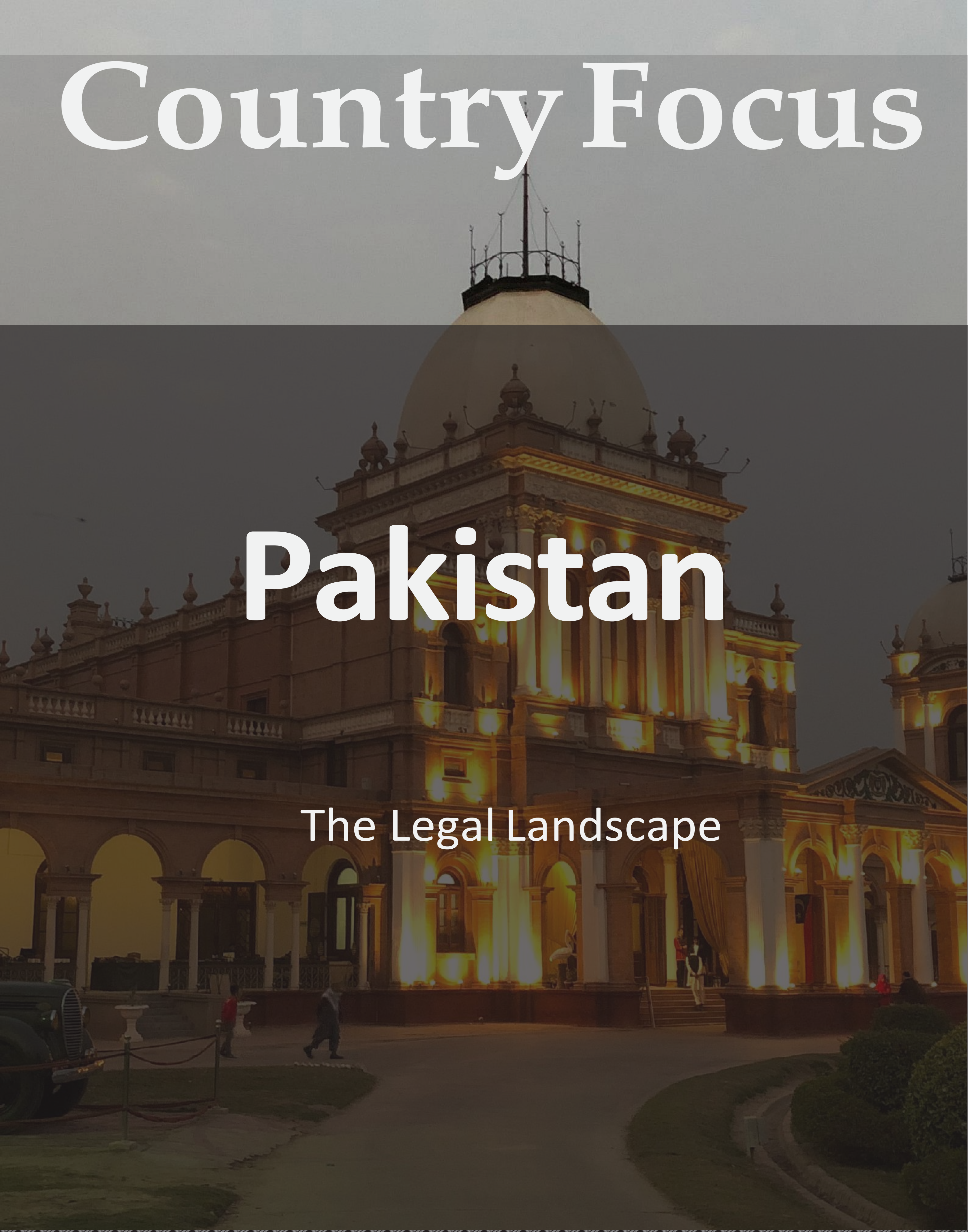
Country Focus



Pakistan

The Legal Landscape

In association with
RIAA Barker Gillette

LEXOLOGY
Getting The Deal Through

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Product marketing manager
Kieran Hansen
kieran.hansen@lbresearch.com

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Meridian House, 34-35 Farringdon Street
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This new Lexology Getting The Deal Through initiative is designed to offer in-house legal departments, as well as private practice lawyers with an international clientele, a concise 'helicopter view' of the legal environments in which they do business, or where they may be considering investment.

The Legal Landscape addresses the key factors that underpin civil and common law legal frameworks, policy, regulation and enforcement, taxation, organisational behaviour and investor strategies.

Lexology Getting The Deal Through has canvassed general counsel at more than 100 multinational corporations and financial institutions to focus on the first points of legal reference that in-house counsel need to know when assessing unfamiliar jurisdictions where they may seek opportunities or be exposed to risk. The following questions and answers cover the essential areas of consideration in their 'first step' analysis.

We would like to thank the team at RIAA Barker Gillette for their analysis of the legal system of Pakistan.

LEXOLOGY
Getting The Deal Through

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Pakistan: The Legal Landscape

Mayhar Mustafa Kazi and Rafia Rauf
RIAA Barker Gillette

Country overview

1 Give an overview of the country's economy, its structure and main characteristics, and prevailing government economic policy, particularly as regards foreign investment.

Over the past three years, the performance of Pakistan's economy has significantly improved. Pakistan's real gross domestic product (GDP) grew by 3.30 per cent in 2019. The security situation in Pakistan has also markedly improved, with a dramatic decline in terrorist attacks and crime in general. The China Pakistan Ecponomic Corridor (CPEC), the first chapter of China's Belt and Road Initiative, promises to greatly improve regional connectivity, cut transport time and costs and increase access to markets and to natural resources. Data in respect of the first eight months of the current fiscal year reveals rising trends in exports and foreign direct investment.

In Pakistan, services are the biggest sector of the economy and account for 53 per cent of total GDP. Within services the most important segments are: public administration and defence (18 per cent of total GDP); telecoms, wholesale and retail trade (17 per cent) and transportation (10 per cent) are major components of the service industry. Industry Manufacturing accounts for 25 per cent of GDP. Within industry, the manufacturing segment represents 19 per cent of GDP and mining and construction accounts for 5 per cent. The remaining 22 per cent is contributed by livestock (11 per cent) and fishing, forestry and agriculture (11 per cent). The fiscal year 2019 particularly saw a growth in export-led industries, including textile, food and beverages and leather in the current fiscal year. Major investments have been made in e-commerce and digital payments platforms.

Aside from an abundance of human capital, with its population estimated at around 200 million, and a growing middle class, Pakistan is rich in natural resources. In terms of fossil fuels, aside from oil and gas, which fulfil a significant proportion of Pakistan's domestic demand, Pakistan is home to one of the largest coal deposits in the world. These reserves, mining of which is expected to commence, are, when converted into crude equivalent, greater than oil reserves of Saudi Arabia and the gas reserves of neighbouring Iran. Pakistan has immense untapped hydroelectricity potential and is home to the world's largest earth-filled dam. Investment in wind and solar power is also on the rise and a number of private sector wind power projects have been commissioned in recent years. Pakistan also has considerable deposits of copper, gold, marble, limestone, salt and various other minerals. In terms of agriculture, Pakistan is home to the world's largest irrigation system, and is the fourth-largest producer of cotton, fifth-largest producer of sugar cane and milk, and tenth-largest producer of rice.

Pakistan has bilateral and multilateral trade agreements with several nations and is a member of the World Trade Organization, South Asia Free Trade Area and has a free trade agreement with China. Pakistan's top exports include textiles, rice, surgical instruments, leather goods, rice, cement, and fruit and vegetables.

Pakistan is a foreign-investment-friendly destination. All sectors of the economy, except arms and ammunition, nuclear energy, currency and security printing and mint are open to foreign investors. In other sectors, there is no maximum cap on the shareholding that may be held by foreign investors except in certain sectors including commercial aviation, and print and electronic media. Under the prevailing investment policy of the government of Pakistan, there is no minimum equity requirement that foreign investors must fulfil in sectors open to foreign investment. Subject to compliance with procedural requirements prescribed by the central bank, the State Bank of Pakistan (SBP), dividends and disinvestment proceeds are freely repatriable. There is no restriction on the purpose for which foreign loans may be obtained. Permission to remit principal and interest repayment is subject to compliance with the procedural requirements prescribed by the SBP. Furthermore, foreign investors may lease land without limitation subject to compliance with applicable rules and regulations of the relevant authority. Foreign real estate developers are subject to the same rules and treatment as domestic real estate developers.

Legal overview

2 Describe the legal framework and legal culture in your jurisdiction as regards business and commerce.

The legal system of Pakistan is based on the English common law system. Pakistan is a parliamentary democracy with a federal system of government. Legislative competence and executive authority with respect to various subjects are split between the federation and the provinces. A number of subjects, including health, education, labour welfare and minerals (with the exception of oil and gas) are within the exclusive legislative and executive competence of the provinces.

Pakistan has a bicameral federal legislature, known as the Parliament or Majlis-e-Shoora, comprising the National Assembly and the Senate, whereas the provincial legislatures (known as the provincial assemblies) are unicameral. The National Assembly, or the lower house, has direct elections on the basis of the 'first past the post' system and its members are elected simultaneously for five years. The Senate, on the other hand, holds indirect elections, with its members being elected by members of the provincial assemblies, for one half of the members every three years, each member being elected for six years. An Act of Parliament must be passed by a quorum in both houses of

Parliament, and receive the President of Pakistan's assent. The constitution empowers the President to promulgate ordinances (temporary law with a validity of 120 days) where Parliament is not and session circumstances necessitate immediate action. Similarly, a governor of a province may promulgate ordinances valid for 90 days. Such ordinances, during their period of validity, have the same status as Acts of Parliament or of the respective provincial assembly.

The Prime Minister must be a member of the National Assembly. Members of the Federal Cabinet must be members of either house of Parliament. Chief ministers of the provinces and members of provincial cabinets must be members of the respective provincial assembly. Under the Constitution, each cabinet is collectively responsible to the respective legislature.

Pakistan has an independent judiciary. The courts of the magistrate, in respect of criminal matters, and the courts of the civil judges, in respect of civil matters are the courts of first instance. An important exception is the High Court of Sindh, which has original jurisdiction in matters where the pecuniary value of the subject matter exceeds 15 millionn rupees. Appeals from decisions of the magistrates are heard by sessions judges, whereas appeals from decisions of civil judges are heard by district judges. Appeals from decisions of District and sessions judges are heard by the High Courts. Each province has a High Court. In addition to having jurisdiction to hear appeals, the High Courts may issue writs or orders against federal and provincial governments and against persons performing functions in connection with the affairs of such governments, including companies owned and controlled by such governments. The Supreme Court is the highest court of the land. Aside from jurisdiction to hear appeals from decisions of the High Courts, the Supreme Court has original jurisdiction to issue orders in public interest matters (matters of public importance affecting the enforcement of constitutionally guaranteed fundamental rights), either on its own motion or on the application of any person. In keeping with the common law tradition of binding precedent, judgments of the Supreme Court are binding on all courts in Pakistan and judgments of a High Court are binding on all courts subordinate to it.

Although the system of government necessarily requires overlap between executive and legislative functions as stated above, the doctrine of separation of powers has been developed by the superior courts to a large extent, particularly to ensure independence of the judiciary. In recent years the Supreme Court has handed down far-reaching judgments on the judicial appointments process that have cited as one of their primary bases the doctrine of separation of powers.

A number of major statutes in effect today in Pakistan date from the colonial era. Examples of such statutes include the Contract Act 1872; the Code of Civil Procedure 1908; the Pakistan Penal Code, 1860; and the Transfer of Property Act 1882. Although amendments have been introduced to bring these laws into line with the demands of the contemporary society and commerce, the process is often piecemeal. Some outdated provisions remain unaltered, such as the Contract Ac, 1872, which attempted to codify the English common law relating to contracts, but which has since not kept pace with the development and evolution of common law contracts principles. Successive governments have recognised the need to update statutes. The last government had taken the initiative to promulgate the Companies Act 2017, which supersedes the Companies Ordinance 1984.

The past decade has seen courts become more assertive in enforcing their orders and far less hesitant in passing judgments against the government. Increased judicial intervention has further sensitised businesses to the requirement to ensure compliance with applicable laws. An area of law that has seen a marked increase in enforcement in recent years is tax collection. There has been a concerted effort by the government to tap Pakistan's dormant tax potential.

Pakistan is a litigious society, notwithstanding the substantial delays that beset litigation in Pakistan owing to overburdened courts and considerable backlog. Though litigation is cumbersome and at times expensive, parties to disputes nevertheless resort to litigation as the courts readily grant interim relief where appropriate. In many commercial disputes, the grant of interim relief mitigates against the delays in final resolution.

Regulators are active and powerful in certain areas, such as the power, oil and gas, banking and company law.

Foreign investors draw comfort from Pakistan's statutes and legal and regulatory system, which are considerably more developed than other developing countries in Africa and the Middle East. Domestic and foreign arbitration are gaining currency as a means of resolving commercial disputes. Arbitration agreements and awards are enforced by courts in Pakistan. Given the recent improvement in the law and order situation, particularly in Karachi (a commercial hub), coupled with the recently democratically elected national government indicating political stability and improving economic indicators, Pakistan compares well with other countries in the region as an investment friendly destination.

3 | What are the main sources of civil and administrative law applicable to companies?

The main laws applicable to companies are as follows:

- the Companies Act 2017 (the Companies Act);
- the Securities Act 2015 (the Securities Act);
- the Contract Act 1872;
- the Competition Act 2010 (the Competition Act);
- the Income Tax Ordinance 2001;
- the Sales Tax Act 1990;
- the Federal Excise Act 2005;
- the Customs Act 1969;
- the respective provincial statutes levying sales tax on services;
- the Transfer of Property Act 1882;
- the Foreign Exchange Regulation Act 1947;
- the Industrial Relations Act 2012;
- the Companies Profits (Workers' Participation) Act 1968; and
- the Workers' Welfare Fund Ordinance 1971.

Dispute resolution

4 | How does the court system operate with regard to large commercial disputes?

Generally, there is no distinction in law between the treatment of commercial and other civil disputes. There are several special courts and tribunals courts in Pakistan that deal with specified areas of law, including banking courts, insurance tribunals and tax tribunals.

With respect to large civil disputes, the Sindh High Court has original jurisdiction in any suit arising in Karachi the value of whose subject matter exceeds 15 million rupees. Where the value of the subject matter in any suit arising in Karachi is less than the aforementioned values, or where the suit arises elsewhere in Pakistan, such suit must be instituted before the Court of the Civil Judge. In appropriate cases, where relief is sought against the government or other persons performing affairs in connection with the government, a petition may be filed directly before a High Court for issuance of appropriate writs (directions).

Large commercial disputes often entail voluminous documentary and other evidence, which may cause more delays when brought before a court of law. By way of immediate recourse and to preserve the subject matter of the dispute, courts in Pakistan grant immediate injunctive relief where appropriate.

5 | What legal recourse do consumers typically have against businesses?

Provincial consumer laws provide for the establishment of consumer courts. Several kinds of complaints may be filed before the consumer courts, including claims for damages arising out of inadequate warning on products, defects in design or construction of products and non-conformity of products with warranties provided by their respective manufacturers. Consumer courts are more expeditious than other courts.

6 | How significant is arbitration as a method of dispute resolution?

Arbitration has a well-developed tradition in Pakistan. In recent years, arbitration has been gaining more favour because it is more expeditious than other methods of dispute resolution; and the parties appoint arbitrators who are usually experts on the related areas of law.

To enforce arbitral awards, the respective parties must file an application for the enforcement of such arbitral awards before a court of competent jurisdiction.

For cross-border or commercial agreements, arbitration is usually used to resolve disputes, and international arbitration is increasingly being adopted for the purpose of dispute resolution between parties in Pakistan. Court proceedings, however, still serve as the primary method of dispute resolution in the country.

For information pertaining to the enforcement of foreign arbitral awards, see question 8.

7 | What other methods of dispute resolution are commonly used?

Most of Pakistan's population resides in rural areas. In some such areas, parties to disputes elect to have their civil disputes adjudicated by a council of village elders. This informal system of dispute resolu- tion has been declared illegal by some courts of Pakistan. However, the practice of referring disputes to such elders continues owing to the process being much quicker than the courts and due to social practices. Mediation as a means of dispute resolution is a new concept in Pakistan yet to gain currency as parties to disputes generally do not see any utility in mediation.

8 | How easy is it to have foreign court judgments and foreign arbitral awards recognised and enforced in your jurisdiction?

Pakistan ratified the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) in 2005. The provisions of the New York Convention were incorporated into domestic law by means of an Ordinance in 2005.

The prevalent law in Pakistan governing foreign judgments and arbitral awards is the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011, which allows foreign arbitral awards to be enforced in Pakistan as if they were an order of a court of Pakistan. Where parties agree to arbitration as the exclusive mode of dispute resolution under an agreement, if either party takes a matter to court instead of arbitration, the court refers the party to arbitration.

Pakistan enforces decrees of those countries with which it has signed a treaty or agreement for reciprocal recognition of judgments and decrees. The Code of Civil Procedure 1908 provides that to enforce a foreign decree, a certified copy of such decree of any of the superior courts of the United Kingdom or any 'reciprocating territory' must be filed in a district court of Pakistan, and such decree may be executed in Pakistan as though it had been passed by such district court. Fiji, Singapore, the Australian Capital Territory, New Zealand and the Northern Territory of Australia have been declared to be 'reciprocating territories' for the purpose of enforcement of decrees. Moreover, the Code of Civil Procedure 1908 also recognises all foreign judgments as conclusive as to any matter thereby directly adjudicated between the same parties or between parties under whom they claim or any of them litigating under the same title, subject to certain exceptions.

Foreign investment and trade

9 | Outline any relevant treaty organisations, economic or monetary unions, or free trade agreements.

Pakistan is a party to a multitude of treaty organisations and economic or monetary unions, including most notably the following:

Economic Cooperation Organization	South Asian Association for Regional Cooperation
International Finance Corporation	*Shanghai Cooperation Organization*
International Labour Organization	*United Nations*
International Monetary Fund	*World Customs Organisations*
Islamic Development Bank	*World Bank*
World Trade Organization	*World Intellectual Property Organization*

Pakistan is a party to several free trade and preferential trade agreements, including most notably:

Agreement on South Asian Free Trade Area	*Pak-China Free Trade Agreements*
Pak-Malaysia Agreement	*Pak-Sri Lanka Free Trade Agreements*
Pak-Indonesia Preferential Trade Agreement	*Pak-Iran Preferential Trade Agreements*

In addition to the foregoing, Pakistan benefits from the EU Generalised Scheme of Preferences.

10 | Are foreign exchange or currency controls in place?

Yes. The provisions of the Foreign Exchange Regulation Act (FERA) govern foreign exchange and currency controls.

Under FERA, no person resident in Pakistan can make payments to any person outside Pakistan except with the general or special permission of the SBP. SBP has granted general permission allowing resident individuals to establish foreign currency accounts with Pakistani banks. The SBP has also granted general permission for the repatriation of dividend and disinvestment proceeds by foreign investors subject to compliance with procedure and certain conditions with respect to purchase price of securities and such purchase price being sent to Pakistan from abroad through normal banking channels. The SBP has also granted persons resident in Pakistan general permission to take loans from non-residents and repay principal and interest subject to compliance with certain conditions.

The Foreign Exchange Manual, published by the SBP, is a compendium of general permissions granted by the SBP under FERA from time to time.

11 | Are there restrictions on foreign investment?

With the exception of specified industries such as arms and ammunitions, currency and minting, and high explosives, all sectors of the economy are open to foreign investment. There are upper limits on investment by foreigners in newspapers, TV channels and airlines in Pakistan.

There is no minimum requirement for the amount of foreign equity investment in any sector. There is no upper limit on the share of foreign equity that may be invested, except in specific sectors including airlines, agriculture, banking and media.

12 | Are there grants, incentives or tax reliefs for foreign investors or businesses?

Yes, the following grants and incentives are available to foreign investors or businesses:

- incentives for ease of entry and facilitation under the Investment Policy 2013; and
- treaties for the avoidance of double taxation (exemption from various taxes and duties).

Aside from the grants and incentives for foreign investors, there are specific laws to protect foreign investors, such as the Foreign Private Investment (Promotion and Protection) Act 1976 and the Protection of Economic Reforms Act 1992.

13 | What are the main taxes that apply to cross-border or foreign-owned business and investors?

Pursuant to section 109A of the Income Tax Ordinance 2001 (ITO), introduced by way of Finance Act 2018, income attributable to a 'controlled foreign company' will be included in the taxable income of a resident person for a tax year.

A 'controlled foreign company' means a non-resident company if:

- more than 50 per cent of the capital or voting rights of the non-resident company are held, directly or indirectly, by one or more persons resident in Pakistan or more than 40 persons resident in Pakistan or more than 40 per cent of the capital or voting rights of the non-resident company are held, directly or indirectly, by a single resident person in Pakistan;
- tax paid, after taking into account any foreign tax credits available to the non-resident company, on the income derived or accrued, during a foreign tax year, by the non-resident company to any tax authority outside Pakistan is less than 60 per cent of the tax payable on the said income under the ITO;
- the non-resident company does not derive active business income; and
- the shares of the company are not traded on any stock exchange recognised by law of the country or jurisdiction of which the non-resident company is resident for tax purposes.

Income of a controlled foreign company is an amount equal to the taxable income of that company determined in accordance with the provisions of the ITO as if that controlled foreign company is a resident taxpayer, and will be taxed at 15 per cent.

The amount of attributable income for a tax year will be computed by multiplying the income of a controlled foreign company by the percentage of capital or voting rights, whichever is higher, held by the person, directly or indirectly, in the controlled foreign company.

The attributable income will be treated as zero, if the capital or voting rights of the resident person is less than 10 per cent. Income of a controlled foreign company will be treated as zero, if it is less than 10 million rupees.

Section 101A of the ITO states that any gain arising from the disposal or alienation outside Pakistan of any asset located in Pakistan of a non-resident company, is chargeable to tax in Pakistan. Where the asset is any share or interest in the non-resident company, the asset will be treated as located in Pakistan if the share or interest derives its value wholly or principally from the assets located in Pakistan and shares or interest of 10 per cent or more of the share capital of the non-resident company are disposed or alienated.

The share or interest will be treated to have derived its value principally from the assets located in Pakistan if on the last day of the tax year preceding the date of transfer of the share or interest, the value of such assets exceeds 100 million rupees and represents at least 50 per cent of the value of the assets owned by the non-resident company.

Where the entire assets of the non-resident company are not located in Pakistan, the income of the non-resident company, from disposal or alienation outside of Pakistan of a share or interest in the non-resident company will be treated as located in Pakistan to the extent it is reasonably attributable to assets located in Pakistan and determined in the prescribed manner. The party disposing of the capital asset is liable to pay the tax. Tax in respect of the foregoing will be charged at either 20 per cent of the fair market value less cost of the acquisition of the asset or 10 per cent of the fair market value of the asset, whichever is higher.

In addition to the above, equity investments made by foreign investors are subject to withholding tax on dividends and profit on debt. Dividends payable to foreign shareholders of Pakistani companies are subject to withholding tax on dividends. Similarly, profit on debt payable to foreign investors is subject to withholding tax. Sales of capital assets, including immovable property and securities, are subject to capital gains tax.

Income tax distinguishes between individual income tax and corporate income tax. Income tax is payable on a person's income at the rates prescribed by the Income Tax Ordinance, 2001, ranging from 7 per cent to 35 per cent. The total income of a person for a tax year is the sum of the person's income under each head of the following heads: salary, income from business, income from property and capital gains and income from other sources.

The rate of corporate tax imposed on the taxable income of a company (other than a banking company is):

- 32 per cent for the tax year 2016;
- 31 per cent for tax year 2017;
- 30 per cent for tax year 2018; and
- 29 per cent for tax year 2019 and subsequent tax years.

Regulation

14 | Which industry sectors are regulated or controlled by the government?

The following key industry sectors are regulated by the government:

- aviation;
- banking;
- drugs and pharmaceutical;
- electricity;
- electronic media;
- insurance;
- intellectual property;
- medical and dental;
- oil and gas;
- power projects and related infrastructure; and
- telecommunication.

15 Who are the key industry regulators, and what are their powers?

- The Securities and Exchange Commission of Pakistan regulates capital markets, non-banking financial companies and the insurance business.
- The SBP regulates the banking industry.
- The National Electric Power Regulatory Authority regulates the generation, distribution and transmission of electricity.
- The Oil and Gas Regulatory Authority regulates the midstream and downstream oil and gas industry.
- The Directorate General of Petroleum Concessions is the regulatory authority for all upstream exploration and production activities in Pakistan.
- The Pakistan Telecommunication Authority regulates the establishment, operation and maintenance of telecommunication systems and the provision of telecommunication services in Pakistan.
- The Civil Aviation Authority is responsible for the regulation and control of civil aviation activities in Pakistan.
- The Pakistan Electronic Media Regulatory Authority is responsible for the regulation of all broadcast media and distribution services in Pakistan established for the purpose of international, national, provincial, district, local or special target audiences.
- The Drugs Regulatory Authority of Pakistan regulates the manufacture, import, export, storage, distribution and sale of therapeutic goods.
- The Pakistan Medical Commission is responsible for, inter alia, registration of medical practitioners and dentists; establishment of standards of basic and higher qualifications in medicine and dentistry in Pakistan and inspection and approval of hospitals for house jobs.

16 What are the other main enforcement authorities relevant to businesses?

- The Competition Commission of Pakistan (CCP) is an independent quasi-regulatory, quasi-judicial body that helps ensure healthy competition between companies. The CCP is responsible for enforcing competition laws, reviewing and clearing mergers and prohibiting the abuse of a dominant position in the market.
- The Federal Board of Revenue is the revenue collection agency of the federal government of Pakistan.
- The Securities and Exchange Commission of Pakistan (SECP) is responsible for the regulation of the corporate sector and capital markets; supervision and regulation of insurance companies and supervision and regulation of non-banking finance companies and private pension schemes.
- The SBP is the central bank of Pakistan and is in charge of the regulation of the banking sector.
- The National Accountability Bureau is the principal anti-corruption investigation and enforcement authority in Pakistan.
- The Federal Investigation Agency is the investigation agency primarily responsible for enforcing anti-money laundering, financial and cybercrime laws.

17 On which areas have regulators particularly focused their recent enforcement activities?

Pursuant to the recently enacted Securities Act, it is now mandatory for every director, executive officer or substantial shareholder of a listed company to give notice in writing to the company of his beneficial ownership in the listed equity securities of the company or any other nature of securities as may be prescribed by the SECP or any change therein.

The Securities Act also provides that in the event that any director, executive officer or substantial shareholder of a listed company, irrespective of intention, makes any gain computed in the prescribed manner, by the purchase and sale of any beneficially owned listed equity securities of either the same class, or any other nature of securities as may be prescribed by the SECP, within six months, such director, executive officer or substantial shareholder shall make a report to the SECP in the prescribed form within seven days beginning with the day on which the gain accrues.

The Benami Transactions (Prohibition) Act 2017 criminalises benami transactions, which are transactions where the person (beneficial owner) pays for the purchase of an asset in the name of another person (benamidar or ostensible owner) with the objective that the property shall be held by the benamidar for the benefit of the beneficial owner. Such transactions were widely used for concealing wealth, tax evasion and facilitating corruption. Note that benami transactions are different from trusts; the latter are permissible under Pakistan law.

The Federal Board of Revenue (FBR) has consistently experienced administrative and policy issues. As such, the current government formed by Pakistan Tehreek-e-Insaf has frequently emphasised the need for reform in the tax machinery to enhance the narrow income tax base of the country. Pakistan has embarked on an ambitious US$400 million tax reform programme in partnership with the World Bank. At a macro level, the project has two components: the results-based component and the investment financing component. The results-based component is worth US$320 million and is further divided into four main objective areas, namely, Controlling Taxpayer Obligations (US$104.5 million), Simple and Transparent Tax System (US$98 million), Facilitation of Compliance (US$72 million) and Institutional Development (US$45.5 million). The investment financing component, worth US$80 million, will be used to upgrade the ICT systems currently being used by the FBR.

Compliance

18 What are the principal bribery, corruption and money laundering concerns for businesses?

Corruption is a criminal offence under Pakistani law and includes bribery of a government servant by individuals or by private or commercial entities. Numerous Pakistani laws make it unlawful for public servants to accept benefits in connection with their official duties. In some cases, there is a presumption that such a benefit will be considered to be in connection with an official's duties, such that there is a presumption of an improper purposes.

Pakistan does not, however, have a law similar to the US Foreign Corrupt Practices Act, making it unlawful to bribe a foreign public official.

19 What are the main data protection and privacy risks for businesses?

The Prevention of Electronic Crimes Act 2016 (PECA) provides for data protection and privacy risks in Pakistan. PECA was promulgated in August 2016, and has introduced various offences for the purposes of data protection, listed herein below:

- unauthorised access to information system or data;
- unauthorised copying or transmission of data;
- interference with information system or data;
- unauthorised access to critical infrastructure information system or data;
- unauthorised copying or transmission of critical infrastructure data;
- interference with critical infrastructure information;
- cyberterrorism;
- hate speech;
- electronic forgery and fraud;

- making, obtaining or supplying device for use in offence;
- unauthorised use of identity information or SIM cards, etc;
- tampering, etc of communication equipment;
- unauthorised interception;
- offences against dignity of a natural person;
- offences against modesty of a natural person, such as publicly exhibiting or displaying or transmitting any information that superimposes a photograph of the face of a natural person over any sexually explicit image or video or includes a photograph or a video of a natural person in sexually explicit conduct;
- offences against the modesty of a minor;
- child pornography;
- malicious code;
- cyberstalking; and
- spamming and spoofing.

PECA provides for the establishment of an investigative agency for the purpose of investigating any complaints pertaining to any offences under this Act. The Federal Investigative Agency has been appointed by the federal government as the investigative agency under PECA.

PECA empowers the Pakistan Telecommunication Authority to remove or block access to information through any information system if it considers it necessary in the interest of public order.

20 | What are the main anti-fraud and financial statements duties?

Anti-fraud duties

Companies must ensure that all information furnished to the SECP gives a fair and accurate portrayal of the company. The following acts are offences under the Companies Act in respect of the aforementioned:

- falsification of books of the company;
- false statement in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of the Companies Act or pursuant to an order or direction given under the Companies Act.

Financial statements duties for companies in Pakistan

All companies must appoint auditors to audit their annual accounts. Audited accounts must be presented before the shareholders of the company at its annual general meeting for their approval.

All companies with a minimum paid-up capital of 1 million rupees must submit a copy of their annual audited accounts, along with their directors' and auditor's reports, to the SECP within 30 days of the meeting at which the same were approved.

The accounts must be prepared in accordance with the International Financial Reporting Standards and the International Accounting Standards.

21 | What are the main competition rules companies must comply with?

The Competition Act is the primary statute that regulates competition in Pakistan. The said act extends to the following principal areas: abuse of dominant position; prohibited agreements that restrict, reduce or distort competition in the relevant market; deceptive marketing practices; and approval of mergers of undertakings.

Under the Competition Act, where a merger of undertakings meets the prescribed thresholds (in respect of value of gross assets of the undertaking, annual turnover of the undertaking in the preceding year, and value of shares being acquired (where applicable)), the parties to the merger must obtain the approval of the CCP before the consummation of the merger.

22 | Outline the corporate governance regime.

Management structure

Companies are managed by the board of directors, who are elected by the shareholders of the company. The chief executive of the company is appointed by the board of directors.

Management restrictions

Powers of the directors

The following decisions are approved by the board of directors of a company:

- approval of bonuses of employees;
- making loans;
- investing the funds of the company;
- issuing shares;
- borrowing money; and
- taking all such decisions regarding the business of the company as are not required to be taken by the shareholder in the general meeting.

Powers of the shareholders

Certain decisions must be approved by the shareholders in a general meeting of the company, such as:

- election of directors;
- appointment of auditors;
- investment in associated undertakings;
- alteration of memorandum and articles of association of the company; and
- increase in the company's share capital.

23 | Can business entities incur criminal liability? What are the sanctions for businesses, related companies and their directors and officers for wrongdoing and compliance breaches?

In addition to their officers who are party to the offence, companies themselves can incur criminal liability for offences under the Companies Act and other laws. The form of penalty applicable to companies is a fine.

Business operations

24 | What types of business entity are most commonly used by foreign investors and why? What are the main requirements for their establishment and operation?

The most commonly used business entity by foreign investors is a private limited company, as the procedure for incorporation is fairly straightforward and relatively quick. Moreover, as compared to a public limited company, a private limited company has fewer corporate governance requirements.

The SECP, inter alia, regulates the incorporation, management and operation of companies and branch offices in Pakistan. To incorporate a private limited company in Pakistan, an application must be made to the SECP to submit the following documents and prescribed forms:

- the memorandum and articles of association of the company;
- copies of national identity cards (for resident subscribers);
- copies of passports duly certified and attested by the Pakistan embassy of the relevant country (for non-resident subscribers);
- a declaration of compliance with the requirements of registration;
- notice of situation of the registered office, the address where the company's registered office is likely to be situated;

- particulars of directors and other officers of the company; and
- a copy of the original paid challan (that is, the receipt evidencing payment of registration fee).

The process of incorporation of a private limited company can take up to one week from the day the requisite documentation is submitted to the SECP.

In the case of incorporation of a company by foreign shareholders, transfer of shares to foreign persons or appointment of foreign directors, ex post facto approval of the Ministry of Interior (MOI) is required. Details in respect of the individual or corporate foreign entities must be submitted on a prescribed form to the MOI after which the MOI issues a no objection certificate (NOC). The NOC is an ex post facto requirement and the application process therefore does not delay incorporation, share transfer or appointment of director(s).

The reporting requirements prescribed by the Companies Act include the filing of the annual returns in the prescribed form with the Registrar within 30 days of the date of the annual general meeting held in that year. Companies must also file annual accounts with the SECP. The foregoing requirement does not apply to private companies the paid-up capital of which does not exceed 10 million Pakistani rupees.

The official website of the SECP (www.secp.gov.pk) provides further information about registration in the companies register along with the reporting requirements.

25 Describe the M&A market and the merger control regime. How easy is it to complete deals in your jurisdiction?

Surging business confidence resulting from an improvement in the security situation and performance of the economy and increased political stability have created conditions for increased M&A activity. The current government has shown a strong inclination in favour of privatisation. Recent years have seen M&A activity in the food, telecoms, banking and energy sectors.

The merger control regime is primarily governed by the mandatory public offer requirements prescribed in the Securities Act, which applies to acquisition of voting shares or control of a listed company. Furthermore, from a competition perspective, the Competition (Merger Control) Regulations 2016 require all undertakings intending to acquire the shares, assets or control of another undertaking, to apply for clearance from the CCP if the transaction meets the prescribed thresholds.

Generally, it is not difficult to complete deals in Pakistan, however, depending on the specifics of a deal, particularly if it involves companies in regulated sectors or state entities, it may take longer to complete.

The legal framework surrounding M&As is relatively well developed and regulators are well versed with the market.

26 Outline the corporate insolvency regime. Is bankruptcy protection available for corporates?

A creditor of a company may by petition apply for the winding up of a company. The SECP may investigate the affairs of a company if the financial position of the company is such as to endanger its solvency.

Apart from the SECP, a court may order the removal or restructuring of the management of a company whose solvency is endangered, or order its winding up. All the property and effects of the company shall be deemed to be in the custody of the court from the date of the winding-up order of the company.

From the date of commencement of the winding up of a company, the official liquidator or the liquidator shall be deemed to have taken the place of the directors, chief executive and managing agents of the company.

The Corporate Rehabilitation Act 2018 was promulgated on 5 March 2018, which is based on Chapter 11 of the US Bankruptcy Code and allows corporates to file a petition in the High Court for an order of mediation that is supported by a plan of rehabilitation. Ultimately, the Court has the power to approve a plan of rehabilitation in accordance with the said act.

Employment

27 How easy is it to enter into and terminate employment contracts?

The West Pakistan Shops and Establishments Ordinance 1969 (Shops and Establishments Ordinance) applies to all persons employed in shops and commercial, industrial and other establishments. The labour laws of Pakistan do not regulate employees working in a supervisory or managerial capacity, and as such, the employment of such persons is regulated by the terms stipulated in their respective employment contracts. The Shops and Establishments Ordinance requires a minimum of one month's notice or payment in lieu to be given to an employee on termination.

The labour laws regulate the employment of 'workmen', which includes any person employed in any industrial or commercial establishment to do any skilled or unskilled, manual or electrical work for hire or reward other than a person employed in a managerial or administrative capacity.

The Industrial and Commercial Employment (Standing Orders) Ordinance 1968 (the 1968 Standing Orders) apply to all industrial and commercial establishments in Pakistan wherein 20 or more workmen are employed, directly or through any other person. Under the 1968 Standing Orders, any workman terminated for any reason other than misconduct must be given one month's notice or one month's wages in lieu of this notice. However, workmen found guilty of misconduct may be dismissed without payment of any compensation and may be liable to punishment under the 1968 Standing Orders. In the event that the employment is not terminated in the manner prescribed by the 1968 Standing Orders or in the case of an unfair dismissal, an employee can initiate action in the labour courts. In 2010, labour was devolved to the provinces, which have enacted laws largely mirroring the provisions of the previous federal laws.

There is no bar or restriction on entering into employment contracts under the relevant labour laws. Employment contracts can be either oral or written except in the case of a worker to whom the 1968 Standing Orders apply in which case the industrial or commercial establishment must issue a formal letter of appointment containing the terms of service. Employment of persons other than workers is governed by principles of contract law and, therefore, significantly less regulated than that of workers.

28 What are the key rights of local employees?

Workmen are legally entitled to:

- minimum wages;
- vacation and sick days;
- maternity leave;
- form trade unions;
- avail social security benefits from designated state institutions to which employers must contribute;
- avail old age benefits from designated state institutions to which employers must contribute; and
- an allocation in a fund that a company is required to establish and to which such company must contribute a portion of its annual profits.

29 What are the main restrictions on engaging foreign employees?

Foreign employees require a work visa to work in Pakistan, unless there is a visa abolition agreement in place between Pakistan and the employee's home country. An application must be submitted to the Board of Investment (BOI). The process takes four weeks and the processing fee is US$100 for one year work visa.

Pakistan also issues fast-track business visas within 24 hours to businessmen of the countries on the business visa list. They are valid for five years (multiple-entry) and the duration of each stay is restricted to three months. The documents required and the business visa list of countries is available at the official website of the BOI.

30 What are the other key employment law factors that foreign counsel, investors and businesses should be aware of?

The Labour Courts and the National Industrial Relations Commission generally tend to be pro-labour and take a more lenient view towards workmen in terms of enforcing their statutory rights. Their decisions are, however, subject to review by the High Court.

Intellectual property

31 Describe the intellectual property environment. How effective is enforcement and what are the key current issues?

Pakistan is a member of the World Intellectual Property Organization. Pakistan has also signed and ratified the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). Further, Pakistan is also a signatory to the Paris Convention for the protection of industrial property, which enables creators to ensure that their intellectual works are also protected in other countries. The principal statutes governing areas such as registration of intellectual property, infringement of intellectual property rights, prohibition on infringement and remedies and compensation with respect thereof in Pakistan are provided below:

- the Patents Ordinance 2000;
- the Trade Marks Ordinance 2001 (the 2001 Ordinance);
- the Registered Design Ordinance 2000 sets out the rules of protection for designs in Pakistan;
- the Copyright Ordinance 1962 sets out the rules on protection of copyright in Pakistan; and
- the Plant Breeders' Rights Act 2016.

The current key issues with respect to intellectual property in Pakistan mainly revolve around the protection of recognisable brands and software. Furthermore, owing to a lack of efficient software and organisation there tends to be a backlog of applications. However, the 2001 Ordinance affords protection to well recognised marks and marks registered in treaty countries.

Legal reform and policy

32 What are the key issues in legal reform, government policy and the economy?

Pakistan is ranked 108 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings. Pakistan's rank improved to 108 in 2019 from 136 in 2018. This is indicative of the regulatory environment in Pakistan becoming more conducive to business operations and offering stronger protections of property rights.

Pakistan's trade deficit, which had peaked at US$37.6 billion in FY18, decreased to US$31.8 billion in FY19. The trade deficit further decreased in the first half of FY 20. The reduction in trade deficit was primarily driven by the fall in imports. However, Pakistan has also recently experienced a growth in its exports. Pakistan's total exports expanded by 26.7 per cent YoY in Feb 2020, compared with an increase of 8.4 per cent YoY in the previous month.

There are several key developments in the economy, most notably, the inflow of Chinese investment estimated to be approximately US$50 billion pursuant to CPEC. This investment is almost exclusively targeted for infrastructure spending, largely for addressing the severe power crisis, and improving road and railway connectivity to aid integration within Pakistan as well as improving regional connectivity. Countries in the region, and those outside the region such as Russia and UK, have shown a keen interest in becoming part of CPEC. The government has also announced the development of nine special economic zones in Pakistan as part of CPEC. Such special economic zones will, inter alia, provide companies exemption from (1) custom-duties and taxes on certain plant and machinery imported into Pakistan and (2) income tax accruable in relation to the development, operation of such zones or commencing commercial production therein.

There has been a push towards introducing greater transparency, checks and balances in various legislative initiatives, most notably the Companies Act 2017, which, among other things, contains far-reaching disclosure requirements. Recently, with a view to increasing transparency, Pakistan and Switzerland signed a revised agreement on avoidance of double taxation with respect to taxes on income.

All provinces have now passed laws on the right to information. The most recent was the Sindh Transparency and Right to Information Act 2016, which provides for transparency and access to information in matters of public importance.

Under the Constitution, sales tax on goods is a federal subject whereas sales tax on services is a provincial subject. A particular challenge to businesses is the lack of harmonisation of tax rates among the provinces, discrepancies in provincial sales tax laws as to whether the tax is chargeable in the province from where the service is provided and/or received. This is compounded by provincial tax authorities' reluctance, despite statutory authority to allow input tax claims based on tax paid to the federal government on goods and vice versa. A further issue is the lack of clarity on the part of provincial tax authorities on the mechanism by which sales tax paid on services received from outside Pakistan (or indeed from outside such province) may be claimed as input tax.

It is estimated that just over one-tenth of an estimated seven million Pakistanis eligible to pay income tax, do so. In addition, the tax to GDP ratio of Pakistan remains low relative to countries with comparable levels of income. Therefore, in recent years, government policy has been geared towards bolstering tax enforcement. The introduction of higher withholding tax rates for persons who do not file tax returns and the prohibition of benami transactions (see question 17) are aimed at increasing compliance and enforcement.

Recently, there has been an increase in the circular debt related to the power sector, which remains a systemic issue, chiefly owing to the fact that tariffs charged from consumers are less than those the government is required to pay power producers, despite concerted efforts by recent governments to manage it. The introduction of a competitive bidding regime for the award of tariffs by NEPRA signals a move towards increased efficiency, which will address the fundamental cause of circular debt in the power sector going forward.

33 Are there any significant legal developments ongoing or pending? What are their effects on the business environment?

In a recent seminal judgment in the case of Mustafa Impex, the Supreme Court of Pakistan ruled that the Prime Minister cannot forward any bill to Parliament or approve any budgetary or discretionary expenditures without first seeking cabinet approval. The judgment reiterates that the executive authority of the government is vested in the Cabinet and cannot be delegated.

The Supreme Court also recently rejected all petitions against high court verdicts to uphold the Industrial Relations Act 2012 on the grounds that the same in incompletely enacted by Parliament as the subject of labour and trade unions was no longer in the legislative domain of the Parliament, but rather within the domain of the provincial assemblies. By way of background, in 2010, subjects of labour and employment devolved to Provinces under the 18th Amendment to the Constitution of Pakistan, as a result of which the Federal labour laws made applicable on Provinces under article 270AA(6) of the Constitution of Pakistan until replaced, amended or repealed by Provinces. The Supreme Court judgment states that the federal legislature does, but the provincial legislatures do not, have legislative competence to legislate to regulate trade unions functioning at trans-provincial level. The court further established that the Industrial Relations Act 2012 neither defeats the objectives of the 18th Amendment to the Constitution nor does it destroy or usurp provincial autonomy. Likewise, it was reiterated that the said act has been validly enacted by Parliament and is constitutional.

The Monitoring Committee of the National Finance Commission, a constitutional body tasked with determining the distribution of federal revenues between the federal and provincial governments, and among the latter, decided to establish a National Tax Council (NTC), a national body to resolve tax issues among centre and provinces. The establishment of the NTC, comprising the Adviser to the Prime Minister and finance ministers of the four provinces -- Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan -- was notified on 20 March 2020. According to the terms of reference, the NTC shall be responsible primarily for:

- recommending harmonisation of rates of tax across the country;
- formulating a model sales tax law on goods and services, harmonising the basis on which tax on goods and services is charged and recommending apportionment of sales tax on services in the course of inter-provincial trade;
- suggesting administrative measures across the country to reduce registration requirements for taxpayers and data sharing between tax administration bodies; and
- developing a mechanism to resolve tax disputes between the federal government and the provincial governments and amongst provincial governments.

The undertaking of such measures would alleviate the issues related to tax administration highlighted in the response to question 32. As regards recent statutes and regulations promulgated there- under, it is pertinent to note that to cater to the ever-growing provision of payment systems in Pakistan, the State Bank of Pakistan has recently promulgated Rules for Payment System Operators and Payment System Providers, Regulations for Electronic Money Institutions and Regulations for Digital On-Boarding of Merchants. The regulations address potential risks to ensure consumer protection in line with legal framework of the country while promoting digital payments and financial inclusion.

Resources and references

Asian Development Bank information on Pakistan’s economy
https://www.adb.org/countries/pakistan/economy

Dual tax agreements
https://www.fbr.gov.pk/international-taxation/51147/131227
Securities and Exchange Commission of Pakistan
www.secp.gov.pk

State Bank of Pakistan
www.sbp.org.pk/

Competition Commission of Pakistan
www.cc.gov.pk/

Board of Investment
http://boi.gov.pk/

Federal Board of Revenue
www.fbr.gov.pk/

Drug Regulatory Authority of Pakistan
www.dra.gov.pk/

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D-67/1, Block 4, Clifton
Karachi, 75600
Pakistan
Tel: +92 21 111 529 937

Mayhar Mustafa Kazi
mayhar.kazi@riaabg.com
Rafia Rauf
rafia.rauf@riaabg.com

www.riaabarkergillette.com

Mayhar Mustafa Kazi

Mayhar Mustafa Kazi is a partner at RIAA Barker Gillette, and an advocate of the High Courts. He practises from the Karachi office of the firm and has a broad range of experience advising multinational companies, local conglomerates, financial institutions, banks and governmental institutions on advisory, transactional and contentious commercial matters. Mayhar has acted for clients in several noteworthy cases regarding tax, company and electricity law in the High Court of Sindh and in special tribunals and courts. He also represents clients in both foreign and domestic arbitra- tion and pre-arbitral expert determination proceedings. Mayhar also acts on commercial matters, including company, contractual, finance, capital markets, oil and gas, electricity and tax arbitration. He has authored a number of publications, including 'Tax Challenges Faced by Pakistani Governments', which was published in *Tax Planning International Review*, Bloomberg, The Bureau of National Affairs, Inc.

Mayhar holds an LLB (Hons) degree from the London School of Economics and Political Science.

Rafia Rauf

Rafia Rauf is an associate at RIAA Barker Gillette practising in areas of tax, labour law, commercial law, project finance and corporate compliance.

Rafia holds a BA (Hons) degree in international relations from the University of Nottingham, a Graduate Diploma in law from the University of Law and a postgraduate diploma in legal practice from BPP University.