

SUMMARY:

LEGAL REPORT ON SINDH FLOOD EMERGENCY HOUSING RECONSTRUCTION PROJECT

1. BACKGROUND¹

The devastation caused by the 2022 floods in Sindh has left millions of people homeless. As part of its rehabilitation program, the Government of Sindh ("GoS") / Sindh Peoples Housing for Flood Affectees² ("SPHF") is assisting the flood affectees with the reconstruction of their homes (the "Beneficiaries").

The GoS / SPHF has also taken a policy decision to transfer (where feasible) ownership rights to the Beneficiaries in the land on which their houses are being built / rebuilt. Some of the Beneficiaries are located on land owned by the GoS while others on land owned by private parties.

The primary objective of the GoS / SPHF, therefore, is to formulate and implement the necessary legal, technical and administrative framework to enable the transfer of both GoS owned and privately owned land to the Beneficiaries in a fair, transparent and legally efficient manner (the "Project"). The Project does not entail the development of a village or a housing scheme.

2. NEED FOR A NEW REGULATORY FRAMEWORK

There is a plethora of legislation in Sindh regulating the transfer and registration of land title. However, majority of these laws are archaic, and the registration process set out therein is cumbersome, expensive, and open to abuse³. In order to meet the objectives of the Project, the following salient features have been identified in consultation with GoS / SPHF:

- (i) transfer of land title to Beneficiaries in a legally efficient and modern manner;
- (ii) enhancing transparency and accuracy of records;
- (iii) reducing costs and risk of corrupt practices;
- (iv) in order to reduce the cost of undertaking the project, dispensation with the payment of compensation to private landowners, where legally permissible;
- (v) enabling the creation of third-party mortgages; and
- (vi) formulating an efficient dispute resolution mechanism.

In view of the above, the optimal solution would be to enact a new legislation which provides for a modern and efficient mechanism for the transfer of both GoS owned and privately owned land to the Beneficiaries through a digitalized land transfer process (along the lines of the CDC for share ownership in a company).

Once successfully implemented, the Digital Land Title Registration System ("DLTRS") will allow the transfer and recording of title in favour of Beneficiaries in a seamless and transparent manner and, in time, will serve as a blueprint for a digital land title transfer and recording system in Sindh.

3. NEW REGULATORY FRAMEWORK⁴

The new regulatory framework would involve the formulation of a new policy (the "GoS Policy") and the enactment of a new proposed legislation (the "Proposed Legislation"), which will regulate the

¹ Capitalised terms not defined herein shall have the meaning ascribed to them in the Report.

² A Section 42 company, established by the GoS.

³ For an analysis of the existing provincial laws regulating transfer of land title and registration please see Chapter 3 of the Report.

⁴ The new regulatory framework has been proposed after a detailed review of the digitilisation process adopted in other jurisdictions (please see Chapter 5 of the Report). Whereas, in Chapter 4 of the Report we have identified the key constitutional issues that GoS / SPHF should take into consideration while implementing the Project.

transfer of title of both GoS owned and privately owned land to the Beneficiaries. The Proposed Legislation will, *inter alia*⁵:

- empower SPHF or establish a new regulatory authority for implementing and regulating the Project⁶.
- provide for the establishment of the DLTRS⁷ through which land will be transferred and registered in favour of the Beneficiaries and will also enable future transfer of land by Beneficiaries, and creation of mortgage over such land in favour of third parties.
- set out the process for transfer of both:
 - (i) GoS owned land and privately owned land to SPHF.

We are of the view that the most viable option for acquiring land from consenting private owners, without payment of any compensation, is by way of a gift⁸. However, the Proposed Legislation will grant sufficient flexibility to SPHF / regulator to acquire private property in any other (legally permissible) manner it deems fit (for example, under the Land Acquisition Act, 1894).

- (ii) land from SPHF / new regulator to the Beneficiaries.

Land title will be transferred by SPHF / new regulator to the Beneficiaries on the basis of digital land coordinates collated by SPHF.

- set out an objective criteria and mechanism through which SPHF / new regulatory authority will identify the Beneficiaries and digitally transfer legal title of land to them.
- allow Beneficiaries to digitally transfer land to a third party or mortgage the same electronically.
- propose a dispute resolution mechanism to resolve any disputes that may arise regarding the transfer of digital land title to Beneficiaries.
- supersede the Registration Act, the Land Revenue Act and the Stamp Act and nothing contained therein shall apply to the registration, transfer, lease and creation of mortgage over land regulated by the Proposed Legislation.

4. POLICY CONSIDERATIONS

We have identified various issues / policy considerations on which we require input from the GoS, such as:

	ISSUE	CONSIDERATIONS AND RECOMMENDATIONS	FEEDBACK / POLICY DECISIONS REQUIRED
1.	Regulatory Authority	Consideration: <ul style="list-style-type: none"> • Formulation of a new framework can serve as a model for future reforms and allow shortcomings 	From GoS: <ul style="list-style-type: none"> • Should SPHF be the new regulatory authority, or will a separate independent regulatory

⁵ For a detailed discussion, please see Chapter 6.

⁶ Proposed powers of the new authority have been discussed in Chapter 6.

⁷ For details of the DLTRS and analysis of the laws passed in other jurisdictions enabling digital transfer of title of land, please see Chapters 5 and 6 of the Report.

⁸ For details, please see Chapter 4

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	and Framework	<p>to be addressed in a more controlled environment.</p> <ul style="list-style-type: none"> The new framework may lead to the creation of a parallel title registration system. <p>Recommendation:</p> <ul style="list-style-type: none"> Making SPHF the sole regulator of title and related matters can mitigate legacy issues. 	<p>authority be set up by the GoS for implementing the Project?</p> <ul style="list-style-type: none"> What should be the powers, composition, resource allocation, funding and training requirements, and operations of the new authority?
2.	Size of Land/ Plot	<p>Consideration:</p> <ul style="list-style-type: none"> Supreme Court precedent establishes that the Government of Pakistan (the “GoP”) can place certain restrictions on the size of land / plot granted in public interest. <p>Recommendation:</p> <ul style="list-style-type: none"> Size of land granted may be small (for reference, the Goth-Abad Act limits the land size to two (2) ghuntas). 	<p>From GoS:</p> <ul style="list-style-type: none"> What should be the size of land granted to the Beneficiaries?
3.	Classification for Beneficiaries	<p>Consideration:</p> <ul style="list-style-type: none"> Reasonable classification of Beneficiaries can prevent claims of discrimination. <p>Recommendation:</p> <ul style="list-style-type: none"> Criteria for classification can include: <ul style="list-style-type: none"> the size of the impacted land; the extent of damage to houses; coverage of areas most severely affected by the floods; financial status of Beneficiaries; impact on income and livelihood; and any indirect consequences arising from close proximity to flood-affected individuals or areas. 	<p>From GoS:</p> <ul style="list-style-type: none"> What should be the objective criteria for determining whether an individual qualifies as a Beneficiary?

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4.	Title Certainty	<p>Consideration:</p> <ul style="list-style-type: none"> Granting a “Provisional Title” prior to a “Final Title” may lead to multiplicity of litigation. <p>Recommendation:</p> <ul style="list-style-type: none"> For transferring GoS land to SPHF, title should become final upon transfer, with any aggrieved party's right to money damages expiring after three (3) years from the transfer. For transferring private party land to SPHF through a gift, title should become final eighteen (18) months after the gift/donation, with any aggrieved party's right to monetary damages expiring after three (3) years from the gift/donation. For transferring land from SPHF to Beneficiaries, title should become final upon transfer, with any aggrieved party's right to monetary damages expiring after three (3) years from the transfer. 	<p>From GoS:</p> <ul style="list-style-type: none"> When should the vested title attain certainty / finality at each stage of transfer of land?
5.	Restraint on Transfer	<p>Consideration:</p> <ul style="list-style-type: none"> The impact of placing restraints on transfer should be considered. The Goth-Abad Rules place a ten (10) year restriction on alienation of allotted plots. 	<p>From GoS:</p> <ul style="list-style-type: none"> Should there be a time limit during which a Beneficiary is restricted from selling / transferring / mortgaging or otherwise parting with possession of the allotted land? If so, for what period?
6.	Transfer of land by GoS	<p>Recommendation:</p> <ul style="list-style-type: none"> Transfer document as per general practice should include a representation and warranty of the GoS with respect to their title being free and clear from any claims, encumbrances, third party disputes and title disputes. 	<p>From GoS:</p> <ul style="list-style-type: none"> Does the GoS have good title to the required land?
7.	Supreme Court Confirmation	<p>Recommendation:</p> <ul style="list-style-type: none"> GoS should seek permission from the Supreme Court for transferring GoS owned land to SPHF / regulator. 	<p>From Ministry of Law & Justice (GoP):</p> <ul style="list-style-type: none"> Seeking an opinion from the Ministry of Law and Justice on the requirements to seek Supreme

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			Court sanction on transferring GoS land to SPHF.
8.	Gift/Donation v. Compulsory Acquisition of Privately Owned Land	<p>Consideration:</p> <ul style="list-style-type: none"> • If private landowners have an option to donate or get compensation through compulsory acquisition, they will be disincentivized to donate. • Compulsory acquisition may lead to controversies on adequacy of compensation. • We understand that approximately 70% of the required land is government owned, while a large part of private land required for the project is being donated by private land owners. Therefore, only a small percentage of land may require compulsory acquisition. <p>Recommendation:</p> <ul style="list-style-type: none"> • Voluntary transfers of privately owned land to SPHF should be effected through a gift by the private party. • Involuntary transfers of privately owned land to SPHF will require compulsory acquisition against fair market value compensation. • Proposed legislation should not provide a mechanism for compulsory acquisition and the same should be done under the Land Acquisition Act, read with the Goth-Abad Act. • Proposed Legislation should grant sufficient flexibility to SPHF to acquire private property through any other (legally permissible) manner it deems fit. 	<p>From GoS:</p> <ul style="list-style-type: none"> • How should voluntary and involuntary land transfer of privately owned land be effected? • Should transfers by private persons only be effected by gift donation?
9.	First Induction	<p>Recommendation:</p> <ul style="list-style-type: none"> • The mode of induction of title to SPHF prescribed under the statutory framework should be in compliance with provisions of existing laws. • The DLTRS should apply to all transfers from SPHF / regulator to 	

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		the Beneficiaries and from the Beneficiaries to third parties.	
10.	Title to Females	Consideration: <ul style="list-style-type: none"> Granting titles to females can have a positive impact on the empowerment of females in Pakistan, however, it can also lead to succession disputes upon their death where the title can, more likely than not, transfer to their husband / son. 	From GoS: <ul style="list-style-type: none"> Should title of land be transferred to the female head of the house? Should a female transferee be permitted to sell or gift the title to a male / artificial person?
11.	Grievance Redressal Mechanism and Appeal Process	Recommendation: <ul style="list-style-type: none"> Proposed Legislation should set out an appropriate grievance redressal mechanism for entertaining complaints from the Beneficiaries or third parties. Until the appellate tribunal is operational, appeals should lie with a higher forum such as the High Court. Proposed legislation should expressly disapply, override and supersede any other legislation that requires a land dispute title to be resolved in a manner other than the one set out in the proposed legislation. 	From SPHF: <ul style="list-style-type: none"> Should the Proposed Legislation set out an appeal process for person's aggrieved by a decision of an officer of SPHF / regulator? Does SPHF have the necessary resources / expertise to establish an appellate tribunal and entertain appeals from aggrieved parties?