

## Memorandum of Understanding

between

The Government of Sindh Province of the Islamic Republic of Pakistan, represented by the  
Sindh Labour & Human Resources Department (Sindh Government)

and

International Labour Organization, represented by the International Labour Office (ILO)

on the

**implementation, administration and governance of the Arrangement  
for the settlement of the funding gap for the compensation to be delivered to the victims of  
the fire at the Ali Enterprises in Baldia, Pakistan, 2012**

### NOTING:

- the request of the Government of the Islamic Republic of Pakistan, through the Ministry of Overseas Pakistanis and Human Resources Development ("Government of Pakistan") to the International Labour Office (ILO) through its country Director, Islamabad, dated 18<sup>th</sup> April 2016;
- the Agreement for the settlement of the funding gap for the compensation to be delivered to the worker victims and, as applicable, the surviving dependents of deceased workers of the fire at the Ali Enterprises in Baldia, Pakistan (altogether "Baldia victims") signed on 9 September 2016 ("the Baldia Arrangement") between the KiK Textilien und Non-food GmbH ("KiK"), the ILO, IndustriALL Global Union, and the Stichting Clean Clothes Campaign;
- the Agreement between the Pakistan Institute of Labour, Education And Research (PILER) and KiK dated 8<sup>th</sup> September 2016 in which the parties agree that the Baldia Arrangement represents the final compensation and relief package;
- the administrative notification of the constitution of the Baldia Oversight Committee by the Government of Sindh No: SO(CSGA&CD/4-10/17) dated 27 September 2017;
- the invitation letter by the Government of Sindh as Chair of the OC, dated 10 January 2018, to the first meeting of the Oversight Committee (OC 1) convened, at the Department of Labour, Karachi;

- The decisions taken by the Oversight Committee, at the conclusion its first meeting on 19 January 2018 (OC 1), namely on: Terms of reference of the Oversight Committee (OC 1 Doc.1); Protocol of basic working methods and guiding principles of the Oversight Committee (OC 1 Doc.2); Oversight Committee standing procedures (OC 1 Doc.3); Mandate of Sindh Employees' Social Security Institution, SESSI as executing agency (OC 1 Doc.4); Report on the review of individual claims for top-up benefits under the Baldia Arrangement (OC 1 Doc.6).

**CONSIDERING that:**

- the amount of 5.15 million USD including a margin of 0.25 million USD (the "Fund") was provided voluntarily by KiK to the ILO under the Baldia Arrangement to exclusively cover the gap in benefits for loss of earnings, medical and allied care and rehabilitation ("C.121 gap benefits"), including the margin for estimated financial fluctuations, payable as of January 2017 to the consolidated list of eligible beneficiaries but not including the costs related to the delivery, administration and oversight as referred to in the ILO technical report dated 9 September 2016 ("ILO Technical Report 2016") as annexed to the Baldia Arrangement;
- the determination of such benefits is made by reference to the principles and provisions of Employment Injury Benefits Convention, 1964 (No. 121) and the assumptions for benefit calculations agreed under the Baldia Arrangement as referred to in the ILO Technical Report 2016;
- the implementation, administration and governance of the Baldia Arrangement are to be developed in a process facilitated by the ILO in accordance with its applicable rules and procedures and subject to the necessary financial resources being made available to the ILO; and
- the International Labour Organization, represented by the International Labour Office (ILO), the Government of Sindh Province of the Islamic Republic of Pakistan, represented by the Sindh Labour & Human Resources Department (Sindh Government) have decided to collaborate with distinct responsibilities in the implementation, administration and governance of the Baldia Arrangement and to sign this MOU exclusively in their own capacities,

The Government of Sindh Province and the ILO, (collectively "the Parties") hereby agree:

1. to exercise their respective roles and responsibilities in launching and coordinating the implementation, administration and governance of the Baldia Arrangement through the following primary means:
  - a) An Oversight Committee (OC) composed by means of an administrative notification issued by the competent Government authority after consultation of the Federal Tripartite Consultative Committee (FTCC) by the Government of Pakistan, and the Sindh Provincial Tripartite Consultative Committee (PTCC) by the Sindh Government, and whose terms of reference and initial composition are set out in Annex A to this MOU as per the decision of OC 1;

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- b) Sindh Employees' Social Security Institution (SESSI) as mandated to be executing agency by public notification of the Sindh Government in accordance with paragraph 3(c) of this MOU;
- c) The financial management and use of the Fund, provisionally guided by the ILO and, thereafter upon certification, under the responsibility of a competent Government authority as described under paragraph (4d), and without assuming any further financial liability towards the Baldia victims than that provided under this MOU; and
- d) The advisory services and technical assistance of the ILO employment injury benefit actuarial and policy specialists provided for the benefit of its tripartite constituents in Pakistan, as set out in paragraph 2 of this MOU.
2. to set up advisory services and technical assistance on C.121 gap benefits to be delivered by the ILO, subject to the availability of resources, as follows:
- a) Advise the OC in its work based on basic working methods and guiding principles as per decision of the OC 1 and attached as Annex B;
- b) Provide technical support related to the delivery of C.121 gap benefits in collaboration with the competent authorities, in particular as organized through the SESSI, for purposes including:
- i. Advising on the calculation and disbursement of all C.121 gap benefit entitlements, as determined by the ILO Technical Report 2016 and the terms of the Baldia Arrangement and the adjusted terms for benefit calculation as agreed at the OC 1 (Doc 6);
  - ii. Reviewing and processing the application of statutory disability benefit provisions, in line with relevant provisions of the Sindh Employees' Social Security Act 2016, to determine the eligibility and C.121 gap benefit entitlements for disabled workers and taking due account of the elapsed time since September 2012 in the case of beneficiaries whose case may not have been timely processed as per usual practice;
  - iii. Advising on the technical and financial documents to be submitted to the OC;
  - iv. Advising on how to maintain verifiable financial records of all transactions related to the C.121 gap benefits and the use of the Fund and its investment performance once the funds are transferred beyond the Provisions Period, as appropriate see paragraph (4d));
  - v. Monitoring the demographic development of the group of beneficiaries under the Baldia Arrangement, on the basis of initial actuarial projections used for the ILO Technical Report 2016, and its effect on the remaining balance of the Fund
  - vi. Providing advice and assistance with actuarial and accounting plans, deficit-minimization measures and investment strategies with the aim of ensuring that the Fund provided under the Baldia Arrangement remains sufficient for the purposes intended in the long term, and guided by internationally recognized standards of actuarial and accounting practice,

- vii. Certifying the completion and evaluating the effectiveness of advisory services and assistance relating to application of the best practice standards for actuarial assessment and financial management of the Fund through such means as may be necessary to fulfil the Baldia Arrangement.
  - viii. Advising for other purposes as indicated under paragraph (3)(c).
  - c) Facilitate regular consultation with ILO tripartite constituents, notably those directly concerned by the Baldia Arrangement as needed;
  - d) Facilitate information exchange with the international stakeholders on the progress of the implementation of the Baldia Arrangement as appropriate; and
  - e) In preparation for the transfer of funds, as appropriate and as described under paragraph (4d), assist in the organization of the investment and fund management mechanism to ensure, directly or through a third-party mechanism, the administration and use of the Fund beyond the Provisional Period and, in any event, within five years.
3. To coordinate the institutional mandates necessary for the implementation of the Baldia Arrangement:
- a. **Government of Sindh:** By issuance by the competent Government authority, after consultation of the relevant Tripartite Coordination Committee, of an administrative notification for appointment of an Oversight Committee for the Arrangement, whose initial composition and terms of reference are set out in Annex A to this MOU.
  - b. **Government of Sindh:** to take responsibility for the delivery of the C.121 gap benefits to Baldia victims and, to this end, mandate the SESSI through public notification, to:
    - i. assess the eligibility and level of all C.121 gap benefit entitlements, including periodical benefits, medical and allied care for disability cases, as appropriate, on the basis of the consolidated list of beneficiaries as per the ILO Technical Report 2016 and in accordance with statutory provisions and the Guiding Principles in Annex B, as supplemented by the principles and provisions of the ILO Employment Injury Benefits Convention, 1964 (121);
    - ii. prepare on a regular basis and submit to the OC for its authorization the detailed list of upcoming individual C.121 gap benefits becoming payable and to process for the transfer of monies from the Fund to the executing agency as necessary;
    - iii. issue individual notices of award and any update to each beneficiary and organize equitable and secure method for periodic payments to be received by them, to review their eligibility status over time, a procedure to deliver the notice of award and any updates, and for the meaningful waiver of claims to be signed by beneficiaries;

- iv. deliver authorized individual C.121 gap benefits to the Baldia victims, subject to receipt from each beneficiary of the signed waiver in favour of KiK as endorsed by the OC
- v. monitor the process to pay C.121 gap benefits in accordance with their entitlements and through methods of payment that ensure timely, secure and accessible benefits, as well as for the delivery of timely and quality medical and allied care services;
- vi. adjust the level of periodical C.121 gap benefits at the beginning of each subsequent year after 2017 subject to the actuarial advice of the ILO and the decision of the OC following the agreed approach as per OC1 Doc 6;
- vii. maintain, in a manner consistent with usual practice, individual records of detailed C.121 gap benefits paid out;
- viii. report no later than every quarter to the OC on the delivery of all C.121 gap benefits due to victims and their reconciliation with authorized awards;
- ix. maintain financial records and an accounting framework of the use of the Fund, to be subjected to an independent certified audit and to proceed to issue certified financial statements in relation to the Fund, at regular intervals and not less than one (1) per year;
- x. monitor the demographic development of the group of beneficiaries under the Baldia Arrangement in light of the initial actuarial projections as per the ILO Technical Report 2016 and provide monitoring reports to the OC; and
- xi. provide reports on the implementation of these duties to the OC for purposes of its guidance within the scope of its mandate.

c. Government of Sindh:



- i. Ensure that the C121 gap benefits are recognized as legal entitlements for Baldia victims' and are enforceable by courts.
- ii. Register and maintain an official archived record of the following elements for the purpose of the implementation of the Arrangement:
  - a) Identity of all beneficiaries, namely the disabled workers and dependents of deceased workers while taking account of special individual circumstances;
  - b) The amount of C.121 gap benefit entitlements determined to be owed under the Baldia Arrangement in periodic payments for loss of earnings to dependents of deceased workers and disabled workers, and medical and allied care and rehabilitation services, as appropriate, for each beneficiary by name;
  - c) The method used for calculating the additional benefits;
  - d) The exact formula used for adjusting periodical C.121 gap benefits, as appropriate; and
  - e) The method of payment in which long-term payment of benefits is received.

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**4. To provide robust financial management of the Fund as follows:**

- a) Ensure the disbursement of the funds is exclusively for the purpose of funding C.121 gap benefit payments for loss of earnings and medical and allied care and rehabilitation services of the disabled victims and, as applicable, surviving dependents as intended by the Baldia Arrangement and this MOU;
  - b) Invest the funds in secured investments expected to be capable of a foreseeable annual real rate of investment return expected of at least 2 per cent and, taking account of the market conditions; without assuming any further financial liability towards the Baldia victims than that provided under this MOU;
  - c) Report to the Oversight Committee on the status of the account of the Fund, namely its certified annual income and expenditure statements, including its investment performance and its demographic development, on the basis of initial actuarial projections used for the ILO Technical Report 2016, and its effect on the remaining balance of the Fund;
  - d) During the initial period of implementation of the Baldia Arrangement, whose duration will be determined by the ILO in consultation with the other Parties (the "Provisional Period"), the Fund will provisionally be held and administered by the ILO, in accordance with the ILO's applicable rules, regulations and procedures and actuarial practice;
  - e) During the Provisional Period, the ILO will transfer the required monies from the Fund as authorized and requested by the Oversight Committee, provided the ILO is satisfied that the funds are used in accordance with the Baldia Arrangement and this MOU;
  - f) At the end of the Provisional Period, the ILO will transfer the full remaining principal of the Fund to the authorities appointed to be in charge, under the responsibility of the Sindh Government, of the financial management and reporting of the Fund as acceptable to the OC and the Parties to this MOU with due account of the need for financial efficiency, for the exclusive purposes and uses to which the Fund is intended and subject to certification by the ILO of: satisfactory calculation and disbursement of periodic payments, health and allied care and rehabilitation services; delivery of financial advice and actuarial planning services; and all appeals on entitlements resolved and/or time-barred.
- 5. To cooperate, in the framework of their respective jurisdiction or mandate, on such other issues and capacity building efforts as may be identified in the course of implementation of this MOU.**

**6. To accept the following miscellaneous provisions:**

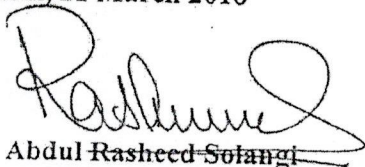
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- a. The ILO's obligations under this MOU are contingent upon availability of the necessary financial resources to cover the costs of ILO technical assistance beyond 30 June 2019.
  - b. In accordance with Article I, paragraph 6, of the Revised Standard Agreement of 2 July 1956 between Pakistan and the United Nations, the ILO and others, concerning technical
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assistance, as amended by exchange of letters of 9 January 1965, the Government of Sindh will be responsible for dealing with any claims which may be brought by third parties against the ILO, its experts, agents and employees and will hold harmless the ILO and its experts, agents and employees in case of any claims or liabilities resulting from operations under this MOU, except where it is agreed by the Parties that such claims or liabilities arise from the gross negligence or wilful misconduct of such experts, agents and employees;

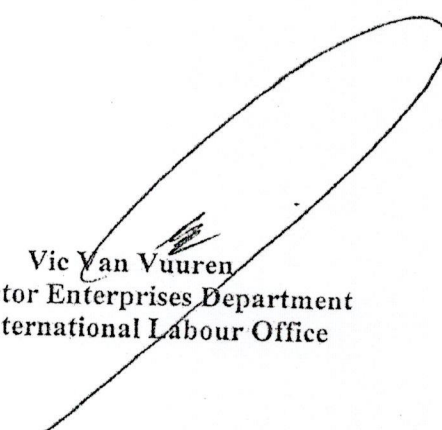
- c. Nothing in or relating to this MOU will be deemed a waiver of any of the privileges and immunities of the ILO.

In witness thereof, the authorized Representatives of the Parties have signed this MOU on the dates written below.

Karachi, 21 March 2018



Abdul Rasheed Solangi  
Secretary Labour & H.R Department  
Government of Sindh




Vic Van Vuuren  
Director Enterprises Department  
International Labour Office

Witness-1



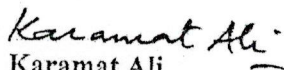
Mukhtiar Ahmed  
Deputy Secretary (Labour)

Witness-2



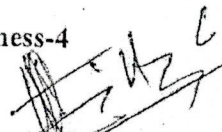
Ingrid Christensen  
Director  
ILO Country Office for Pakistan

Witness-3



Karamat Ali  
Executive Director  
Pakistan Institute for Labour Education  
& Research (PILER)

Witness-4



Nasir A Mansoor  
Deputy General Secretary  
National Trade Union Federation  
(NTUC)

## Annex A: Terms of Reference and Composition of the Oversight Committee (OC)

1. A multistakeholders' committee to oversee the implementation of the Arrangement (Oversight Committee, OC) is expected to run to at least 31 December 2020 and through the period of transfer of the Fund<sup>1</sup> to an appointed competent authority. Its duration may be extended upon mutual arrangement.
2. The Oversight Committee is to be constituted with the following Terms of Reference (ToRs) to be included in the administrative notification referred to in paragraph 1(a) of the MOU:
  - a) Approve the Protocol of basic working methods and guiding principles attached as Annex B to this MOU, and adopt any procedures for its working methods, including on decision-making, as may be necessary and appropriate;
  - b) Endorse an arrangement with SESSI to provide benefits to the Baldia victims and their dependants;
  - c) Review for endorsement the terms to establish a procedure or other decision to record and enforce the entitlements of the beneficiaries under the arrangement with the SESSI;
  - d) Approve, on the basis of report(s) provided by SESSI and the ILO, the:
    - i. Reviewed Methodology for use by SESSI in reviewing claims and awards for C.121 gap benefits and in particular, for assessing disability, calculating the remaining benefits owed, and determining medical and allied care services and the formula for adjusting periodic payments in line with the investment and demographic performance;
    - ii. The design of the Notice of award of benefits;
    - iii. Procedure for satisfactory delivery of benefits, including in inter-provincial contexts;
    - iv. Arrangement for counselling of beneficiaries to ensure meaningful understanding of their entitlements and rights and the meaningful waiver of rights to further calculations of such benefits in future but not including claims for pain and suffering.
  - e) Review for endorsement the periodic reports on award decisions and delivery of benefits provided by SESSI in collaboration with the ILO Technical Adviser(s);
  - f) Arrange for archiving records of the information provided under (d) and Notices of Awards of benefits for the record in the event of future enforcement need.
  - g) In relation to the Fund,
    - i. Take note of the provisional financial management of the Fund to be arranged by the ILO;
    - ii. Authorize the transfer of required amounts of the Fund in specified amounts based on periodic reports provided by SESSI and confirmed by the ILO;
    - iii. Review periodic reports on status of the Fund account and its certified financial statements; and

<sup>1</sup>Fund contributed by Kik, December 2016.

- iv. Endorse, upon certification of the ILO, the transfer of all remaining principal in the Fund to the responsibility of an appointed authority, for its financial management and expected performance as described above.
  - h) Provide public reports not less than twice a year on the benefits paid to victims, with due protection of their privacy; and
  - i) Make arrangements for such action as may be necessary to ensure the continuing and satisfactory delivery of the benefits under the Baldia Arrangement including after the provisional period during which the ILO manages the Fund (expected up to no later than 2020).
3. Based on the principle of tripartism, the Oversight Committee is composed of two representative organizations each of the Government, employers and workers, each at Federal and provincial levels and in addition two domestic NGOs as agreed (see table below). Each member organization has one vote and will freely nominate its representative and up to two advisers to serve on the OC. The OC is chaired by the Government of Sindh acting through the Labour and Human Rights Department (Dept. Secretary), who will cast only a determining vote, Quorum for taking decisions: at least one Government, one Employer and one Worker member of the OC must be present and voting at the meeting; proxy votes by nominated advisers are allowed if received in writing in advance of the meeting concerned.

### COMPOSITION OF THE OVERSIGHT COMMITTEE (OC)

| OC members                           |  |
|--------------------------------------|--|
| Government                           | <ul style="list-style-type: none"> <li>Labour and Human Resources Development, Sindh Province (Chair) (advised by Finance Department, Sindh)</li> <li>Ministry of Overseas Pakistanis and Human Resource Development</li> </ul>        |
| Employers' organizations             | <ul style="list-style-type: none"> <li>Employers' Federation of Pakistan (EFP)</li> <li>SITE Association of Industry, Karachi</li> </ul>   |
| Workers' organizations               | <ul style="list-style-type: none"> <li>Pakistan Workers Federation (PWF)</li> <li>National Trade Union Federation (NTUF)</li> </ul>  |
| Non-governmental organizations       | <ul style="list-style-type: none"> <li>Pakistan Institute of Labour Education &amp; Research (PILER)</li> <li>Ali Enterprises Factory Fire Affectees Association (AEFA)</li> </ul>   |
| Non-member participants and advisers |  |
| Technical advisers                   | <ul style="list-style-type: none"> <li>International Labour Organization (ILO)</li> <li>Finance Department, Sindh Province (Investments)</li> </ul>  |
| Executing agency                     | <ul style="list-style-type: none"> <li>Sindh Employees' Social Security Institution (SESSI)</li> </ul>   |
| Funding agency                       | <ul style="list-style-type: none"> <li>German Federal Ministry for Economic Cooperation and Development (BMZ) in a capacity as financial donor to support administrative costs of implementation of the Baldia Arrangement.</li> </ul> |

## Annex B: Protocol of Basic Working methods and Guiding Principles of the Oversight Committee

### I. Basic Working Methods

1. To avoid all conflicts of interest, financial or personal, existing at the time of appointment or arising in the course of the OC's mandate.
2. To provide all necessary cooperation and assistance to the OC to ensure its decisions are taken in an informed, representative, and democratic manner, by consensus wherever possible and by simple majority unless otherwise decided at least one session in advance of the vote concerned.
3. To respect as final the decisions taken by the OC in its capacity as an administrative ad-hoc body.
4. To respect the personal data and privacy of the beneficiaries and victims concerned.

### II. Basic Guiding Principles

1. Benefits cover the loss of earnings and, to the extent applicable for injured workers and medical care and where possible, allied care and rehabilitation.
2. Benefits are determined and administered based on ILO's technical recommendations guided by ILO Convention No. 121 on Employment Injury Benefits, after consultation with national tripartite constituents and national and international stakeholders concerned.
3. Beneficiaries are either workers disabled by the accident or dependents of deceased workers in line with the definition of dependents provided in the Sindh Employees' Social Security Act, 2016 (Sindh Act. No. VI of 2016) (SESSA2016) and taking account of the long time elapsed for the handling of claims.
4. Dependents' benefits are determined according to their situations of need in relation to the prior income of their family member who was employed in the Ali Enterprise and disabled workers according to their degree of disability, as provided in SESSA2016.
5. The Fund for the application of the Baldia Agreement will pay C.121 gap benefits. See OC 1 Document 6m and its Annex 3 on Summary benefit options (18 December 2017) as agreed.
6. For the purpose of estimating the total amount of necessary funds at USD 5.15 million, the United Nations mortality table for Pakistan and the prevailing real rate of return on the Government bond in the country were applied.