or development shall be constructed or made above the metro alignment or on any land within such distance as may be specified in the notification.
- 2) The Authority may order the temporary evacuation of all persons together with any moveable property from any building situated above the metro alignment or in an area of 200 feet on either side of the alignment within the time specified in the Notification.

Chapter V: Amenities and facilities in Mass Transit Systems

21. Security and protection arrangements

- 1) The Mass Transit System shall have adequate arrangements for the security, safety and protection of passengers at all times.
- 2) The Mass Transit System shall have notices in Urdu and English for guidance and warning of passengers and staff where necessary.

22. Lifts for disabled passengers. - Every Mass Transit Station shall have lifts for disabled persons provided that special lifts for disabled passengers may not be installed where lifts are installed for ordinary passengers.

23. Communications between passengers and officials.- The Operator shall provide and maintain in proper order, effective and efficient means of communication between passengers on a line and officials at all times.

24. Reporting centers

- 1) The shall be a reporting center at each station for
 - a. filing reports of lost children and older persons
 - b. filing reports of lost and stolen goods
- 2) The shall also be a center for return of lost and stolen goods

Chapter VI: Operation and Uses

25. Authorization for opening

- 1) The Mass Transit System shall not be opened for public carriage of passengers without the previous sanction of the Provincial Government
- 2) The Government shall before giving its sanction to the opening of the Mass Transit System obtain a report from the Authority that
 - a) A careful inspection of the rolling stock and infrastructure has been undertaken and

the same has been found safe for use.

- b) Adequate arrangements for dealing with accidents and emergencies have been made

26. Notice of Accident

- 1) Where, during the course of operation of the Mass Transit System-
 - a) Any accident attended with loss of human life or grievous bodily harm as defined in the Pakistan Penal Code, or
 - b) Any collision between trains carrying passengers
 - c) The derailment of a train carrying passengers
 - d) Any accident of any other description which the Government may notify in this behalfOccurs, the Mass Transit Operator, shall without delay give notice of the accident to the Authority and the Station House Officer of the police station concerned in such form and containing such particulars as may be prescribed.
- 2) A copy of the form shall also be sent to the Government

27. Inquiry of Accident

- 1) On the receipt of a notice under section 25, the Authority shall issue a public notice of its intention to hold an inquiry
- 2) The Authority shall proceed to hold the inquiry in accordance with the schedule indicated in the public notice and shall complete the inquiry as expeditiously as possible but not later than 30 days of the

28. Compulsory medical examination of persons injured or died in an accident. Whenever a person suffers a grievous injury or dies due to an accident, he shall be medically examined and a report of the medical examination provided to the Authority.

29. Liability of Mass Transit Operators due to accident.

- 1) The Operator shall in addition to any damages that may be payable for negligence under any law for the time being in force, pay compensation for loss occasioned by death or bodily injury on such rates as may be prescribed.
- 2) An application for compensation shall be made to the Authority.

30. Operation after an accident - Where an accident has occurred on some part of the Mass Transit System, operation shall not be restored on that part of the system unless the damaged tracks and/or works have been restored to their original standard and the Authority has certified in writing that the opening of the restored tracks and/or works shall not cause any danger to the public.

31. Carriage of Goods

- 1) No person shall, while travelling on the Mass Transit System carry, with him or her
 - a) any package or bag, which exceeds the prescribed size and weight.
 - b) any dangerous or offensive equipment, substance or material
- 2) Where any person travels on the Mass Transit System in contravention of sub section 1), he/she shall, notwithstanding that he holds a valid pass or ticket for any travel, be liable to be removed from the Mass Transit System by the Operator or an official thereof.

32. Prohibition on health grounds

- 1) No person suffering from infectious or contagious diseases, as may be prescribed, shall travel on the Mass Transit System.
- 2) Any person travelling in contravention of subsection (1) or a rule made in pursuance thereof shall be liable to be removed from the Mass Transit System.

33. Demonstrations on the Mass Transit System

- 1) No demonstration of any kind shall be allowed on any part of the Mass Transit System and it shall be lawful for the Authority, Mass Transit Company or Mass Transit Operators to exclude from the Mass Transit System Area any person attending such demonstration or intending to attend such demonstration, whether or not in possession of a pass or ticket entitling him to be there.
- 2) No person shall paste or put up any poster or material, or write, or draw anything in a train or any part of the Mass Transit System Area without permission from the Authority
- 3) Whoever contravenes sub section 1) or 2) shall be guilty of an offence punishable with imprisonment that may extend to 15 days and fine, which may extend to Rs 50,000/-.

34. Unauthorized manner of travel

- 1) No person shall travel on the roof of a train or travel in any part of the train not intended for use of passengers or project any part of his or her body out of a train.
- 2) Whosoever contravenes subsection 1) shall be guilty of an offence punishable with imprisonment that may extend to 30 days and fine which may extend to Rs 50,000/-

35. Unauthorized sale of articles

- 1) No person shall sell any article in the Mass Transit System Area without permission of the Authority.
- 2) Notwithstanding anything contained in sub section 1) no permission shall be granted to sell any article on a train or platform.
- 3) Whosoever contravenes subsection 1) shall be guilty of an offence punishable with imprisonment that may extend to 15 days and fine which may extend to Rs 50,000/-

36. Travel without ticket

- 1) No person shall travel on a train without being in possession of a valid ticket for all or any part of his journey
- 2) Whosoever contravenes sub section 1) shall be liable to pay a fine of Rs 5000/-.

37. Needlessly interfering with means of communication.- If any passenger or any other person interferes with any means of communication or misuses alarm bell of a train, he shall be guilty of an offence punishable with imprisonment which may extend to 15 days or with fine which may extend to Rs 100,000 or with both.

Chapter VII: Enforcement**38. Power to arrest**

- 1) If a person commits any offence under this Act and refuses to comply with any lawful instruction to stop the violation or leave a train or a Closed Area, he may be arrested without warrant by an official of the Authority or an official of the Operator duly authorized in this behalf

- 2) A person so arrested shall be immediately made over to a police officer, who shall proceed to re-arrest him.

39. Protection to action taken in good faith.-No suit, prosecution or other legal proceeding shall lie against the Authority, Company, Operator or authorized official thereof for anything which is done in good faith under this Act or any rules, regulations or notifications made there under.

40. Restriction on execution against Mass Transit System property

- 1) No rolling stock, Mass Transit tracks, machinery, plants, tools, fittings, materials or effects used or provided by a Mass Transit Operator for the purposes of traffic on the Mass Transit System, its stations, workshops or offices shall be liable to be taken in execution of any decree or order of any court or local Authority or person having by law the power to attach or distrain property or otherwise to cause the property to be taken in execution, without the previous sanction of the Government.
- 2) Nothing in subsection (1) shall be construed as affecting the authority of any court to attach the earnings of the Mass Transit Authority in execution of a decree or order.
- 3)

Chapter VIII: Miscellaneous

41. Officials of the Mass Transit Authority etc to be public servants.- All person employed by the Mass Transit System Authority or Operators shall, when acting or purporting to act in pursuance of the provisions of this Act shall be deemed to be public servants.

42. Power of Government to make rules: The Government may, by notification in the official gazette make rules for carrying out the purposes of this Act.

43. Overriding effect.- The provisions of this Act shall have effect notwithstanding anything contained in any other enactment.

Governor of Khyber Pakhtunkhwa

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