PART III

Other Notifications, Orders, etc.

NATIONAL ASSEMBLY SECRETARIAT

NOTIFICATION

Islamabad, the 13th May, 2019

No. F. 22(23)/2018-Legis.—The following Bills have been introduced in the National Assembly on 13th May, 2019.

N.A. BILL NO. 45 OF 2019

A

BILL

to provide for affordable housing through establishment of Naya Pakistan Housing Authority

WHEREAS, it is expedient to establish the Naya Pakistan Housing Authority for the purposes of planning and development of affordable housing schemes for citizens and matters connected therewith and ancillary thereto;

(1)

Price: Rs. 60.00

[789(2019)/Ex. Gaz.]
It is hereby enacted as under:—

CHAPTER I

PRELIMINARY

1. **Short title, extent, commencement and application.**—(1) This Act shall be called the Naya Pakistan Housing Authority Act, 2019.

   (2) It extends to the whole of Pakistan.

   (3) It shall come into force at once.

2. **Application.**—(1) It shall apply to the works, lands and buildings vested 1 or in possession of the Federal Government for the purposes of this Act.

   (2) The Federal Government may, on the recommendation of the Board and by notification in the official Gazette, declare an area as a specified area which shall include immovable property transferred to the Authority.

3. **Definitions.**—In this Act,—

   (a) “Authority” means Naya Pakistan Housing Authority established under this Act;

   (b) “Board” means the Board of the Authority constituted under this Act;

   (c) “certificate of title” means a certificate of title or lease of ninety-nine years issued by the Registrar;

   (d) “Chairperson” means the Chairperson of the Board;

   (e) “Chief Executive Officer” means the Chief Executive Officer of the Authority;

   (f) “condominium” means a building containing two or more housing or other units with areas common to all the housing units;

   (g) “enforcement inspector” means an employee of the Authority designated as enforcement inspector;

   (h) “financial institution” shall have the same as assigned thereto in the Financial Institutions (Recovery of Finances) Ordinance, 2001
(XLVI of 2001); “Fund” means Naya Pakistan Housing Fund created under this Act;

(j) “hearing officer” means a hearing officer of the Authority;

(k) “High Court” means the High Court having jurisdiction over the specified area where or in relation to which the cause of action has arisen;

(l) “immovable property” means a plot, land, building or a space in a condominium;

(m) “member” means a member of the Board;

(n) “prescribed” means prescribed by rules or regulations;

(o) “proprietor” means a person who is owner or holder of leasehold rights tier ninetynine years or mortgagee of an immovable property mentioned in the certificate of title;

(p) “Schedule” mean the Schedule appended to this Act;

(q) “scheme” means a project containing details of development or redevelopment of a specified area; and

(r) “specified area” means an area notified as such by the Federal Government under section 2.

CHAPTER II

INCORPORATION AND FUNCTIONS

4. **Authority.**—(1) The Federal Government shall, by notification in the official Gazette, establish Naya Pakistan Housing Authority within thirty days of the commencement of this Act.

   (2) The Authority shall be a body corporate having perpetual succession, a common seal and may sue or be sued by the name of Naya Pakistan Housing Authority.

   (3) The head office of the Authority shall be at Islamabad and the Authority may establish regional offices in other parts of Pakistan.

5. **Functions of the Authority.**—(1) The Authority shall—
(a) identify an immovable property suitable for execution of a scheme to provide affordable housing to citizens;

(b) make request to the Federal Government, a Provincial Government or a local government to acquire or transfer the property to the Authority;

(c) coordinate with the similar provincial agencies for maximum provision of affordable houses to the people and, for this purpose, may enter into joint ventures with a provincial agency on mutually agreed terms and conditions;

(d) prepare and approve a master plan of a specified area containing zoning, spatial planning, infrastructure development and land use;

(e) design, approve and execute a scheme in a specified area;

(f) exercise full control on town planning and all the related aspects in a specified area;

(g) fix building heights and building lines and exercise complete building control in a specified area;

(h) undertake development of a specified area preferably through public private partnership;

(i) prescribe transparent criteria and procedure for registration, membership, possession, transfer and cancellation of a housing unit or a residential plot;

(f) set-up ‘sponsor a shelter foundation’ enabling a donor or philanthropist to provide financial assistance or donation to meet a part of upfront cost or mortgage payment for a house;

(k) facilitate the low income borrowers for availing housing under the programme for partial financial assistance through entities like ‘sponsor a shelter foundation’;

(l) develop clear procedures for allocation, lease or auction of a commercial plot for development or use of a commercial building or space and to provide cross subsidy to low income houses in that specified area;

(m) ensure maximum use of indigenous labour and construction material in the development of a specified area;
(n) develop and maintain public amenities and common areas in a specified area;

(o) maintain updated record of title, leasehold rights, mortgage, easement, license, tenancy and possession of an immovable property;

(p) publish geo tagged title, leasehold rights, mortgage and other rights or interests in an immovable property on its website;

(q) collect all taxes, fees and charges on transfer or occupation of an immovable property under any law after agreeing on an arrangement with the relevant collection agency;

(r) exercise control over maintenance of condominium buildings, their common areas and amenities;

(s) collect all the fines, fees and charges levied by the Authority; and

(t) perform any ancillary function or a function assigned to the Authority under the rules.

(2) The Authority may—

(a) establish one or more real estate investment trusts or issue bonds under the relevant law;

(b) raise loans from the financial institutions for performance of any function;

(c) levy any fee or charges under the regulations;

(d) establish and assign functions to condominium corporation for proper management and development of one or more condominium building in a specified area;

(e) generate electricity or obtain a utility in bulk for provision of the utility in a specified area;

(f) manage and maintain a utility in a specified area;

(g) assign any function to a local government or local authority on mutually agreed terms and conditions;
(h) outsource any function through public private partnership or any other mode;

(i) hire or utilize services of academia, university or a consulting entity or firm for design, technical evaluation and monitoring of a project;

(j) enter into contract for undertaking a scheme or performance of any function; and

(k) exercise any other power that is necessary for the performance of any function.

CHAPTER III

BOARD AND ADMINISTRATION

6. **Board.**—(1) The Federal Government shall, by notification in the official Gazette, constitute the Board for a term of four years and in the like manner notify the Chairperson or a member nominated to fill a casual vacancy.

(2) The Board shall consist of the following, namely:—

(a) Secretary of the Division to which business of the Authority stands allocated, Member

(b) Secretary, Law and Justice Division; Member

(c) Secretary, Finance Division; Member

(d) Secretary, Planning Division; Member

(e) four persons, one to be nominated by each Provincial Government; Members

(f) four persons from private sector to be nominated by the Federal Government; and Members

(g) Chief Executive Officer. Member-cum-Secretary

(2) The Federal Government shall nominate the Chairperson from amongst the members.

(3) A member, other than an ex officio member, shall hold office for a renewable term of four years but a person shall not hold more than two consecutive terms as a member.

(4) Seven members shall constitute the quorum for a meeting of the Board, and the decision of the Board shall be taken in terms of decision of the majority of the members present and voting.
(5) The Board shall meet at least once in two months and a meeting of the Board shall be held on such date, time and place as the Chairperson may determine.

(6) The Chairperson shall preside over the meeting of the Board and in his absence another member shall be elected by the members present to preside over the meeting of the Board.

(7) The Chief Executive Officer shall maintain or cause to be maintained the record of each meeting of the Board including the minutes of the meetings as approved by the Chairperson or member who presided the meeting.

(8) In case of a casual vacancy in the Board, the Federal or concerned Provincial Government shall nominate the member for remainder of the term of the earlier member because of whose resignation, removal or death, the vacancy has occurred.

(9) An officer of the concerned Division not below the rank of Additional Secretary may represent the Secretary to the Federal Government in a meeting of the Board.

7. **Qualification of members.**—The Federal or a Provincial Government shall not nominate a person as the member who—

   (a) is or, at any time, has been convicted of an offence involving moral turpitude;

   (b) is or, at any time, has been adjudicated as an insolvent;

   (c) is found to be a lunatic or of unsound mind; or

   (d) is in a situation of irreconcilable conflict of interest with the Authority.

8. **Removal of a member.**—(1) The Federal Government may remove a member during the term of office if such member is—

   (a) not qualified to be nominated as the member;

   (b) absent from three consecutive meetings of the Board without leave of absence from the Board; or

   (c) found guilty of misconduct.
(2) The Federal Government shall not remove a member under sub-section (I) without a show cause notice and provision of an opportunity of hearing.

9. **Functions of the Board.**—(1) The Board shall exercise general supervision in the performance of functions by the Authority and may perform such functions and exercise such powers as are necessary for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the functions mentioned in sub-section (1), the Board shall—

(a) establish and maintain strategic direction of the Authority;

(b) oversee implementation of strategic objectives of the Authority;

(c) monitor performance and review achievements of the Authority;

(d) ensure adequate and effective governance and financial risk management systems in the Authority;

(e) promote and develop partnerships with other organizations;

(f) approve key performance indicators, annual plans and reports of the Authority;

(g) ensure the effective and efficient use of resources, solvency and safeguarding of the property of the Authority;

(h) approve annual accounts, budget and estimates of expenditure of the Authority;

(i) create or abolish posts in the Authority and oversee the performance of the Chief Executive Officer and other employees of the Authority;

(j) establish committees for assistance and advice in relation to the performance of its functions or to perform delegated functions of the Board and determine the membership and terms of reference of a committee;

(k) approve master plan, zoning, spatial plan, land use and scheme of a specified area;
(l) specify major decisions of the Authority in the regulations and take major decisions; and

(m) frame or amend service, conduct of business and other regulations.

10. **Chief Executive Officer.**—(1) The Federal Government shall, for a renewable term of three years, appoint the Chief Executive Officer.

(2) The Federal Government shall prescribe the qualification, terms and conditions of service of the Chief Executive Officer.

11. **Functions of Chief Executive Officer.**—(1) The Chief Executive Officer shall perform functions under this Act, rules, regulations and directions of the Board.

(2) Save as otherwise directed by the Board, the Chief Executive Officer shall—

(a) manage the administration, operations and functions of the Authority;

(b) act as the principal accounting officer responsible and accountable for the management of the Authority’s funds and property;

(c) prepare and present to the Board with strategic and operational plans for review, appraisal and approval;

(d) assist the Board in strategic thinking, planning and leadership, implement its policies and protect the financial health of the Authority;

(e) provide leadership to the senior management and direction to the employees of the Authority;

(f) take disciplinary action against employees on behalf of the Board and report any such action to the Board;

(g) take decisions on behalf of the Board under delegated authority from the Board;

(h) devote his whole time and attention to the affairs of the Authority; and

(i) convene the meetings of the Board on the directions of the Chairperson, maintain or cause to be maintained the record of each
meeting of the Board, including the minutes of the meetings as approved by the Chairperson or member who presided the meeting.

12. **Appointments of employees.**—The Board may, in such manner and on such terms and conditions as may be prescribed by regulations, appoint the employees, consultants and advisers as may be necessary for purposes of this Act.

13. **Delegation of functions.**—(1) The Board may delegate to the Chief Executive Officer, a committee of the Board or any employee any of its functions except the following functions, namely:—

   (a) framing or amendment or repeal of the regulations;
   (b) approval of annual budget of the Authority;
   (c) consideration and decision on the audit or performance reports;
   (d) approval of the major decisions and any change in such a decision;
   (e) fill a vacancy in a committee of the Board; or
   (f) approval of the annual plan and annual report of the Authority.

   (2) Subject to the direction of the Board, the Chief Executive Officer may delegate any of his functions to any other employee of the Authority.

14. **Conflict of interest.**—(1) A member other than the Chief Executive Officer, shall not directly or indirectly receive any remuneration for his position as the member except the reasonable expenses incurred by the member in the performance of duties under this Act.

   (2) The pecuniary interests of the immediate family members or close personal or business associates of a member or an employee of the Authority shall also be considered to be the pecuniary interest of the member or employee.

   (3) A member or an employee of the Authority shall be in conflict of interest if the member or employee—

   (a) is an employee or a consultant of a business entity that has, or of a trade association of business entities that have, a substantial pecuniary interest in any of the functions of the Authority;
   (b) owns, controls or has directly or indirectly more than ten per cent equity in a business entity that has a substantial pecuniary interest in any of the functions of the Authority;
(c) receives more than twenty-five per cent of his individual income from a business entity that has a substantial pecuniary interest in any of the functions of the Authority; and

(d) benefits either directly or indirectly, financially or otherwise, from any other organization for being the member or employee of the Authority.

(4) A member or an employee of the Authority shall disclose a potential, real or perceived conflict of interest as soon as he becomes aware of the potential conflict before the Board or Chief Executive Officer or any of its committees seized of the matter.

(5) If a member or an employee of the Authority is not certain about the situation of the conflict of interest, he shall place the matter before the Board or Chief Executive Officer for advice and the decision of the Board on conflict of interest shall be final.

(6) A member shall not take part in the proceedings of the Board in which any question of conflict of interest of the member is on the agenda.

(7) The disclosure of conflict of interest and the decision of the Board shall be specifically recorded in the minutes of the meeting of the Board.

15. Committees.—The Board may constitute a committee and assign specific task to the committee for efficient performance of a function of the Authority and the committee shall perform its tasks in the manner specified by the Board.

16. Action in emergency.—(1) Subject to such conditions as may be prescribed, the Chairperson may in an emergency and on the recommendation of the Chief Executive Officer, take an action which is in the competence of the Board.

(2) The Chief Executive Officer shall within three days of taking an action under sub-section (1) submit a report about the action to the members and the Chairperson shall summon the meeting of the Board to be held within fifteen days of the action to ratify or otherwise the action approved by the Chairperson in emergency.

CHAPTER IV

LAND FOR SPECIFIED AREA

17. Land bank.—(1) Where the land is or is likely to be required for a housing project by the Authority or by a similar provincial agency, the Federal
Government and a Provincial Government shall collect information of the land owned or possessed by it or by any entity under its control in order to make the land available for affordable housing project of the Authority or similar provincial agency.

(2) The Federal Government and a Provincial Government shall compile the information about the land suitable for an affordable housing project in a land bank software containing requisite details, maps and geographical location of the land.

18. Land for specified area.—The Authority may procure land for a specified area in any of the following manners, namely:—

(a) the Federal Government, a Provincial Government, a local government or any other public authority may transfer land to the Authority free of cost or on mutually agreed terms and conditions; or

(b) the Authority may acquire, purchase, hold on trust, lease or license or accept donation of land in the prescribed manner.

19. Land acquisition.—(1) If the Authority requests the Federal Government or a Provincial Government to acquire land for the purposes of the Authority under the Land Acquisition Act, 1894 (I of 1894), the concerned Government shall immediately initiate the process of land acquisition and ensure its completion within six months.

(2) A land acquisition collector or a court shall deem the purposes of the Authority as public purpose but may determine adequacy of compensation for compulsory land acquisition.

(3) The land acquisition collector may, with the consent of the owner and the Authority, award compensation in the form other than money including an immovable property in a specified area, bonds issued by the Authority or shares in a real estate investment trust established by the Authority.

20. Preferential right of Authority.—(1) The Authority shall exercise preferential right over immovable property in a specified area.

(2) If a proprietor enters into agreement to sell or transfers the immovable property, the Authority may, within ninety days of registration of the instrument take possession of the property and other rights over the property by paying extra fifteen percent of the price of property to the proprietor or new proprietor.
CHAPTER V

DEVELOPMENT OF SPECIFIED AREA

21. **Development of a specified area.**—(1) The Board shall take decision on mode of development of a specified area with such details as are required to prepare feasibility for a scheme.

(2) The Board shall approve feasibility of a scheme before commencement of the infrastructure development work.

22. **Outsourcing and public private partnership.**—(1) The Authority shall prefer to outsource any development work through any mode including public private partnership.

(2) The Authority may, in the prescribed manner, use e-procurement method for selection of a contractor or partner for development of a specified area.

23. **Redevelopment of a specified area.**—(1) The Board may approve redevelopment of whole or a part of a specified area.

(2) The provisions of this Act for development of a specified area shall, with necessary changes, apply to redevelopment under sub-section (1).

CHAPTER VI

TORRENS TITLE

24. **Registrar.**—(1) The Board shall appoint one or more Registrars of titles on the terms and conditions as may be prescribed in the regulations.

(2) The Registrar shall maintain record of transfers, certificates of title, leases, mortgages and formal occupations of immovable properties in a specified area.

(3) The Registrar may exercise the powers of a civil court for summoning any person, document, enforcing attendance of any person or compulsory production of any document or taking statement on oath.

25. **Record of titles.**—(1) The Authority may outsource maintenance of record of titles in the specified area to central depository company or any other similar entity.
(2) The Authority may link the record of titles in the specified area with the record of the National Database and Registration Authority on mutually agreed terms and conditions.

26. Torrens titles.—(1) The Authority shall use system of torrens titles and leasehold rights in a specified area based on mirror, curtain and indemnity principles.

(2) The Registrar shall maintain accurately and completely the current facts about each immovable property including certificate of title, leasehold rights, mortgage, an easement, a right of occupation or any other right or interest which shall be available online on the website of the Authority with geo-tagged system.

(3) The Registrar shall issue computerized certified copy of certificate of title of each immovable property containing validity period of the copy and all the necessary details about the property which shall be proof of facts contained in the copy and no other document or statement shall be required to prove the contents of a certified copy of the certificate of title.

(4) A beneficiary of a certificate of title shall not be responsible for any defect in the certificate and an aggrieved person may initiate proceedings against the Registrar before the Authority for any error or defect in the certificate of title.

(5) The Authority may grant compensation to an aggrieved person if it is found that any right of the aggrieved person is infringed by the Registrar in the certificate of title.

(6) The Registrar shall ensure that only one valid certified copy of certificate of title for an immovable property exists and if earlier valid certified copy of certificate of title is not found due to any reason, sufficient public notice of its loss is given and the new certified copy of certificate of title contains a statement to that effect.

(7) A court may take judicial notice of certificate of title of an immovable property as available on the website of the Authority presuming the contents of the certificate of title as correct and up to date.

27. Initial titles.—The Authority shall allot an immovable property to a person or jointly to two or more persons and the Registrar shall issue the first certificate of title in favour of the person or persons.

28. Subsequent transfer.—(1) Except as provided in sub-section (2), the Registrar shall not override an existing certificate of title without agreement of the proprietor or joint proprietors.
(2) This section shall not apply in the following cases, namely:—

(a) open auction or auction of an immovable property amongst joint proprietors or legal heirs of a deceased proprietor;

(b) direction of the Authority; and

(c) court order or decree.

29. **No right without registration.**—A person is not entitled to any right or interest in an immovable property including mortgage, tenancy, licence, easement, will, possession or agreement to sell unless the instrument creating the right or interest is registered with the Registrar.

30. **No adverse possession.**—A person is not entitled to claim adverse possession on an immovable property irrespective of time spent in occupation of the property and an illegal possession of an immovable property shall not be construed to create any right or interest in the property in favour of unauthorized occupant due to any afflux of time.

31. **No other registration.**—(1) An instrument required to be registered by the Registrar shall not be registered by any other authority.

(2) Except the title of the Authority, a court or any other authority shall not accept or admit in evidence any instrument relating to an immovable property in a specified area which is not registered by the Registrar.

32. **Subdivision.**—Except as may be directed by the Authority in the prescribed manner, a person or the Registrar shall not divide or partition a housing or other unit.

**CHAPTER VII**

**MORTGAGES**

33. **Mortgage.**—(1) A proprietor may mortgage his immovable property in favour of a financial institution by registering the mortgage deed with the Registrar.

(2) Where a financial institution grants home finance loan to a proprietor, the proprietor shall deposit a certified copy of the certificate of title to secure the loan in addition to registration of the mortgage deed under subsection (1).
(3) The Authority shall fix the presumptive value of each immovable property in a specified area which shall form the basis for securing a home finance loan.

(4) A financial institution may enter into a framework agreement with the Authority for provision of home finance loans in a specified area.

34. Mandatory disclosure.—Before entertaining an application for loan under section 33, the financial institution shall provide to the proprietor in Urdu—

(a) total period and grace period for repayment of the loan;

(b) monthly, annual and total cost of credit which the proprietor will have to pay for redemption of the property; and

(c) an estimate of all the charges of the mortgage transaction.

35. Restriction on further charge.—(1) A proprietor shall not create any further charge on the mortgaged property without the prior written consent of the financial institution.

   (2) The restriction under sub-section (1) shall not apply if the mortgaged property is redeemed or the Authority is satisfied that the proprietor has fully discharged his obligation under the mortgage deed.

36. Restriction on transfer.—(1) Except in the cases of succession or tenancy, a proprietor shall not transfer or agree to transfer any right or interest in the mortgaged property without the prior written consent of the financial institution.

   (2) The restriction under sub-section (1) shall not apply if the mortgaged property is redeemed or the Authority is satisfied that the proprietor has fully discharged his obligation under the mortgage deed.

37. Default in payment.—(1) Where the proprietor fails to make payment of installment within fourteen days from the last date of such payment, the financial institution shall put the proprietor to notice for immediate payment of the installment.

   (2) If the proprietor defaults in the payment of two consecutive installments, the financial institution shall ask the proprietor to immediately pay the arrears otherwise it may approach the Authority for auction of the mortgaged property.
38. **Auction of mortgaged property.**—(1) If a proprietor defaulted even after notices under section 37, the financial institution may apply to the Authority for auction of the mortgaged property.

(2) If, after summary enquiry, the Authority finds that the proprietor defaulted in the repayment of loan and the default continues, it may hold open auction of the mortgaged property.

(3) In the open auction, the financial institution may participate as a bidder and the Authority shall determine the amount payable to the financial institution for discharge of mortgage including expenses incurred on auction of the property and pay the remainder amount of auction proceeds to the proprietor.

(4) If auction proceeds are less than the amount determined for discharge of the mortgaged property, the Authority shall pay the entire auction proceeds to the financial institution and the financial institution may recover the remainder amount from the proprietor or mortgagor under the law.

(5) Where the proprietor, at any stage before completion of the auction of the mortgaged property, makes payment of all the arrears and expenses incurred by the financial institution on proceedings before the Authority, the Authority shall immediately stop further proceedings in the case.

39. **Auction purchaser’s title.**—(1) Where the auction purchaser deposits the entire auction price of the mortgaged property within the specified time, the Authority shall direct the Registrar to issue certificate of title in favour of auction purchaser free from all encumbrances.

(2) If the auction purchaser fails to deposit the entire auction price of the mortgaged property within the specified time, the Authority shall confiscate his bid security and earnest money and proceed to re-auction the mortgaged property by black listing such auction purchaser from participating in any future auction of the Authority for a period of five years.

**CHAPTER VIII**

**CONDOMINIUMS**

40. **Common property.**—(1) The common property in a condominium shall vest in the Authority.

(2) The Authority may manage the common property or transfer management of the common property to a condominium corporation.
41. **Condominium corporation.**—(1) The Authority may establish a condominium corporation for one or more condominiums consisting of all the proprietors in the condominium or condominiums as members of the corporation.

(2) The Registrar shall register a condominium corporation and issue a certificate of registration of the condominium corporation with details of condominiums.

(3) A condominium corporation registered under this Act shall be a body corporate with common seal and having power to enter into contract and it may sue or be sued by the registered name of the condominium corporation.

(4) The Authority shall make regulations for establishment, democratic management, functions and powers of a condominium corporation.

(5) The Authority may delegate any regulatory function in relation to a condominium or common property of a condominium to the condominium corporation.

(6) The Authority may issue direction to a condominium corporation and the condominium corporation shall comply with the direction of the Authority.

(7) If a condominium corporation fails to comply with any direction of the Authority or unable to function due to any cause, the Authority may appoint administrator or an administration committee for a term not exceeding one year which shall perform the functions of the condominium corporation.

42. **Statutory easements in condominium.**—(1) A proprietor of a housing or other unit in a condominium shall have the following easement rights, namely:—

(a) an easement for the subjacent and lateral support of the unit by the common property and by any other unit capable of affording the unit such support;

(b) an easement for shelter of the unit by the common property and by any other unit capable of affording the unit shelter; and

(c) an easement for passage, provision of water, sewage, solid waste, utility connections, pipes, wires, cables, ducts required for the proper enjoyment of the unit.

(2) A proprietor of a housing or other unit in a condominium shall be responsible for the following easement rights of other proprietors of such units, namely:—
(a) an easement for the subjacent and lateral support of the unit for the common property and for any other unit capable of enjoying such support from the unit;

(b) an easement for shelter to the common property and to any other unit capable of enjoying shelter from the unit; and

(c) an easement for passage, provision of water, sewage, solid waste, utility connections, pipes, wires, cables, ducts from the unit required for the proper enjoyment of the common property and other units by the other proprietors.

(3) Subject to a reasonable notice, the Authority and the condominium corporation shall have unrestricted access to a unit in condominium for installation, repair or development of any easement or condominium.

43. **Duties of condominium corporation.**—(1) A condominium corporation shall—

   (a) manage, administer and control common property of the condominium and ensure proper enjoyment of easement rights by the proprietors and lawful occupants;

   (b) keep the common property clean and in a state of good and serviceable repair;

   (c) carry out the work as may be directed by the Authority; and

   (d) follow the regulations for the management, administration and control of the condominium.

(2) The Authority shall, by regulations, confer powers on a condominium corporation enabling it to properly perform its duties.

44. **Investigation into affairs of corporation.**—The Authority may cause to be conducted—

   (a) a special audit of a condominium corporation in addition to regular annual audit;

   (b) performance audit of the condominium corporation; and

   (c) investigation into any specific instance of maladministration, neglect or abuse of authority on the part of the condominium corporation.
45. **Dissolution of condominium corporation.**—(1) If more than one-half of the total members of a condominium corporation apply to the Authority for dissolution of the corporation, the Authority may dissolve the corporation and pass such consequential orders as may be necessary for smooth transition.

(2) If a condominium corporation is dissolved under sub-section (1), the Registrar shall cancel the registration of the corporation.

**CHAPTER IX**

**TAXES, FEES AND CHARGES**

46. **Authority to be exempt from taxation.**—The Authority shall not be exempt from payment of any fee for the services rendered by any public entity.

47. **Exemption for first proprietor.**—(1) The Authority shall not charge any tax or stamp duty from the first proprietor of an immovable property.

(2) This exemption shall not apply to the fee charged by the Authority for the services rendered by the Authority or the Registrar.

48. **Registrar to collect taxes.**—(1) The Registrar shall collect stamp duty and other taxes on a transaction other than the transaction exempt from levy of stamp duty or tax under this Act.

(2) The Registrar shall refuse to register an instrument if it is not properly stamped or other applicable tax is not paid.

(3) The Registrar shall not collect any fee other than the fee prescribed by the Authority.

49. **Authority to collect property tax.**—The Authority or, if authorized by the Authority, condominium corporation shall collect property tax, if any, and the Authority shall enter into an arrangement with the concerned Government for sharing of proceeds of the property tax collected from a specified area.

50. **Authority to levy fee and charges.**—The Authority shall fix fee or charges for rendering of any service in a specified area including registration fee, water rate, sanitation fee, solid waste management fee, development or redevelopment charge and maintenance fee.

51. **Additional charge or surcharge.**—If a person fails to pay a tax, fee or charge to the Authority, the Authority may in the manner prescribed by the
rules levy additional charge or surcharge for non-payment of dues within the specified time.

CHAPTER X

OFFENCES, ENFORCEMENT AND ADJUDICATION

52. Offences and cognizance.—If a person commits an offence specified in—

(a) Part I of the Schedule, he shall be liable to imprisonment for a term which may extend to two years or fine which may extend to five hundred thousand Rupees or with both and where an accused was directed by the Authority for immediate discontinuance of the offence, the court may impose a further fine which may extend to fifty thousand Rupees for every day for the period the accused has persisted in the offence from the date of the direction; and

(b) Part II of the Schedule, he shall be liable to imprisonment for a term which may extend to six months or fine which may extend to one hundred thousand Rupees or with both and where an accused was directed by the Authority for immediate discontinuance of the offence, the court may impose a further fine which may extend to ten thousand Rupees for every day for the period the accused has persisted in the offence from the date of the direction.

(2) An offence punishable under sub-section (1) shall be cognizable by the magistrate on a complaint in writing of an employee authorized by the Authority.

53. Alternative penalties.—(1) If a person is found guilty of an offence under section 52, the magistrate may direct the convict to do one or more of the following in lieu of sentence prescribed in that section, namely:—

(a) take any action the court considers appropriate to remedy or avoid the hazard caused by the commission of the offence;

(b) pay to the Authority or any other person an amount of money as compensation, in whole or in part, for the cost of a remedial or preventive action taken by or on behalf of the convict as a result of the commission of the offence;

(c) perform community service in the specified area for a period up to two years;
(d) not to do any act or engage in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence or the commission of a similar offence under this Act;

(e) comply with any conditions that the court considers appropriate for preventing the offence, from continuing or repeating the offence or committing a similar offence under this Act; or

(f) submit to the Authority or an authorized employee information respecting his activities or activities of any person acting on his behalf that the court considers appropriate in the circumstances, for a period up to two years.

(2) For the purposes of subsection (1), the magistrate may require the convict to submit—

(a) a bond for an amount the court considers appropriate for the purpose of ensuring compliance with a prohibition, direction or requirement under this section; and

(b) periodic reports or do any other thing necessary to permit an employee authorized by the Authority or other person specified by the magistrate to monitor compliance of the court order for a period of up to two years.

54. Court competent to try offences.—No court other than a magistrate of first class shall take cognizance of or try an offence under this Act.

55. Offences to be cognizable and bailable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), offences under this Act shall be bailable and cognizable by the magistrate on the complaint of an employee authorized by the Authority.

56. Summary trial.—The magistrate shall try an offence under this Act in a summary manner in accordance with the procedure provided for summary trials under the Code of Criminal Procedure, 1898 (Act V of 1898) but notwithstanding anything contained in the said Code may award any punishment of fine or compensation to the extent prescribed in this Act.

57. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time of commission of offence was in charge of and was responsible to the institution for the conduct of its activities shall be deemed to be guilty of the offence and shall be liable to be proceeded against under this Act.
(2) Nothing contained in this section shall render any such person liable if it is proved that the offence was committed without the person's knowledge or that such person exercised due care to prevent the commission of the offence.

58. Compounding of offence.—(1) Subject to sub-section (2), an employee of the Authority specifically authorized by the Board may, at any stage, compound an offence under this Act subject to the deposit of administrative penalty which shall not be less than twenty-five thousand Rupees and immediate remediing the violation, if any.

(2) The offences under this Act shall not be compoundable if the accused had been previously convicted under this Act or his previous offence had been compounded by an authorized employee of the Authority.

59. Administrative penalties.—(1) A hearing officer may, in the prescribed manner, issue warnings and directions to any person for compliance with any provision of this Act, the rules or regulations within the time specified in the direction.

(2) If a person fails to comply with any direction of the hearing officer within such time as may be specified in such direction or where violation is declared as grave under the regulations, the hearing officer may pass one or more of the following orders, namely:

(a) direct the delinquent person to pay a fine as administrative penalty which may extend to one hundred thousand Rupees and in case the failure continues, with an additional fine which may extend to five thousand Rupees for every day during which such failure continues after the direction to pay fine for the first such failure is passed;

(b) direct initiation of prosecution against the delinquent person for the offence under section 52;

(c) seal (for a specified or unspecified period) the immovable property where violation of this Act, rules or regulations has taken place;

(d) direct the relevant employee of the Authority, a civic or utility agency to stop or discontinue the provision of municipal or utility services to the immovable property in occupation of the delinquent person till such time as the violation continues;

(e) direct removal or construction of any structure by the Authority;
(f) direct the enforcement inspector to dispossess an authorized occupant from an immovable property and hand over peaceful possession of the property to the person entitled to the possession of the property; and

(g) direct cancellation of lease or allotment of the delinquent person and resumption of possession of the immovable property by the Authority.

(3) The hearing officer shall take cognizance of a case on the report of an enforcement inspector or an employee authorized by the Authority which shall contain documentary evidence of the violation and identification of the delinquent person.

(4) The hearing officer shall not pass any direction or order without affording an opportunity of hearing to the delinquent person.

60. **Administrative penalty and offence.**—(1) A person, on whom an administrative penalty is imposed under section 59, shall not be prosecuted for an offence in respect of the same incident that gave rise to imposition of the administrative penalty unless the hearing officer directs prosecution of the person.

(2) A person charged with an offence may also be subject to an administrative penalty in respect of the same incident that gave rise to the charge of the offence.

61. **Enforcement.**—(1) The Authority shall devise and implement enforcement plans regarding the observance of this Act, rules and regulations.

(2) The Authority shall designate enforcement inspectors for the implementation of the enforcement plans in such manner as may be prescribed under the regulations.

(3) The enforcement inspectors shall exercise such powers, in such manner and to such extent as it is provided in this Act or as may be prescribed in the regulations.

62. **Power to enter.**—(1) Subject to any rules or regulations, an enforcement inspector may, whenever it is necessary for purposes of this Act and at all reasonable times, enter upon any immovable property and—

(a) make inspection, survey, measurement, valuation or enquiry;

(b) take levels;
(c) dig or bore into sub-soil;

(d) set out boundaries and intended lines of work;

(e) mark such levels, boundaries and lines by placing marks and cutting trenches;

(f) take electronic or other evidence; and

(g) do such other acts or things as may be prescribed.

(2) An enforcement inspector shall not enter any housing unit except—

(a) with the consent of the occupant;

(b) with prior written notice specifying date and time of inspection;

(c) when directed by the court or hearing officer; and

(d) without notice to prevent any disaster in an emergency.

63. **Powers of seizure.**—(1) An enforcement inspector may seize any vehicle, apparatus or other thing which appears to the officer to be used in contravention of this Act, rules or regulations.

(2) The enforcement inspector shall prepare a statement describing the vehicle, apparatus or other thing seized and shall deliver a copy of the statement to the person from whom it is seized or, if such person is not present, send the copy to him by mail and report the matter to the hearing officer.

(3) A person claiming back anything seized under sub-section (1) may apply to the hearing officer and the hearing officer may confirm such seizure, wholly or in part, or may order that it be restored to the claimant.

(4) If the hearing officer confirms the seizure of the vehicle, apparatus or other thing, it shall stand forfeited to the Authority.

64. **Encroachments and unauthorized possession.**—(1) If a person encroaches on the property of the Authority or any open space or unauthorizedly possesses an immovable property of a proprietor, transferee, licensee or lessee or accumulates any building material in the specified area, an enforcement inspector shall prevent the encroachment or unauthorized possession.

(2) In case of a settled unauthorized possession, the enforcement inspector shall, on his own accord or on the application of an aggrieved person,
report the matter to the hearing officer and if so directed by the hearing officer recover possession from the unauthorized occupant and hand over peaceful possession of the immovable property to the person as directed by the hearing officer.

65. **Hearing officer.**—(1) The Board shall appoint one or more hearing officers for a specified area and if the Board appoints more than one hearing officers for a specified area, it shall specify jurisdiction of each hearing officer.

   (2) The hearing officer shall hear and decide a case referred to him by the Board, Chief Executive Officer, Registrar or an enforcement inspector under this Act, rules or regulations including a case to determine default by a mortgager and auction of the mortgaged property.

66. **Inquiry and decision.**—(1) The hearing officer may—

   (a) conduct an inquiry in any case;

   (b) while inquiring into a case, exercise powers of a civil court under the Code of Civil Procedure, 1908 (Act V of 1908) in respect of the following matters:

   (i) summon and enforce attendance of a person, compel a person to give oral or written evidence on oath and to produce a document or any other material;

   (ii) receive evidence on affidavit;

   (iii) requisition information from any office; and

   (iv) issue summons for witnesses or documents.

   (2) The hearing officer shall execute his decisions as if he is a civil court under the Code of Civil Procedure, 1908 (Act V of 1908) or may direct an enforcement inspector to execute the decision in the manner mentioned in the direction.

67. **Review.**—If no appeal is filed against any decision of the hearing officer, the hearing officer may, at any time, review his decision to correct any error or on proof of any other sufficient cause justifying review of the decision.

68. **Recovery of dues.**—(1) If a person fails to pay any amount due to the Authority or a mortgagor of an immovable property fails to pay an installment to a financial institution, the hearing officer shall, on a reference from an authorized employee of the Authority or the financial institution, recover the amount due from the person or mortgagor as arrear of land revenue under the Land Revenue Act, 1967 (XVII of 1967).
(2) In exercise of powers under this section, the hearing officer shall exercise any power of collector under the Land Revenue Act, 1967 (XVII of 1967).

69. **Appeals.**—(1) A person aggrieved from any final direction, decision or order of a hearing officer may, within fifteen days from the date of communication of the same, file an appeal before an appellate committee of the Board.

(2) A person aggrieved by any final order of an appellate committee of the Board may, within thirty days, file an appeal to the High Court which shall be heard by a division bench of the High Court.

70. **Bar of jurisdiction.**—(1) Save as provided in this Act, a court or any other authority shall not entertain any proceedings, suit or application, subject matter of which is pending before a hearing officer or an appellate committee of the Board or which can be brought before a hearing officer through an enforcement inspector, Registrar, Chief Executive Officer or the Board.

(2) A court shall not pass a temporary injunction in matter on which this Act applies including land acquisition for the purposes of the Authority.

**CHAPTER XI**

**FINANCIAL PROVISIONS**

71. **Fund.**—(1) The Authority shall establish a fund to be known as Naya Pakistan Housing Authority Fund to be administered and controlled by the Authority.

(2) The Fund shall consist of—

(a) funds, loans or grants provided by the Federal Government or a Provincial Government;

(b) grants and loans negotiated and raised or otherwise obtained by the Authority;

(c) fee, charges, rentals, fines and other moneys received or collected by the Authority;

(d) income from the lease or sale of the property;

(e) funds from floating bonds, shares, debentures, certificates or other securities issued by the Authority; and

(f) all other sums received by the Authority.
(3) The fine imposed or the fee charged under this Act, the rules or regulations shall, on receipt or recovery, be deposited in and shall form part of Naya Pakistan Housing Authority Fund.

(4) The Authority shall meet all its expenses from the Fund and shall exercise prudence in its expenditures from the Fund.

(5) The Board shall make arrangements for pre-audit before incurring of expenditures by the Authority.

72. **Bank account.**—The Authority may open and maintain its accounts at such scheduled banks as may be prescribed and until so prescribed, as the Board may determine.

73. **Budget and accounts.**—(1) The Chief Executive Officer or any other employee of the Authority as may be directed by the Board shall prepare the budget of the Authority for each financial year commencing on first day of July of a year and ending on thirtieth day of June of the succeeding year.

(2) The Chief Executive Officer shall place the budget for approval before the Board at least forty-five days prior to the commencement of a financial year.

(3) The accounts of the Authority shall be maintained in such manner as may be prescribed.

74. **Audit.**—(1) The Auditor General of Pakistan shall conduct audit of the accounts of the Authority.

(2) The Board shall appoint a firm of chartered accountants, which is placed in category ‘A’ by State Bank of Pakistan, for the annual audit of the accounts of the Authority.

(3) The auditors appointed under sub-section (2) shall submit the audit report to the Board and the Board may take such action and make such decisions as may be necessary in the light of the audit report.

**CHAPTER XII**

**MISCELLANEOUS**

75. **Roads and streets.**—The Authority shall be the exclusive owner of a road, street, green belt, park, play ground or any other common property in a specified area shown in the master plan, spatial plan, classification or reclassification plan, building plan or any instrument registered with the Registrar.
76. **Control over master plan.**—(1) The Authority shall make, maintain, amend, manage, enforce and keep in its custody the master plan of a specified area.

(2) The Authority shall, in the prescribed manner, exercise exclusive land use control and perform housing, town planning and building control functions in the specified area.

(3) A person shall be bound to adhere to the master plan, rules and regulations for land use and building control in the specified area.

77. **Indefeasible title of the Authority.**—(1) If a land is transferred to the Authority through acquisition, sale, grant, gift or any other mode, the collector of district shall immediately enter the mutation in the revenue record and impose a ban on the issuance of Fard Malkiat of the land or a part of the land except on proof of a resolution of the Board addressed to the collector.

(2) On entry of mutation of land in the revenue record in the name of the Authority, the Authority shall become exclusive owner of the land and any person may, within thirty days of entry of the mutation, seek compensation for any unaccounted for right in the land or a part of the land.

(3) After expiry of thirty days mentioned in sub-section (2), every person is barred from seeking any relief from a court including the relief of compensation.

78. **Duty to assist the Authority.**—(1) The Authority may in the performance of its functions seek assistance of any office, authority or agency working under the Federal Government, a Provincial Government or a local government.

(2) The office, authority or agency shall comply with the direction of the Authority under sub-section (1) unless, for reasons to be recorded in writing and within thirty days of the direction, an officer not below the rank of head of the office, authority or agency requests the Authority to place the matter before the Board whose decision, on such matter, shall be final.

79. **Authentication of instruments of Authority.**—All orders, decisions and other instruments of the Authority shall be authenticated by the signature of the Chief Executive Officer or any other employee of the Authority authorized by the Board.

80. **Monitoring and evaluation.**—(1) The Federal Government shall, at least once in a year, cause to be conducted, the performance audit of the Authority to assess and evaluate the performance of the Authority in accomplishing the objectives of this Act.
(2) The Authority shall cooperate with the monitoring and evaluation team and make all the record available to it for a meaningful performance audit of the affairs of the Authority.

(3) The Government shall evaluate the reports mentioned in sub-section (1) and shall, as soon as possible but not later than three months from the date of receipt of such report, lay the report before both Houses of Majlis-e-Shoora (Parliament).

(4) Majlis-e-Shoora (Parliament) may, in a joint sitting by resolution, issue such directions to the Authority as may be necessary for accomplishing the objectives of this Act and the Authority shall implement the directions.

81. Annual report.—(1) The Authority shall, within three months of the end of a financial year, submit to the Federal Government an annual report.

(2) The Annual report under sub-section (i) shall consist of—

(a) the statement of accounts and audit reports of the Authority;

(b) a comprehensive statement of the work and activities of the Authority during the preceding financial year and its proposed projects; and

(c) such other matters as may be prescribed or as the Authority may consider appropriate.

(3) The Federal Government shall, within three months of the receipt of the annual report from the Authority, lay the report before both Houses of Majlis-e-Shoora (Parliament).

82. Public servants.—The Chairperson, a member, Chief Executive Officer, hearing officer, enforcement inspector, Registrar and an employee, expert or consultant of the Authority shall, when acting or purporting to act in pursuance of any of the provisions of this Act, be deemed to be public servant within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

83. Immunity.—No suit, prosecution or any other legal proceedings shall lie against the Authority, the Chairperson, a member, Chief Executive Officer, hearing officer, enforcement inspector, Registrar or an employee, expert or consultant of the Authority, in respect of anything done or intended to be done in good faith under this Act.
84. **Act to prevail over other laws.**—(1) In the event of any conflict or inconsistency between the provisions of this Act and the provisions of any other law, the provisions of this Act shall, to the extent of such conflict or inconsistency, prevail.

(2) If an instrument is required to be registered under this Act as also under any other law, the instrument shall only be registered under this Act.

85. **Rules.**—The Federal Government may, on the recommendation of the Board and by notification in the official Gazette, make rules for carrying out the purposes of this Act.

86. **Regulations.**—Subject to this Act, the Board may, by notification in the official Gazette and publication on its website, make regulations, (not inconsistent with the rules) to give effect to the provisions of this Act.

**SCHEDULE**

[see section 521]

**LIST OF OFFENCES**

**PART I**

1. Fraudulently procures or assists in fraudulently procuring a certificate of title from the Registrar.

2. Knowingly uses or attempts to use a certified copy of a certificate of title which has been cancelled by the Registrar.

3. Destroys or attempts to destroy any record or instrument required to be maintained by the Registrar or any other employee of the Authority under this Act, rules or regulations.

**PART II**

1. Discharging any dangerous chemical, inflammable, hazardous or offensive article in any drain, or sewer, public water course or public land vested in, managed, maintained or controlled by Authority which causes or is likely to cause danger to persons passing by or living or working in neighborhood, or risk or injury to property or causing harm to the environment.

2. Failure to register an instrument within the prescribed time required to be registered under the Act, rules or regulations.
3. Willfully obstructing an enforcement inspector or any other employee of Authority or any person authorized to exercise powers conferred under this Act.

4. Throwing or placing any refuse, litter or garbage in violation of the solid waste disposal regulations.

5. Failure to deliver possession of an immovable property to the Authority or to any other person entitled to the possession on expiration or lawful cancellation of tenancy, lease or allotment.

6. Doing an act without license, approval or permission when the doing of such act requires a license or permission under any of the provisions of the Act, rules or regulations.

7. Violation of the master plan, building plan or building regulations.

8. Erection or re-erection of building over set back area or parking area or building line area required to be left open under the rules or regulations.

9. Changing or converting into any other use any portion of a commercial or residential building or area specified or earmarked for public parking or amenities.

10. Establishing any parking stand on any property or on any open space and public park or land vested in or managed, maintained or controlled by the Authority or condominium corporation.

11. Establishing temporary shop or running any restaurant or vending stall, Khoka or kiosk or any sort of commercial activity on any road, street, footpath, public place, over a drain, or any other property vesting in the Authority without permission of the Authority.

12. Obstructing or tampering with any road, street, drain or sewer pipe or pavement or tampering with any main pipe, meter or any apparatus or appliance for the supply of water or sewerage system or laying out a drain or altering any drain in a street or road without approval of the Authority.

13. Connecting any house drain with a drain in a public street without approval of the Authority.
14. Drawing off, diverting or taking any water except with the permission required under this Act, rules or regulations.

15. Willfully causing damage, or allowing damage to be caused to any property which vests in the Authority or unlawfully converting it to his own or any other person’s use.

16. Refusal or willfully neglecting to provide an enforcement inspector or any other employee of the Authority with the means necessary for entering into any immovable property for the purpose of collecting any information, evidence or making an examination or enquiry in relation to any works.

17. Without lawful excuse, failing or refusing to comply with any direction or order issued by an employee of Authority under this Act.

18. Excavation, without the permission in writing of the Authority, of earth, stone or any other material.

19. Exhibiting, without the previous approval in writing of the Authority, any advertisement in any manner, including flex, cloth banner and paper poster.

20. Using loan or a part of the loan obtained under this Act for purpose other than the purpose for which loan is obtained.

21. Attempting to commit or abetting the commission of an offence punishable under this Act.

STATEMENT OF OBJECTS AND REASONS.

1. **Introduction:**

Prime Minister approved the establishment of an Apex body by the name of “Naya Pakistan Housing Authority” in order to create a One Window Facility to facilitate & regulate the private sector through an enabling environment.

Authority will look into:

- Co-ordination with all relevant ministries, provincial governments, Relevant Development Regulatory Bodies and other stakeholders.
• One Window facility for Lay out Plan and other utilities

• Identification of land owned by Federation & Provinces for development of affordable housing units

• Designs of houses to be as per the cultural demand of respective areas

• Undertake development and construction of properties itself or through Public / PPP

• Upgradation and regularization of Slums/ KatchiAbbadi

• Technology transfer Strategy

2. Justification to establish Naya Pakistan Housing Program into an Authority:

• The jurisdiction of Naya Pakistan Housing Program may extends to whole of Pakistan with current projects launching at Islamabad/ Rawalpindi, Quetta and Karachi.

• To facilitate Land acquisition and free of cost transfer of state land to NPHA by Federal, Provincial and local Governments.

• To establish a transparent criteria and procedure for registration, membership, possession, transfer and cancellation of housing units/ plots under Naya Pakistan Housing Program.

• The authority may call Open auction / lease or PPP mode development of commercial areas.

• The Authority will specify Key performance indicators, monitoring and evaluation, performance audit and reporting mechanisms.

• The Authority will aid collection of local taxes (property tax)/ levy of fee and charges.

• The Authority will be responsible for co-ordination with all relevant ministries, provincial governments, Relevant Development Regulatory Bodies and other stakeholders

• The Authority may undertake development and construction of properties itself or through Public / PPP including Infrastructure work such as provision of water, electricity and gas will be undertaken.
The Authority aims concentration on low & medium income houses and preference to those who have no previous independent shelter facility in their name.

The Authority mandate will include upgradation and regularization of Slums/KachiAbbadi all across Pakistan.

The Authority will identify land owned by Federation & Provinces for development of affordable housing units.

Once Approved Naya Pakistan Housing Authority will be a regulatory body with powers vested with the status of authority to accord requisite approvals for its projects.

The launching of NPHA projects may not be feasible on fast track basis without status of Authority.

It is extremely difficult to implement any scheme within the anticipated time frame,

because of no controls/authority. The time overruns thus lead to cost overruns.

3. Therefore, there is an urgent need of a body to expedite the projects on fast track basis by establishing a one window facility through legislation in Naya Pakistan Housing Authority, so as to address the above narrated issues.

Minister In-charge.

N.A. BILL NO. 46 OF 2019

A BILL

to provide for the efficient recovery of mortgage-backed securities by financial institutions.

WHEREAS it is expedient to provide an effective law for the purposes of facilitating financial institutions in granting mortgage-backed securities, by allowing the recovery thereof so as to allow for provision of finances based on mortgage-backed securities, whereby the same ultimately acts as a catalyst for satisfying the housing needs of the people of Pakistan.

1. Short title, extent and commencement.—(1) This Act shall be called the Recovery of Mortgage-backed Securities Act, 2019.
(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions.—(1) In this Act, unless the context otherwise requires;

(a) “bank” means—

(i) a banking company; or

(ii) a corresponding new bank; or

(iii) the State Bank of Pakistan; or

(iv) a subsidiary bank; or

(v) the House Building Finance Company Limited; or

(vi) such other bank which the Federal Government may, by notification in the official Gazette, specify for the purposes of this Act;

(b) “banking company” shall have the same meaning as assigned to it in the Banking Companies Ordinance, 1962 (LVII of 1962);

(c) “banking court” means:

(i) in respect of a case in which the claim does not exceed fifty million Rupees or for the trial of offences under the Financial Institutions (Recovery of Finances) Ordinances 2001 (XLVI of 2001), the court established under section 5 of that Ordinance; and

(ii) in respect of any other case, the High Court;

(d) “borrower” means any person or corporation who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution;

(e) “central depository company” means the Central Depository Company of Pakistan Limited as formed under the Central Depositories Act, 1997 (XIX of 1997);
(f) “default” means non-payment of any principal debt or interest thereon or any other amount payable by a borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor in accordance with the directions or guidelines issued by the State Bank of Pakistan;

(g) “financial assistance” means any loan or advance granted or any other credit facility extended by any bank or financial institution;

(h) “financial asset” means debt or receivables and includes—

(i) any debt or receivables secured by mortgage of, or charge on, immovable property; or

(ii) any right or interest in the security, whether full or part underlying such debt or receivables;

(i) “financial institution” means—

(a) a financial institution as defined under the Companies Act, 2017 (XIX of 2017);

(b) any other institution or non-banking financial company as defined in the Banking Companies Ordinance, 1962 (LVII of 1962), or which the Federal Government may, by notification in the official Gazette, specify as financial institution for the purposes of this Act;

(j) “mortgage” means the transfer of an interest in property for the purpose of securing the payment of the mortgage money or the performance of an obligation which may give rise to a pecuniary liability

(k) “mortgage money” means any finance or other amounts relating to a finance, penalties, damages, charges or pecuniary liabilities, payment of which is secured for the time being by the security agreement, including any mortgage deed or memorandum of deposit of title deeds;

(l) “non-performing asset” means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, in accordance with the directions or under guidelines relating to asset classifications issued by the State Bank of Pakistan;
(m) “prescribed” means prescribed by rules made under this Act;

(n) “property” means immovable property;

(o) “state bank” means the State Bank of Pakistan;

(p) “security agreement” means an agreement, instrument or any other document or arrangement under which security interest is created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor;

(q) “secured asset” means the property on which security interest is created;

(r) “secured creditor” means any bank or financial institution or any consortium or group of banks or financial institutions;

(s) “secured debt” means a debt which is secured by any security interest; and

(t) “security interest” means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation or assignment.

(2) Words and expressions used and not defined in this Act shall have the same meaning assigned thereto in the Contract Act, 1872 (IX of 1872) or the Transfer of Property Act, 1882 (IV of 1882) or the Companies Act, 2017 (XIX of 2017).

3. Enforcement of security interest.—(1) Any security interest created in favour of any secured creditor may be enforced, without the intervention of any court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof and his account in respect of such debt is classified by the secured creditor as a non-performing asset, then the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced
by the secured creditor in the event of non-payment of secured debts by the borrower and shall be given in the manner and form as may be prescribed.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2) and in the prescribed manner, the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;

(b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;

(c) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (c) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(6) Any transfer of secured asset after taking possession thereof or takeover of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or
transferred by the secured creditor and no further step shall be taken by him for
transfer or sale of that secured asset.

(9) In the case of financing of a financial asset by more than one
secured creditor or joint financing of a financial asset by secured creditors, no
secured creditor shall be entitled to exercise any or all of the rights conferred on
him under or pursuant to sub-section (4) unless exercise of such right is agreed
upon by the secured creditors representing not less than three-fourth in value of
the amount outstanding as on a record date and such action shall be binding on
all the secured creditors. For the purposes of this subsection amount outstanding
shall include principal, interest and any other dues payable by the borrower to the
secured creditor in respect of secured asset as per the books of account of the
secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the
sale proceeds of the secured assets, the secured creditor may file an application in
the prescribed form and manner to the banking court having jurisdiction or a
competent court, as the case may be, for recovery of the balance amount from the
borrower.

(11) The rights of a secured creditor under this Act may be exercised by
one or more of his officers authorised in this behalf in such manner as may be
prescribed.

(12) No borrower shall, after receipt of notice referred to in sub-section
(2), transfer by way of sale, lease or otherwise, other than in the ordinary course
of his business, any of his secured assets referred to in the notice, without prior
written consent of the secured creditor.

4. Valuation of security interest.—(1) The security agreement shall
be registered with the Central Depository Company and shall become valid only
once such registration has been completed.

(2) No disbursement shall be made unless the security agreement has
been registered under sub-section (1).

(3) The particulars of the security agreement shall be filed with the
Central Depository Company in the manner and on payment of such fee as may
be prescribed, within fourteen days after the date of such transaction or creation
of security, by the secured creditor:

Provided that the Central Depository Company may allow the filing of
the particulars of such transaction or creation of security within fourteen days
next following the expiry of the said period of fourteen days on payment of such
additional fees not exceeding ten times the amount of such fee.
(4) The registration under sub-section (1) shall include the registration of the validity, value and all material details of the security agreement as may be prescribed.

(5) The registration under sub-section (1) shall be done by the secured creditor. The Central Depository Company shall explicitly communicate the details of the security interest as to be registered through a notice to the borrower within one week of an application of registration by the secured interest.

(6) The borrower shall file objections with respect to registration under this section, if any, within one week of the receipt of the notice under sub-section (2) of section 3, after which, the borrower shall be deemed to have no objections to the details of such registration.

(7) The secured property registered under sub-section (1) shall have a reserve price which shall be equal to the secured interest as per the security agreement as registered by the Central Depository Company plus costs reasonably incurred by the secured creditor through enforcement under section 3.

5. Recovery of asset.—(1) In case of default in payment by a borrower, the financial institution may send a notice upon the borrower demanding payment of the mortgage money outstanding within fourteen days from service of the notice and failing payment of the amount within due date, it shall send a second notice of demand for payment of the amount within fourteen days. In case the borrower on the due date given in the second notice sent, continues to default in payment, financial institution shall serve a final notice upon the borrower demanding the payment of the mortgage money outstanding within thirty days from service of the final notice on the borrower.

(2) Before exercise of its powers under section 3, the secured creditor shall cause to be published a notice in one reputable English daily newspaper with wide circulation and one Urdu daily newspaper in the Province in which the mortgaged property is situated, specifying particulars of the mortgaged property, including name and address of the mortgagor, details of the mortgaged property, amount of outstanding mortgage as registered under section 4 and indicating the intention of the secured creditor to sell the mortgaged property. The financial institution shall also send such notices to all persons who, to the knowledge of the secured creditor, have an interest in the mortgaged property as mortgagees.

(3) The sale of the secured property shall be done through a public auction where the property may be sold at the highest price obtained through such auction provided that such price is not below the reserve price.

(4) The secured creditor and the borrower shall be entitled, in their discretion, to participate in the public auction and to purchase the mortgaged
property at the highest bid obtained in the public auction, provided that such price is not below the reserve price.

6. **State authority to assist secured creditor in taking possession of secured asset.**—(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request in writing any state authority designated in the prescribed manner by the Federal Government, within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof and such state authority, on such request being made to it, shall—

   (a) take possession of such asset and documents relating thereto; and

   (b) forward such asset and documents to the secured creditor.

   (2) For the purpose of securing compliance with the provisions of sub-section (1), the designated state authority may take or cause to be taken such steps and use or cause to be used such force as may in its opinion be necessary.

   (3) No act of the designated state authority done in pursuance of this section shall be called in question in any court or before any authority.

7. **Right to appeal.**—(1) Any person including borrower, aggrieved by any of the measures referred to in sub-section (4) of section 3 taken by the secured creditor or his authorised officer under this Act, may prefer an appeal to the banking court, having jurisdiction in the matter, within forty-five days from the date on which such measure had been taken.

   (2) Where an appeal is preferred by a borrower, such appeal shall not be entertained by the banking court unless the borrower has deposited with the court seventy-five percent of the amount claimed in the notice referred to in sub-section (2) of section 3.

8. **Appeal to High Court.**—Any person aggrieved, by any order made by the banking court under section 7, may prefer an appeal to the High Court within thirty days from the date of receipt of the order of the banking court.

9. **Scope of appeal.**—(1) Neither the banking court under section 7 nor the High Court under section 8 shall grant an injunction restraining the sale or proposed sale of mortgaged property unless—

   (a) it is satisfied that no mortgage in respect of the immovable property has been created; or
(b) all moneys secured by mortgage of the mortgaged property have been paid; or

(c) the mortgagor or objector deposits in the banking court in cash the outstanding mortgaged money.

10. **Right of borrower to receive compensation and costs in certain cases.**—If the banking court or the High Court, as the case may be, on an appeal filed under section 7 or section 8 holds the possession of secured assets by the secured creditor as wrongful and directs the secured creditor to return such secured assets to the concerned borrower, such borrower shall be entitled to payment of such compensation and costs as may be determined by such banking court or High Court.

11. **Secured creditors to report satisfaction of security interest.**—(1) The secured creditors shall give intimation to the Central Depository Company of the payment or satisfaction in full of any security interest relating to the secured creditors and requiring registration under this Act within thirty days from the date of such payment or satisfaction.

(2) The Central Depository Company shall, on receipt of such intimation, cause a notice to be sent to the secured creditors calling upon it to show cause within a time not exceeding fourteen days specified in such notice, as to why payment or satisfaction should not be recorded as intimated to the Central Depository Company.

(3) If no cause is shown, the Central Depository Company shall order that a memorandum of satisfaction shall be entered in the Central Depository Company.

(4) If cause is shown, the Central Depository Company shall record a note to that effect and shall inform the borrower that he has done so.

12. **Right to inspect particulars of security interest transactions.**—(1) The particulars of security interest entered in the register of such transactions kept under section 11 shall be open during the business hours for inspection by any person on payment of such fee as may be prescribed.

(2) The register referred to in sub-section (1) maintained in electronic form, shall also be open during the business hours for the inspection of any person through electronic media on payment of such fee as may be prescribed.

13. **Protection of action taken in good faith.**—No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his
officers or managers exercising any of the rights of the secured creditor or borrower for anything done or to be done in good faith under this Act.

14. **Civil court not to have jurisdiction.**—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a banking court or the High Court is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

15. **Act to override other laws.**—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

16. **Power to make rules.**—The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

17. **Power to remove difficulties.**—If any difficulty arises in giving effect to the provisions of this Act, the Federal Government may, by order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

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**STATEMENT OF OBJECTS AND REASONS**

1. **Introduction:**

Mortgage facility is a backbone of Housing Sector which supports financial aspect of construction of houses. In Pakistan Mortgage debt has deteriorated to an acute level. Banks/ Investors are ill-equipped to protect their own interests. Foreclosure laws empower the bank/ investors to take possession of the asset upon borrower’s default. Therefore, to increase the trend of housing mortgage, banks desperately needed the updated foreclosure laws. Without these Laws commercial banks as well as foreign investors are reluctant to invest and finance in this sector.

Prime Minister approved the Establishment of an Apex body by the name of “Naya Pakistan Housing Authority” to regulate the private sector through an enabling environment which will regulate mortgage
debt to GDP ratio by adapting better legal frameworks and minimize housing lag on supply side.

2. **Justification to Establish Legal Framework of foreclosure:**

   - The jurisdiction of legal framework may extends to whole of Pakistan.
   - An efficient development program that balances risk, cost, schedule and performance.
   - Promptly identifies loans with well-defined weaknesses.
   - Provides essential information to assess the adequacy.
   - Ensures that appraisals on troubled real estate and other secured loans are maintained on a regular, timely basis.
   - It is better to recover a portion of a mortgage loan than to absorb a total loss. Therefore, in lieu of a better foreclosure framework, banks will often settle for low risks.
   - To establish a transparent criteria and procedure for regularizing mortgage debt.
   - To establish and specify Key performance indicators, monitoring and evaluation, audit and achievement mechanisms.
   - Public can use regular mortgage financing.
   - Banking regulation will improve.
   - Regulating the mortgage debt ratio will bring positive tax benefits to the economy.
   - Facilitating peoples to relish capital appreciation over their land.
   - Improving confidence of foreign investors by taking measures to regulate the mortgage debt to GDP ratio.
   - Economy will become more documented inevitably minimizing risks and increasing investing opportunities.
   - Better foreclosure laws that would develop Protection of credit and prevention of a foreclosure.
• Provision of mortgage facility will benefit peoples to pay their debt through affordable monthly/ quarterly installments.

3. Therefore, there is an urgent need of a legal framework to expedite the better mortgage facilities on fast track basis so as to address the above narrated issues.

CHAUDHARY TARIQ BASHIR CHEEMA,
Minister for Housing and Works.

TAHIR HUSSAIN,
Secretary.