

---

CHAMBERS GLOBAL PRACTICE GUIDES

---

# Technology M&A 2023

---

Definitive global law guides offering  
comparative analysis from top-ranked lawyers

**Pakistan: Law & Practice**

Hasnain Naqvee, Shafaq Rehman,  
Adil Tirmizey and Zealaf Shahzad  
RIAA Barker Gillette

## Law and Practice

### Contributed by:

Hasnain Naqvee, Shafaq Rehman,  
Adil Tirmizey and Zealaf Shahzad  
RIAA Barker Gillette see p.20



## Contents

<b>1. Market Trends</b>	p.4	<b>6. Acquisitions of Public (Exchange-Listed) Technology Companies</b>	p.8
1.1 Technology M&A Market	p.4	6.1 Stakebuilding	p.8
<b>2. Establishing a New Company, Early-Stage Financing and Venture Capital Financing of a New Technology Company</b>	p.4	6.2 Mandatory Offer	p.8
2.1 Establishing a New Company	p.4	6.3 Transaction Structures	p.9
2.2 Type of Entity	p.4	6.4 Consideration; Minimum Price	p.9
2.3 Early-Stage Financing	p.5	6.5 Common Conditions for a Takeover Offer/Tender Offer	p.10
2.4 Venture Capital	p.5	6.6 Deal Documentation	p.11
2.5 Venture Capital Documentation	p.5	6.7 Minimum Acceptance Conditions	p.11
2.6 Change of Corporate Form or Migration	p.6	6.8 Squeeze-Out Mechanisms	p.11
<b>3. Initial Public Offering (IPO) as a Liquidity Event</b>	p.6	6.9 Requirement to Have Certain Funds/Financing to Launch a Takeover Offer	p.11
3.1 IPO v Sale	p.6	6.10 Types of Deal Protection Measures	p.11
3.2 Choice of Listing	p.6	6.11 Additional Governance Rights	p.12
3.3 Impact of the Choice of Listing on Future M&A Transactions	p.6	6.12 Irrevocable Commitments	p.12
<b>4. Sale as a Liquidity Event (Sale of a Privately Held Venture Capital-Financed Company)</b>	p.6	6.13 Securities Regulator's or Stock Exchange Process	p.12
4.1 Liquidity Event: Sale Process	p.6	6.14 Timing of the Takeover Offer	p.12
4.2 Liquidity Event: Transaction Structure	p.6	<b>7. Overview of Regulatory Requirements</b>	p.12
4.3 Liquidity Event: Form of Consideration	p.7	7.1 Regulations Applicable to a Technology Company	p.12
4.4 Liquidity Event: Certain Transaction Terms	p.7	7.2 Primary Securities Market Regulators	p.13
<b>5. Spin-Offs</b>	p.7	7.3 Restrictions on Foreign Investments	p.13
5.1 Trends: Spin-Offs	p.7	7.4 National Security Review/Export Control	p.14
5.2 Tax Consequences	p.7	7.5 Antitrust Regulations	p.14
5.3 Spin-Off Followed by a Business Combination	p.7	7.6 Labour Law Regulations	p.14
5.4 Timing and Tax Authority Ruling	p.7	7.7 Currency Control/Central Bank Approval	p.15
		<b>8. Recent Legal Developments</b>	p.16
		8.1 Significant Court Decisions or Legal Developments	p.16

<b>9. Due Diligence/Data Privacy</b>	p.16
9.1 Technology Company Due Diligence	p.16
9.2 Data Privacy	p.16
<b>10. Disclosure</b>	p.17
10.1 Making a Bid Public	p.17
10.2 Prospectus Requirements	p.17
10.3 Producing Financial Statements	p.17
10.4 Disclosure of Transaction Documents	p.17
<b>11. Duties of Directors</b>	p.18
11.1 Principal Directors' Duties	p.18
11.2 Special or Ad Hoc Committees	p.18
11.3 Board's Role	p.18
11.4 Independent Outside Advice	p.19

## 1. Market Trends

### 1.1 Technology M&A Market

The technology market in Pakistan grew significantly during the COVID-19 pandemic. Investments increased from USD65 million in 2020 to USD350 million in 2021. Put differently, 62% of overall funding for Pakistani start-ups was raised in 2021 alone.

The majority of start-ups in Pakistan are in their early stage of growth, as a result of which there has been limited M&A activity locally over the past twelve months. The following four deals stand out:

- the acquisition of Call Courier, an e-commerce logistics service provider, by Post-ex, a cash on delivery and revenue finance start-up;
- Venturedive, an IT services company, acquiring NexDegree to expand into a new business vertical of data analytics;
- the acquisition of Tez Financial Services, a consumer-lending fintech company, by Zood Pay, a buy now, pay later provider in the Middle East and Central Asia; and
- the acquisition of Cloudways, a cloud-hosting service, by Digital Ocean, a US-based cloud-hosting service provider.

The first two are examples of an M&A strategy towards growth and the last two are examples of exits.

The war in Ukraine has not had any noticeable impact on deal activity in Pakistan.

## 2. Establishing a New Company, Early-Stage Financing and Venture Capital Financing of a New Technology Company

### 2.1 Establishing a New Company

New start-up companies incorporate their operating company in Pakistan, while a holding company is incorporated outside Pakistan to raise funding. The operating companies are incorporated as private limited companies with the Securities and Exchange Commission of Pakistan (SECP), and the process of incorporation takes at least seven days after submission of documents, although collating such documents for companies with non-Pakistani shareholders and directors may take several weeks. In the case of certain fintech companies, the relevant law requires them to set up as a public limited company. The incorporation of these specialised companies (known as non-banking finance companies, or NBFCs) takes longer, as there is an additional step of obtaining “permission to incorporate” from the SECP, which typically takes up to six months.

There is no minimum capital requirement for a private limited company. However, the minimum initial capital requirement for fintech companies is higher and varies according to the licence required for their specific business. An entity seeking to obtain an Electronic Money Institution licence requires an initial capital of PKR200 million, a digital retail bank licence requires PKR1.5 billion, a lending NBFC requires PKR100 million, and a deposit-taking lending NBFC requires PKR1 billion.

### 2.2 Type of Entity

Entrepreneurs are advised to incorporate a private limited company as these are corporate vehicles which are well understood within the

financial and technology community, making it easier to close financing transactions and undertake mergers and acquisitions with such entities. However, certain fintech companies are required to incorporate a public limited company under the regulatory regime governing their activities (see **2.1 Establishing a New Company**).

### **2.3 Early-Stage Financing**

Seed financing typically comes from family, friends, individual investors and from family offices and corporate investors who are well versed in this space. Until recently, corporate groups in Pakistan (which largely still remain family owned) have remained inactive in start-up investments but the growing publicity around start-up companies and their blue-chip investors, is shifting this trend. A larger number of corporate groups investing in local venture capital funds or in start-ups directly are expected very soon.

### **2.4 Venture Capital**

Home country venture capital financing comes from a few family offices and a handful of venture capital funds. Pakistan has around nine private equity and venture capital (PE&VC) firms incorporated locally and so far venture capital funds have been established by Laksons Venture Capital, IJARA Capital Partners Limited and JS Investments Limited. The remaining PE&VC firms are in the process of establishing their venture capital funds.

Foreign venture capital funds such as Sequoia Capital Venture Fund, 500 Global, Pioneer Fund, Kleiner Perkins, Tiger Global, Soma Capital, Sapphire Venture, JAM Fund have made investments in Pakistan and have played an instrumental role in highlighting Pakistan's technology and start-up companies globally.

### **2.5 Venture Capital Documentation**

There are standardised documents used in venture capital funding involving a term sheet, share subscription agreement, shareholders' agreement, convertible notes and simple agreement for future equity (SAFE) notes. The term sheet is the foundation on which the transaction is built. It covers all important terms on which the venture capital firm will offer finance, such as valuation of the company, form of investment, preferential rights demanded by the venture capital firm, details of restrictions on the management, and any veto rights.

The term sheet is followed by a share subscription agreement and a shareholders' agreement. These agreements include provisions relating to anti-dilution, board of directors, tag and/or drag-along rights, right of first refusal, deadlock resolution, exit of the investor, amongst others. In addition, the venture capital firm conducts a due diligence of the founders and the company, which includes, without limitation, ensuring that all required approvals, registrations and licences for commercial operations have been obtained, proper corporate records are maintained, all assets/contracts are owned by the company and if there are any undisclosed liabilities. The venture capital firm may also require amendments to the memorandum and articles of association of the company.

In addition, holding companies of start-ups raise financing through the issuance of SAFE notes which are converted into shares at a discounted price on the occurrence of a trigger event. These SAFE notes typically carry valuation caps which enable the investor to determine the highest conversion rate which will be applicable.

## 2.6 Change of Corporate Form or Migration

The structure being followed in Pakistan involves a start-up incorporating its operating company within Pakistan, which proceeds to apply for a specialised licence that may be required for its activities. The initial months of the operating company's business are financed by family, friends and angel investors. Subsequently, the operating company incorporates a foreign holding company in a tax-friendly jurisdiction to obtain financing from foreign venture capital funds. While previously there was a restriction on Pakistan residents from remitting funds to incorporate a company outside Pakistan, this model is now recognised and supported by the foreign exchange laws of Pakistan (see 8. Recent Legal Developments).

## 3. Initial Public Offering (IPO) as a Liquidity Event

### 3.1 IPO v Sale

Pakistan has not witnessed many liquidity events, but the few that have taken place have been through a bilateral sale process. The few technology companies that have pursued an IPO have done so to raise capital to expand their business (rather than as a liquidity event). Recently, the Pakistan Stock Exchange introduced a growth enterprise market (GEM) board which has less stringent requirements for listing, to encourage technology and high-growth companies to list on the stock exchange to access additional capital. Currently, three companies are listed on the GEM board, two of which are technology companies: Supernet Limited; XB; and BlueEx (a brand of Universal Network Systems).

## 3.2 Choice of Listing

Given the trend of start-up companies to incorporate holding companies outside Pakistan, the option of listing the holding company on a foreign exchange and the operating company on the local exchange exists. It is likely that both options will be evaluated at the time of such exit to determine which jurisdiction offers the best valuation.

## 3.3 Impact of the Choice of Listing on Future M&A Transactions

We do not see a listing on a foreign exchange as affecting a future sale, especially since squeeze-out rules exist in Pakistan too.

## 4. Sale as a Liquidity Event (Sale of a Privately Held Venture Capital-Financed Company)

### 4.1 Liquidity Event: Sale Process

The form a sale process takes is decided on a case-by-case basis. Up to now, sales have been undertaken through a bilateral negotiation as opposed to an auction.

### 4.2 Liquidity Event: Transaction Structure

The limited exits that have taken place in Pakistan have been through a 100% share sale, with the retention of the founders and key employees who continue to run the business. For instance, the acquisition of EdMatrix, a Pakistan based ed-tech platform, by Abwaab, a Jordanian ed-tech platform, involved Abwaab acquiring 100% of EdMatrix while the founders and other key personnel were retained to perform managerial functions and operate the company in Pakistan.

### 4.3 Liquidity Event: Form of Consideration

Experience has indicated cash transactions and combination transactions (ie, cash and stock) but not a pure stock-for-stock transaction.

### 4.4 Liquidity Event: Certain Transaction Terms

The founders, especially if they are also actively involved in running and managing the company, are expected to stand behind the representations, warranties and certain liabilities, such as for any non-compliance with the law, tax demands, etc. The venture capital investors are generally expected to represent and warrant only their clear and clean title to their respective shareholding in the company and their authority to enter into the transaction. Escrow/holdback is not customary for these purposes, although representations and warranties insurance has been sought by incoming investors through non-Pakistani insurers.

## 5. Spin-Offs

### 5.1 Trends: Spin-Offs

Spin-offs are not customary in the technology industry of Pakistan, primarily due to the fact that the industry is still young. However, a recent example of a spin-off is the transfer by Avanceon (an industrial automation company) of its operational maintenance support services business to a wholly owned subsidiary company, Octopus Digital. Avanceon spun off its business in order to list its subsidiary to raise funds and expand its operational maintenance support services business.

### 5.2 Tax Consequences

A spin-off in Pakistan typically takes the shape of a demerger whereby an existing company

transfers the assets and liabilities relating to a business to a newly formed company (which can be either a subsidiary of the existing company or a company under the common ownership of its shareholders).

A spin-off which is executed through a scheme of arrangement and sanctioned by the competent forum (depending on the size of the companies involved, this will be either a High Court or the Securities and Exchange Commission of Pakistan) will be tax free, ie, the transfer of assets from one company to the other will not result in a gain or loss. A demerger through a scheme of arrangement requires the approval of shareholders holding at least 75% of the voting shares, and other formalities such as a valuation report and updated audited financial statements. A demerger does not result in a tax event for the shareholders' level either, as typically the shareholders will incorporate a new company with nominal share capital and hence there is no "income" received by the shareholders, with the transfer of assets and liabilities being made to the new company.

### 5.3 Spin-Off Followed by a Business Combination

There is no restriction on a business combination that follows a spin-off. Typically, the scheme of arrangement which implements a spin-off captures a business combination, and, if that is part of the arrangement, an additional step is not required once the scheme of arrangement is sanctioned.

### 5.4 Timing and Tax Authority Ruling

A spin-off through a scheme of arrangement can be completed within four to six months provided that no objections are raised by the creditors of the transferor company, or any regula-

tory authority such as the SECP or Competition Commission of Pakistan.

A tax ruling is not a precondition to a spin-off.

## 6. Acquisitions of Public (Exchange-Listed) Technology Companies

### 6.1 Stakebuilding

Depending on the risk appetite of acquirers, they may first acquire a minority stake in a public company and thereafter gradually increase such stake, or acquire a controlling interest at the outset. Such acquisitions are regulated by the Securities Act, 2015 (the “Securities Act”), read with the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2017 (the “Takeover Regulations”).

Any acquirer who acquires voting shares, which, taken together with voting shares, if any, held by the acquirer, would entitle the acquirer to more than 10% voting shares in a listed company is required to disclose the aggregate of his shareholding in that company to the said company, the securities exchange on which the voting shares of the said company are listed and the SECP. This disclosure is required to be made within two working days of the receipt of intimation of allotment of voting shares or the acquisition of voting shares, as the case may be. An acquirer may acquire additional voting shares within a period of twelve months after acquisition of voting shares without making a further disclosure in case the total acquisition does not exceed an aggregate of 30%.

Separate to the above, every director, executive officer or substantial shareholder (a person who has an interest in shares of a company the nomi-

nal value of which is equal to or more than 10% of the issued share capital of the company or which enables the person to exercise or control the exercise of 10% or more of the voting power at a general meeting) of a listed company is required to submit to the SECP, in the prescribed form, a statement of beneficial ownership in the listed equity securities of the company or any other nature of securities as may be prescribed by the SECP, the particulars of any change in this interest, and any change in his position. This reporting requirement must be completed before the expiration of a period of seven days beginning with the day on which the requirement first arises.

The public announcement of the mandatory offer (discussed in **6.2 Mandatory Offer**) is required to give prescribed information, including reasons for acquiring shares or control of the target company and details regarding the future plan for the target company, such as whether after acquisition the target company would continue as a listed company or not.

### 6.2 Mandatory Offer

The mandatory requirement for an acquirer to make a public offer under the Securities Act is triggered where the acquirer intends to, directly or indirectly:

- acquire voting shares, which (taken together with voting shares, if any, held by such acquirer) would entitle the acquirer to more than 30% of the voting shares in a listed company; or
- acquire additional voting shares, where the acquirer already holds more than 30% but less than 51% of the voting shares of a listed company (provided that such acquirer will not be required to make a fresh public offer within



- a period of twelve months from the date of the previous public offer); or
- acquire control of a listed company (acquirer is required to make a public announcement of offer to acquire at least 50% of the remaining voting shares of the target company).

## 6.3 Transaction Structures

### Securities Act and Takeover Regulations

Acquisition of shares of a listed company is governed by the Securities Act read with the Takeover Regulations. The acquirer is compulsorily required to make a public offer to acquire voting shares of the listed company where the said acquisition meets the thresholds mentioned in **6.2 Mandatory Offer**. Certain transactions are exempt from the requirement to make a public offer, including the following: acquisition of voting shares in the ordinary course of business by banks and financial institutions as enforcement of security; a scheme of arrangement or reconstruction including amalgamation, merger or demerger; and allotment of voting shares by way of a rights issue.

### Companies Act, 2017

The Companies Act, 2017 (the “Companies Act”) provides a framework for schemes of arrangement for amalgamations and restructuring of companies. Applicable provisions, inter alia, allow companies to enter into a compromise or an arrangement with their members or creditors. Where a compromise or arrangement is proposed between a company and its members or any class of them, the SECP or High Courts (depending on the size of companies involved) may, on the application of the company or member of the company, order a meeting of the members of the company in such manner as the relevant forum directs. Additionally, there are some industry-specific regulations on mergers and acquisitions: for example, the framework for

mergers and acquisitions of banking companies is governed by the Banking Companies Ordinance, 1962, and the framework for acquisition of insurance companies has been provided in the Insurance Ordinance, 2000.

Schemes of arrangement and acquisitions through mandatory offers are both used to acquire listed companies.

### 6.4 Consideration; Minimum Price

Most companies within the technology industry are private limited companies. Cash is permissible in a merger, though it is more common for shares to be issued against the transfer of an undertaking. Under the Takeover Regulations the consideration for the voting shares in a listed company to be acquired by the acquirer can be payable in the form of, inter alia: cash; transfer or exchange of (i) shares, (ii) listed debt instruments, (iii) convertible debt securities, (iv) government debt securities; or a combination of the foregoing, subject at all times to prescribed conditions.

The Takeover Regulations set out a minimum price requirement for a takeover offer on the basis of whether or not the shares of the target company are frequently traded. Shares will be deemed to be frequently traded if they have been traded for at least 80% of the trading days during six months prior to the date of public announcement of offer and their average daily trading volume in the ready market is not less than 0.5% of its free float or 100,000 shares, whichever is higher.

If the shares of the target company are frequently traded, the public announcement of offer will be at the price which is highest amongst the following:

- the negotiated weighted average price under share purchase agreement(s) for the acquisition of voting shares of the target company;
- the highest price paid by the acquirer for acquiring the voting shares of the target company during six months prior to the date of public announcement of offer;
- the weighted average share price of the target company as quoted on the securities exchange during the last 180 days preceding the date of public announcement of offer;
- the weighted average share price of the target company as quoted on the securities exchange during 28 days preceding the date of public announcement of intention; and
- the price per share arrived at on the basis of net assets value carried out by a Chartered Accountant firm based on audited financial data not older than six months from the date of public announcement of offer made by the manager to the offer.

If the shares are not frequently traded, the public announcement of offer to acquire shares will be at the price which is highest amongst the following:

- the negotiated weighted average price under share purchase agreement(s) for the acquisition of voting shares of the target company;
- the highest price paid by the acquirer for acquiring the voting shares of the target company during six months prior to the date of public announcement of offer; or
- the price per share arrived at on the basis of net assets value carried out by a Chartered Accountant Firm based on the audited financial data not older than six months from the date of public announcement of offer made by the manager to the offer.

## 6.5 Common Conditions for a Takeover Offer/Tender Offer

For listed companies, the public offer by the acquirer is required to be made for such minimum number of voting shares and for such minimum offer price (as discussed in **6.4 Consideration; Minimum Price**) as prescribed under the Securities Act read with the Takeover Regulations. Moreover, the acquirer is also required to appoint a manager to the offer before making any public offer and the manager to the offer cannot be an associate, or a group company, of the acquirer or the target company.

In addition to the aforesaid, the Takeover Regulations set out the general obligations of the acquirer, which include that the acquirer will make its public announcement of offer only after careful and responsible consideration and the acquirer and its manager to the offer must be satisfied that it can and would continue to be able to implement the takeover offer in full. On or before the date of issue of the public announcement of offer, the acquirer is required to arrange the requisite security as provided under the Security Act and the Takeover Regulations and must ensure that firm financial arrangements for fulfilment of the obligations under the public offer and suitable disclosures in this regard have been made in the public announcement.

A public offer once made cannot be withdrawn, except in the circumstances prescribed under the Securities Act read with the Takeover Regulations, such as where a competitive bid has been made, the acquirer is a company and it has gone into liquidation or has been declared bankrupt before the completion of the acquisition process, or if the sole acquirer, being a natural person, has died or has been declared to be of unsound mind before the completion of the acquisition process.

## 6.6 Deal Documentation

Transaction parties can enter into negotiations for a share purchase agreement following a public announcement of intention. It is customary for the target company to give representations and warranties under a share purchase agreement.

## 6.7 Minimum Acceptance Conditions

A public offer by the acquirer may be made conditional upon a minimum level of acceptances and such minimum level must not be more than 35% of the remaining voting shares. The acquirer can still choose to accept the acceptances even if such acceptances, put together, do not reach the specified minimum level. The reason for this limitation is to ensure maximum participation of the public and preclude shareholding from being concentrated on a specific class of investors.

## 6.8 Squeeze-Out Mechanisms

One of the mechanisms to squeeze out dissenting shareholders is by way of a scheme of arrangement.

Where a scheme involving the transfer of shares or any class of shares in any company (the “transferor company”) to another company (the “transferee company”) has been approved by the holders of not less than nine tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may give notice in the specified manner to any dissenting shareholder that it desires to acquire the dissenting shareholder’s shares. When such a notice is given, the transferee company, unless the SECP thinks fit to order otherwise, will be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.

Takeover laws do not describe any squeeze-out mechanisms, although the SECP has been empowered to make regulations governing this process.

## 6.9 Requirement to Have Certain Funds/ Financing to Launch a Takeover Offer

The public offer is made by the acquirer through the manager to the offer. The acquirer and the manager to the offer are required to ensure that firm financial arrangements for fulfilment of the obligations under the public offer are available and suitable disclosures in this regard have been made in the public announcement. Further, the acquirer is required to furnish security for performance of its obligations under the public offer to the manager to the offer. Such security can be in the form of, inter alia, a cash deposit in an escrow account or a securities deposit or a bank guarantee.

## 6.10 Types of Deal Protection Measures

The Securities Act does not allow for deal exclusivity between the acquirer and the target company prior to the close of the public offer.

Where the acquisition does not attract the provisions of a mandatory offer, the acquirer may acquire any number of voting shares through a share purchase agreement. The acquirer and the target company will have the discretion to commercially agree on the terms of the said agreement, which may include exclusivity and confidentiality provisions. Further, while break-up fees are not regulated under the laws of Pakistan, the transaction parties may include relevant provisions relating to the levy of liquidated damages which are calculated in accordance with the pre-estimation of the actual loss that will be suffered by the acquirer upon termination of the transaction by the target company and/or its shareholders.

## 6.11 Additional Governance Rights

Even if an acquirer does not obtain full control of a target company, once the acquisition of shares has been completed in accordance the Securities Act read with the Takeover Regulations, the target company is required to allow such changes in the board of directors as would give the acquirer proportionate representation on the board or control of the company. Where the acquirer does not get a proportionate representation on the board of directors of the target company, the acquirer may serve a notice on the target company for the holding of fresh elections and submit a copy of such notice to the SECP forthwith. No additional rights are granted to the acquirer by virtue of a significant shareholding in a listed company.

## 6.12 Irrevocable Commitments

The applicable law does not set out any provisions relating to irrevocable commitments from principal shareholders of the target company. If there is any agreement with the present management, promoters or existing shareholders of the target company, an overview of the important features of the agreement(s) including acquisition price per share, number and percentage of shares to be acquired under the agreement(s), name of the seller(s), manner of payment of consideration, details of the same are required to be disclosed in the document for public announcement of the offer.

Where the prescribed thresholds for a mandatory offer are not triggered in respect of an acquisition, the acquirer may acquire any number of voting shares through a share purchase agreement, thereby entitling the transaction parties to commercially agree on the terms of the share purchase agreement.

## 6.13 Securities Regulator's or Stock Exchange Process

The public announcements of intention and offer along with all other supporting documents need to be in the manner and form prescribed under the Takeover Regulations. The Securities Act stipulates that a person may not make a public offer in Pakistan unless the SECP has approved the prospectus for the same. The prospectus includes all material information in relation to the offer, including the offer price.

The Takeover Regulations set out an offer timetable that must be complied with by the acquirer, manager to the offer, target company or any person making a competitive bid. Where there is a competitive bid, the date of closure of the earlier bid, as also the date of closure of all the subsequent competitive bids, will be the date of closure of public offer under the last subsisting competitive bid and the public offers under all the subsisting competitive bids will close on the same date. The offer timetable envisages the possibility of competitive bids and strict timelines have been provided in respect thereof.

## 6.14 Timing of the Takeover Offer

The timeline for a public offer may be extended by the SECP by up to 90 days if a reasonable request is made by the acquirer. It is typical for parties to obtain approvals after announcing and prior to launching the offer.

## 7. Overview of Regulatory Requirements

### 7.1 Regulations Applicable to a Technology Company

The process for incorporating a company is prescribed under the Companies Act and the Companies (Incorporation) Regulations, 2017

and is relatively straightforward save for companies incorporated with foreign shareholders, directors and/or chief executive, which requires (a post facto) security clearance to be sought in respect thereof from the Ministry of Interior (MOI) (discussed in **7.3 Restrictions on Foreign Investments**).

Notwithstanding the foregoing, special approvals and licensing requirements may be triggered if the new company intends to operate in specific sectors of the technology industry.

### **Regulations for Electronic Money Institutions**

The State Bank of Pakistan (SBP) promulgated the Regulations for Electronic Money Institutions (the “EMI Regulations”) by providing Electronic Money Institutions (EMIs) (as defined under the EMI Regulations) with a licensing framework for the issuance of electronic money. Subject to the fulfilment of conditions for licensing set out under the EMI Regulations, the SBP may grant an EMI licence in three stages and no definite timelines have been provided in respect thereof.

### **Licensing and Regulatory Framework for Digital Banks**

The SBP has launched the licensing and regulatory framework for setting up digital banks in Pakistan. Under this framework, the SBP may grant two types of digital bank licences: (i) Digital Retail Bank (DRB), which will provide financial solutions to retail customers; and (ii) Digital Full Bank (DFB), which may provide financial solutions to retail customers as well as business and corporate entities.

The digital banking regime is not, however, immediately effective – the application process will be followed by a no objection certificate, an in-principle approval, demonstration of operational readiness by prospective licensees, and

thereafter a grant of a restricted licence to commence pilot operations before grant of licence to commence commercial operations. The length of time needed to obtain a licence varies according to the fulfilment of each of the specified criteria.

### **Licensing of NBFCs**

To incorporate an NBFC, the applicant must first obtain a permission to incorporate from the SECP, after which the NBFC may be incorporated. The NBFC must then apply for a licence from the SECP to conduct the business it intends to undertake. The entire process for setting up an NBFC typically takes at least nine months.

## **7.2 Primary Securities Market Regulators**

The primary securities market regulator of M&A is the SECP. The Competition Commission has the power to approve or disapprove of M&A in prescribed situations. High Courts have the jurisdiction to approve schemes of arrangement under the Companies Act, 2017.

## **7.3 Restrictions on Foreign Investments**

Pakistan has a liberal foreign investment regime. Except arms and ammunitions, consumable alcohol, currency and mint, high explosives, radioactive substances, and security printing, all other sectors of the economy are open to foreign investment. 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 allowed, except in specific sectors including airline, banking, agriculture and media. Foreign investments do not require any approval from the authorities.

A number of industries including aviation, banking, electric power, finance, insurance, oil and gas, and pharmaceutical drugs are governed by specific statutes which require licences to

be obtained prior to engaging in any regulated activity. Both local and foreign persons require such licences.

Foreign companies require approval from the Board of Investment to establish branch or liaison offices in Pakistan. Further, foreign shareholders and directors of Pakistani companies are required to obtain security clearance from the MOI, which ordinarily may take up to two years to obtain. However, the SECP proceeds to incorporate companies with foreign shareholders and directors while the application for MOI clearance is in process. Companies having foreign shareholders/officers of Indian nationality or origin will only be incorporated after receipt of security clearance from the MOI.

There is generally no requirement to register or intimate the investment of foreign capital. However, applicable law requires that the shares held by non-residents in companies in Pakistan be registered with the SBP on a fully repatriable basis, following which such non-resident shareholders are able to receive dividends and disinvestment proceeds in respect of such shares outside Pakistan.

## 7.4 National Security Review/Export Control

Please refer to 7.3 **Restrictions on Foreign Investments** for discussion on specified restricted industries and the requirement to obtain MOI security clearance for non-resident shareholders/officers.

Pakistan does not recognise Israel as a state and has a strained business relationship with India. Import and export of goods in Pakistan is regulated by the Ministry of Commerce under the Imports and Exports (Control) Act, 1950 and the statutory regulatory orders issued thereunder.

The Import Policy Order, 2022 places a blanket prohibition on the import of goods from, or originating in, Israel or India, except, in relation to India, such prohibition will not apply to therapeutic goods regulated by the Drug Regulatory Authority of Pakistan (DRAP). In addition, foreign exchange laws provide that it is not permissible to issue letters of credit/register contract or otherwise facilitate the imports of goods into Pakistan where such goods originate from Israel or India.

Pursuant to the Export Policy Order, 2022 no goods are allowed to be exported to India, except therapeutic products regulated by the DRAP.

## 7.5 Antitrust Regulations

Under the Competition Act, 2010 (the “Competition Act”), where an undertaking intends to acquire the shares or assets of another undertaking, and meets the pre-merger notification thresholds prescribed by the CCP in the Competition (Merger Control Regulations), 2016 (the “Merger Regulations”), such undertaking(s) are required to apply for clearance from the CCP of the intended merger.

The Competition Act applies to all undertakings and all actions or matters that take place in Pakistan and distort competition within Pakistan.

## 7.6 Labour Law Regulations

Labour is governed by provincial and federal legislation in Pakistan. Accordingly, each of the provinces of Pakistan (ie, Sindh, Punjab, Khyber Pakhtunkhwa and Balochistan) and Islamabad Capital Territory (ICT), have their own labour laws governing (i) the relevant obligations of employers, and (ii) the rights of employees (white-collar employees) and workers (similar to blue-collar workers) of the establishments located therein.

The most significant laws in respect of employment of employees and workers are as follows.

## Workers

The Industrial and Commercial Employment (Standing Order) Ordinance, 1968 regulates workers in Punjab, Balochistan and ICT), the Khyber Pakhtunkhwa Industrial and Commercial Employment (Standing Order) Act, 2013 governs employees in the province of Khyber Pakhtunkhwa, and Sindh Terms of Employment (Standing Orders) Act, 2015 is applicable in the province of Sindh (collectively referred to as the “Standing Orders”). The applicability of Standing Orders for each respective province is subject to the employment of the minimum number of workers prescribed therein. Relevant provincial and federal industrial relations laws regulate workers’ unions and their rights.

## Employees

The West Pakistan Shops and Commercial Establishments Ordinance, 1969, regulates employees in Balochistan and ICT, the Punjab Shops and Establishments Ordinance, 1969 governs employees in the province of Punjab, the Sindh Shops and Commercial Establishments Act, 2015 is applicable in the province of Sindh, and the Khyber Pakhtunkhwa Shops and Commercial Establishments Act, 2015 is applicable in the province of Khyber Pakhtunkhwa.

In addition to the aforementioned laws, the acquirer will also be required to ensure compliance with, inter alia, the Provincial Employees’ Social Security Ordinance 1965 (or the Sindh Employees’ Social Security Act, 2016) and the Employees’ Old-Age Benefits Institution Act, 1976 (applicable in all provinces of Pakistan except Sindh) or the Sindh Employees’ Old-Age Benefits Act 2014 (applicable in Sindh).

## 7.7 Currency Control/Central Bank Approval

Applicable laws generally do not prescribe an approval of the SBP for an M&A transaction (except for any acquisition of 5% or more of the shares of a banking company).

Pakistan has a strict currency control regime. The Foreign Exchange Regulation Act, 1947 (FERA) outlines a framework of currency controls and foreign exchange regulations. The general or special permission of the SBP is required for any dealing in foreign exchange, including the borrowing and selling of foreign exchange. Except in accordance with any general or special exemption, no person in, or resident in, Pakistan may, inter alia, (a) make any payment to or for the credit of any person resident outside Pakistan, or (b) draw, issue or negotiate any bill of exchange or promissory note or acknowledge any debt so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person resident outside Pakistan. In addition to the foregoing, as per currency control, no person can, except with the general or special permission of the SBP, inter alia, take or send any security to any place outside Pakistan, or transfer any security or create or transfer any interest in a security to or in favour of a person resident outside Pakistan. The SBP has provided a general exemption from the provisions of FERA in connection with the issue, transfer and export of securities and repatriation of dividends and disinvestment proceeds in respect thereof to non-resident shareholders.

## 8. Recent Legal Developments

### 8.1 Significant Court Decisions or Legal Developments

Two significant amendments have been made in Pakistan's foreign exchange laws which have allowed foreign capital to flow into start-up companies. First is the recent general permission by the SBP for start-ups to incorporate a holding company outside Pakistan. This has helped to attract investments from funds and investors outside Pakistan whose mandates restricted them from investing directly into a Pakistan company. Second is the general permission for non-resident shareholders of a Pakistan company to repatriate divestment proceeds which exceed the break-up value of a company. Earlier, a foreign investor in a Pakistan company could repatriate divestment proceeds up to the break-up value of a company only, which served to discourage foreign investment in technology companies.

Early listing of a start-up company (in order to access capital) is now also possible with the introduction of the "Growth Enterprise Market" (GEM) Board, by the Pakistan stock exchange, which is a separate board from the main trading board. The listing requirements for the GEM Board is less stringent than the main board (eg, the post listing paid-up capital requirement is PKR25 million instead of PKR200 million for the main board) so as to make it easier for companies in the early stages of growth to make a public offer for sale.

## 9. Due Diligence/Data Privacy

### 9.1 Technology Company Due Diligence

The Securities Act, read with the Takeover Regulations, does not entail specific provisions

relating to the due diligence information that the public company is required to provide to its bidders. The target company is merely required to ensure that the acquirer and the manager to the offer are provided with all relevant and material information which they require for the purposes of due diligence.

Additional information with respect to the directors and shareholders, the constitutional documents of a company and key details of registered encumbrances of a company is publicly available and can be obtained from the SECP upon payment of the specified fee. Information with respect to a company's assets may be available via publicly accessible registers, such as the revenue record/register of documents and register of intellectual property. Announcements with respect to the target company may also be viewed on the Pakistan Stock Exchange website. Potential acquirers may access pending litigation matters of the target company; however, the availability of such information will largely depend on the respective court/tribunal before which it is pending.

The law does not expressly provide that the information given to one bidder must be given to all other potential bidders, although this is common practice.

### 9.2 Data Privacy

Currently there is no generally applicable data protection legislation in Pakistan. The Prevention of Electronic Crimes Act, 2016 (PECA) is the primary legislation that provides a legal framework in relation to various kinds of electronic crimes, mechanisms for investigation, prosecution and adjudication in relation to electronic crimes. While PECA prohibits the unauthorised obtaining of sale, use, possession and transmission of a person's identity information (defined to mean



information which may authenticate or identify an individual or an information system and enable access to any data or information system), it does not specifically regulate the rights and obligations of controllers and processors of data in Pakistan.

PECA also criminalises disclosure of personal information, which has been obtained by any person as part of a lawful contract or otherwise in accordance with the law, without the consent of the person concerned or in breach of lawful contract with the intent to cause or knowing that they are likely to cause harm, wrongful loss or gain to any person or compromise confidentiality of such material or data.

The Ministry of Information Technology and Telecommunications has introduced the Personal Data Protection Bill 2021 (the “Bill”), which is yet to be promulgated into law. The Bill, once enacted, will be the main legislation regulating any person who processes, or any person who has control over or authorises the processing of, any personal data, provided any of the data subject, data controller, or data processor (either local or foreign) is located in Pakistan.

## 10. Disclosure

### 10.1 Making a Bid Public

Any person, other than the acquirer who has made the first public announcement, who is desirous of making a competitive bid must, within 21 days of the public announcement of the first offer, make a public announcement of their offer for acquisition of at least same number of voting shares of the target company.

### 10.2 Prospectus Requirements

This would include A prospectus approved by the SECP will be required for a stock-for-stock offer. A merger by way of a scheme of arrangement is exempt from the application of takeover laws and will not require a prospectus to be issued.

There is no requirement for the buyer’s shares to be listed on a specified exchange in the home market or other identified markets.

### 10.3 Producing Financial Statements

At the time of making the public announcement of offer, the acquirer is obliged to disclose any information which may be necessary for the shareholders of the target company to make an informed decision. If the acquirer is a company, information required to be disclosed includes brief audited financial details of the acquirer for a period of at least five years, including income, expenditure, profit before depreciation, interest and tax, depreciation, profit before and after tax, provision for tax, dividends, earnings per share, return on net worth and book value per share.

Financial statements of companies incorporated in Pakistan are required to be prepared in accordance with the financial reporting standards set out in the Companies Act.

### 10.4 Disclosure of Transaction Documents

Copies of all announcement and offer documents together with supporting documents as prescribed in the Takeover Regulations are required to be submitted to the target company, the PSX and the SECP. Supporting documents required to be submitted with the public announcement offer include copy of the agreement, if any, for the acquisition of shares and/or control of the target company and evidence

that security has been created as required under the Securities Act and the Takeover Regulations.

## 11. Duties of Directors

### 11.1 Principal Directors' Duties Under the Companies Act

The following principal duties have been prescribed for directors:

- to act in accordance with the articles of association of the company;
- to discharge their duties with due and reasonable care, skill and diligence, and to exercise independent judgment;
- not to be involved in a situation in which they may have a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company;
- not to achieve or attempt to achieve any undue gain or advantage either to themselves or to their relatives, partners or associates, and if such director is found guilty of making any undue gain, they will be held liable to reimburse an equal amount to such gain to the company; and
- not to assign their office, and, where they do, any assignment so made will be void.

The duties of directors are owed to the company, its employees, the shareholders, the community and the environment.

### Duties Under the Securities Act and Takeover Regulations

Once the public announcement of intention has been made, the board of the target company cannot appoint any person who represents or has an interest in the acquirer as an additional director or against a casual vacancy on the board of directors, until the acquisition is com-

pleted. The board, during the offer period, cannot (a) sell, transfer or otherwise dispose of or enter into an agreement for sale, transfer or for disposal of the undertaking or a sizeable part thereof, not being sale or disposal of assets in the ordinary course of business of the company or its subsidiaries; (b) encumber any asset of the company or its subsidiary; (c) issue any further shares during the offer period; or (d) enter into any material contract.

The board of the target is required to facilitate the acquirer in verification of securities tendered for acceptance. It is also required to send its unbiased comments and recommendations on the public offer to the shareholders, if so desired by the acquirer(s) or the shareholder(s) of the target company.

### 11.2 Special or Ad Hoc Committees

It is common for directors to establish committees to regulate the affairs of the company, and so a board may establish a special or an ad hoc committee to oversee the proposed M&A transaction.

Where a director of an acquirer that is a public company is faced with conflict of interest as a result of a proposed acquisition, the acquirer's board of directors is required to establish an independent committee to assess the proposed public offer. No such requirement has been prescribed in the case of a conflict in the target company's board.

### 11.3 Board's Role

The business of a company is required to be managed by the board. The board of directors is entitled to exercise all such powers of the company which are not required to be exercised by the company through its shareholders in a general meeting pursuant to the Companies Act

or the articles of association of the company. Accordingly, the board oversees the negotiation process and, with respect to the target company, the board may be required to send their unbiased comments and recommendations on the public offer to the shareholders, if so desired by the acquirer(s) or the shareholder(s).

It is not common to have shareholder litigation challenging the board's decision to recommend an M&A transaction.

## **11.4 Independent Outside Advice**

It is customary for the board of directors of the acquirer to obtain legal and financial advice from independent outside advisers. The manager to the offer is required to ensure that the contents of the public announcement and offer letter are true, fair and adequate and based on reliable sources, quoting the source wherever necessary. While applicable laws do not impose an obligation on the directors of the target company to seek advice from an independent financial adviser, it is customary to do so in order to assess the reasonability of the public offer.

**RIAA Barker Gillette** offers the full range of corporate, commercial and dispute resolution legal services from offices in Pakistan's major cities: Karachi, Lahore, Islamabad and Peshawar. With nine partners and over 40 associates, the firm is amongst the country's largest practices. Its clients include multinational corporations, financial institutions, non-profit organisations, Pakistani conglomerates, private clients and government agencies. RIAA Barker Gillette is also the primary contact in Pakistan for many major international law firms. It has extensive

experience of complex, cross-border work, and on advising across a number of industry and regulatory sectors. The firm is routinely called on to act in projects, M&A, private equity, corporate restructuring and tax advisory mandates, and on commercial disputes. In addition to the support of and access to the resources of its offices in London, New York, Dubai, Beijing and Kabul, RIAA Barker Gillette is the exclusive member firm in Pakistan for Lex Mundi, the world's leading network of independent law firms, with members in over 100 countries.

## Authors



**Hasnain Naqvee** is a Lahore-based senior partner and advises on a range of energy projects, project finance, corporate structuring, mergers & acquisitions, tax planning and

general corporate matters. He is well equipped in conflict resolution through negotiations and mediation, and helps clients find cheaper and efficient solutions to avoid or settle their commercial disputes. Hasnain has advised on infrastructure projects exceeding USD10 billion in aggregate value and has represented scores of local and international investors.



**Shafaq Rehman** is a partner at RIAA Barker Gillette based in Karachi, and has vast experience in assisting clients on corporate advisory and transactional matters. Her

clients are primarily comprised of multinational companies operating in Pakistan or seeking to commence operations in Pakistan. She is a key contact for foreign law firms, including several offices of Baker Mckenzie, Clifford Chance and Cooley LLP. Shafaq has assisted with establishing and regularising multiple start-ups and has also acted for investors that have funded existing start-ups in Pakistan. Her practice focuses on cross-border advisory, where she routinely advises clients on matters relating to foreign exchange, M&A and corporate compliance.



**Adil Tirmizey** is a Lahore-based partner and advises on the full spectrum of the life of a technology company, from formation, regulatory compliance and financing to

mergers, acquisitions and listings. He advises founders, start-up companies and venture capital investors. He has advised some of the earliest start-ups in the Pakistan emerging companies ecosystem, and has helped founders and venture capitalists navigate the nascent regulatory environment, especially relating to foreign exchange laws, tax and NBFC and EMI licences.



**Zealaf Shahzad** is a corporate/commercial lawyer based in RIAA Barker Gillette's Lahore office. She has worked with several technology companies and is known for her

consummate knowledge of the fintech regulatory environment. She has advised some of the earliest fintech companies in Pakistan.

---

## RIAA Barker Gillette

D67/1  
Block 4  
Clifton  
Karachi  
Pakistan

Tel: +92 21 111 529 937  
Email: [pk@riaabg.com](mailto:pk@riaabg.com)  
Web: [www.riaabarkergillette.com/pk](http://www.riaabarkergillette.com/pk)

**RIAA  
Barker  
Gillette**

---

## CHAMBERS GLOBAL PRACTICE GUIDES

---

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email [Katie.Burrington@chambers.com](mailto:Katie.Burrington@chambers.com)