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Pakistan: Law & Practice

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RIAA Barker Gillette

PAKISTAN

Law and Practice

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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 ten partners and over 45 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 Pakistan contact for many major international law firms. It has extensive experience of complex, cross-border work, and in advising across a number of industry and regulatory sectors. The firm is routinely called on to act on projects, M&A, private equity, corporate restructuring and tax advisory mandates, and on commercial disputes. In addition to having offices in London and Dubai (DIFC), 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 more than 125 countries.

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1. Legal System

1.1 Legal System and Judicial Order

Pakistan is a common law jurisdiction, although its laws are largely codified. The laws relating to companies, contract and property are largely based on principles of English common law. Certain provisions of criminal law are based on principles of Islamic law. Subjects such as marriage and the inheritance of property are matters of personal law, so the applicable law will depend on the religion of the individual concerned.

Pakistan has an independent judiciary with a hierarchy of courts. Courts follow an adversarial system and precedent is binding. Judgments of lower courts are appealable to higher courts. There is no jury system, so all issues of fact and law are decided by judges.

In general, courts of civil judges serve as the courts of first instance for civil matters, and courts of magistrates serve as the courts of first instance in criminal matters. Courts of district judges generally exercise appellate jurisdiction. However, they also serve as courts of first instance for certain types of cases, such as defamation and, in Islamabad, in respect of civil claims valued at PKR50 million and above. One important exception is in the district of Karachi, where the High Court of Sindh has the original jurisdiction to hear civil claims valued at more than PKR65 million. This exception was recently challenged before the High Court of Sindh, wherein the provincial government has been directed to reconsider this exception to expedite the settlement of an overwhelming backlog of cases currently pending before courts in Pakistan.

In addition to the ordinary civil courts, Pakistan has set up various specialised courts and tribunals that exercise jurisdiction over certain types of civil disputes, such as banking courts, rent courts, consumer courts and intellectual property tribunals. There may also be an administrative division of cases among the various benches of a court.

Each of the four provinces (ie, Sindh, Punjab, Balochistan and Khyber Pakhtunkhwa) as well as the Islamabad Capital Territory have a High Court. While the High Courts generally exercise appellate jurisdiction, they are conferred with original civil jurisdiction in certain matters, including company and banking cases, by way of statute. All the courts mentioned above, including all ordinary and specialised courts and tribunals, fall within the supervisory jurisdiction of one of the five High Courts in Pakistan. The High Courts also exercise constitutional jurisdiction, under which they can adjudicate challenges to the legality of actions of government authorities. Any party aggrieved by the actions of such authorities may petition the High Court for relief in the nature of the issuance of a writ. Businesses often invoke the constitutional jurisdiction of the High Court to challenge the legality of actions of regulatory authorities, government departments, state-owned enterprises and tax authorities.

The Supreme Court of Pakistan is the highest court of appeal, and its judgments are binding on all other courts. The Supreme Court also has original jurisdiction in matters of public importance involving the enforcement of fundamental rights guaranteed under the Constitution.

2. Restrictions on Foreign Investments

2.1 Approval of Foreign Investments

Pakistan has a liberal foreign investment regime, with all other sectors of the economy being open to foreign investment except arms and ammunitions, consumable alcohol, currency and mint, high explosives, radioactive substances and security printing. Notably, foreigners cannot acquire land without the permission of the federal or provincial government. There are upper limits on investment by foreigners in newspapers (up to 25% subject to approval), broadcast media (49%) and airlines (49%) in Pakistan. There is no minimum requirement for the amount of foreign equity investment in any sector. Generally, foreign investments do not require any approval from the authorities, and the Foreign Private Investment (Promotion and Protection) Act, 1976 requires equal treatment to be given to foreign and domestic private investment.

In a renewed push to attract foreign investment, in early July 2023 the federal government approved the Pakistan Investment Policy 2023 (PIP 2023). Such policies do not have the force of law but are a statement of the government's objectives in attracting foreign investment, its sectoral focus areas and its commitment to facilitating investment. PIP 2023 reaffirms the government's commitment to an open-admission policy for foreign investment regime and the repatriability of profits. The announcement of PIP 2023 coincides with the creation of the Special Investment Facilitation Council (SIFC), whose apex body committee comprises the country's civil and military leadership, with the aim of streamlining approval processes and facilitating policy reforms to create an investor-friendly business environment. The SIFC has identified key sectors for prioritisation, including IT, agriculture, mines and minerals, energy and defence production, and aims to achieve USD100 billion in foreign investment in the next three years.

The recently enacted Foreign Investment (Promotion and Protection) Act, 2022, as amended by the Foreign Investment (Promotion and Protection) (Amendment) Act, 2022 (the "FIPP Act"), allows the federal government to designate certain investments, sectors, industries or projects as "qualified investments". It provides that no investment will be notified as a qualified investment if the amount to be invested in Pakistan is less than USD500 million, unless there are specific reasons, to be recorded by the federal government. The FIPP Act enables the promotion and protection of qualified investments by providing investment incentives for such investments, such as regulatory exemptions, tax exemptions and various other concessions. The FIPP Act applies to all of Pakistan except for the Province of Balochistan, where it applies only to qualified investments in the Reko Diq mining project.

Another recently enacted statute is the Inter-Governmental Commercial Transactions Act, 2022 (the "IGCT Act"), which provides an expedited means for the federal government to approve, implement and give broad exemptions from regulatory compliance to commercial transactions in pursuance of an agreement or MOU between the federal government and a foreign state. The IGCT Act contemplates commercial transactions between the federal government or state-owned entities and a foreign state or its nominated entity. For implementation, the IGCT Act allows the federal government to relax or exempt such commercial transactions from any "regulatory requirement or operation necessitated by any law" and to issue directions to any

provincial government, government agency or authority for, inter alia, land acquisition, resettlement, construction of access roads and utility services.

A number of industries are governed by specific statutes that require licences to be obtained prior to engaging in any regulated activity, including aviation, banking, electric power, finance, insurance, oil and gas and pharmaceutical drugs. Both Pakistanis and foreigners must obtain such licences.

Furthermore, depending on the nature and terms of the investment, investors may be required to obtain the approval of the Competition Commission of Pakistan under the provision of the Competition Act, 2010 (please refer to **6. Competition Law** for further detail). Again, the requirement for such approval is not specific to foreign investment.

Foreign companies require approval from the Board of Investment to establish branch or liaison offices in Pakistan. In the case of foreign banks, approval for establishing a branch in Pakistan will be required from the central bank: the State Bank of Pakistan. Furthermore, foreign shareholders and directors of Pakistani companies are required to obtain security clearance from the Ministry of Interior (MOI). Foreign promoters (other than Indian nationals or those of Indian origin) may proceed with the incorporation of companies, and foreign directors (other than Indian nationals or those of Indian origin) may assume office while the application for MOI clearance is in process. In the case of a refusal of security clearance, the foreign shareholder and director must take immediate steps to transfer shares or resign from office, as the case may be. Companies that have foreign subscribers/officers who are Indian nationals or of Indian origin will be incorporated after the receipt of security clearance.

2.2 Procedure and Sanctions in the Event of Non-compliance

As stated in **2.1 Approval of Foreign Investments**, there is no general requirement for the approval of foreign investments. Licences or approvals are required by persons seeking to engage in any activity that is regulated by a sector-specific law. The requirement for licences or approvals applies across the board, regardless of whether the investment is local or foreign.

Please see **6.1 Merger Control Notification** and **6.2 Merger Control Procedure** regarding the procedure for obtaining approval from the Competition Commission of Pakistan. If approval is not obtained in respect of any transaction for which it is required, the Competition Commission of Pakistan can impose fines and, in appropriate cases, undo the transaction. In most cases, the approval of the Competition Commission of Pakistan can be obtained within two months.

2.3 Commitments Required From Foreign Investors

As stated in **2.1 Approval of Foreign Investments**, foreign investments in open sectors of the economy are not subject to approval. The federal government is obliged to notify investments that are eligible for incentives and promotions under the FIPP Act as “qualified investments” in accordance with the terms of the FIPP Act. Under the IGCT Act, for implementing inter-governmental commercial transactions, the federal government may approve exemptions or relaxations from regulatory compliance, and issue directions to other government authorities.

2.4 Right to Appeal

As stated in **2.1 Approval of Foreign Investments**, foreign investments in open sectors of the economy are not subject to approval.

Appeals against orders of the Competition Commission of Pakistan may be filed with the Appellate Bench of the Commission within 30 days of the order. Appeals against orders of the Commission made by a bench of two or more members and of orders of the Appellate Bench of the Commission may be made to the Competition Appellate Tribunal within 60 days of the order. Orders of the Competition Appellate Tribunal may be appealed within 60 days before the Supreme Court of Pakistan.

Decisions of the Board of Investment on applications for the establishment of liaison or branch offices by foreign companies are not appealable, nor are decisions of the MOI on applications for security clearance of foreign shareholders or directors. However, such decisions may be challenged in any of the High Courts of Pakistan by way of judicial review of executive actions.

3. Corporate Vehicles

3.1 Most Common Forms of Legal Entity

Various kinds of corporate vehicles may be created under Pakistan law, including companies and limited liability partnerships, all of which are regulated by the Securities and Exchange Commission of Pakistan (SECP).

The Companies Act, 2017 allows for the creation of single member companies, private limited companies and public companies. The liability of members in each of these types of companies may be unlimited or limited by shares or guarantee. Furthermore, a single member company may be converted into a private company and vice versa, and a private company may be converted into a public company and vice versa. All companies have separate legal personality and the right to sue and be sued, own property, and generally create legal relations with third parties.

All companies are required to have directors, although the minimum number varies between single member, private and public companies. Only natural persons can be directors. Every company is required to have a chief executive officer.

Single Member Companies

Single member companies can have only one shareholder, which may be a natural or juristic person. They are required to have at least one director. Compliance with the requirements of the Companies Act on matters requiring the approval of a general meeting of the members or meetings of the board of directors, as the case may be, may be made by recording the decision in the relevant minutes signed by the sole member or director(s). A single member company is best suited for situations where 100% of the shareholding is required to be maintained by a single person.

Private Companies

Private companies are companies which by their articles:

- restrict the right of members to transfer their shares in the company, except as otherwise provided in the Companies Act;
- limit the number of members to 50 (excluding persons who are in the employment of the company); and
- prohibit any invitation to the public to subscribe for the shares, if any, or debentures or redeemable capital of the company.

Private companies must have at least two members and at least two directors. They are required to hold annual general meetings, at which the board of directors lays the financial statements before the members for adoption. Private companies are the most common form of corporate vehicle in Pakistan.

The sale of shares in private companies is subject to a statutory right of first refusal of the other members, which they may exercise in respect of shares proposed to be sold in proportion to their shareholding. Coupled with any other share transfer restrictions specified in the articles, this gives current shareholders the opportunity to retain ownership and control before any new shareholder can be inducted. Private companies are suited to businesses that do not require investment from the public, and to persons who wish to maintain control of their businesses. Many joint ventures are incorporated as private companies.

Public Companies

Public companies are defined as companies that are not private companies. There is no maximum number of shareholders in public companies, which are also entitled to invite the general public to subscribe to their shares. Their shares are not subject to any statutory restrictions on transfer, except in regulated sectors such as banking. Public companies may be listed (where their shares are traded on a stock exchange) or unlisted. The minimum number of directors of a listed public company is seven, or three if unlisted. The requirements for the holding of annual general meetings and the auditing of financial statements are the same as those applicable to private companies; listed companies are also required to audit quarterly accounts.

Public companies are suitable for large infrastructure and other greenfield projects, and for all businesses that require equity investment from the public or a large number of shareholders. Certain sector-specific laws, such as those governing insurance, stipulate that licences may be granted only to public companies.

In terms of statutory compliance, single member and public listed companies fall at opposite ends of the spectrum, with the former having the least onerous requirements and the latter the most.

Limited Liability Partnerships

Limited liability partnerships are regulated by the Limited Liability Partnership Act, 2017. They are rarely used as they are viewed as tax-inefficient corporate vehicles.

3.2 Incorporation Process

The process for incorporating a company is prescribed under the Companies Act and the Companies Regulations, 2024, and is comprised mainly of the steps set out below.

Setting Up Online Accounts

Online accounts are required to be set up for each of the initial subscribers and directors of the proposed company.

Accounts are generated automatically upon the submission of the requisite information to the SECP.

Name Availability

An application for confirmation of availability of the proposed name of the proposed company must be made to the SECP through the online SECP account of any initial subscriber or proposed director. If the proposed name is available, an email confirmation is issued by

the SECP within two working days. The name remains reserved for 60 days.

Incorporation

The subscribers apply to the SECP to incorporate the proposed company. Particulars of the proposed subscribers and directors are required to be submitted to the SECP online, together with constitutional documents. Companies are usually incorporated within one week of the submission of documents to the SECP. A “fast-track” option is available whereby a company may be incorporated within two days upon the payment of enhanced fees.

Security Clearance

If a company is incorporated with foreign shareholders, directors and/or chief executive, security clearance will have to be sought from the MOI. The application for such clearance must be made upon incorporation. The SECP proceeds with the incorporation of companies with foreign shareholders, directors and/or chief executive, and issues the certificate of incorporation and acknowledgements of filing, except in cases of persons of Indian nationality or origin. There is no prescribed timeframe for the processing of applications for security clearance; in practice, they can take anywhere from six months to two years.

3.3 Ongoing Reporting and Disclosure Obligations

Companies are subject to various reporting and disclosure obligations. Statutory filings under the Companies Act are required to be made with the Registrar of Companies (RoC) and are publicly accessible; they include:

- the annual return;
- the appointment of or a change in officers;
- the issuance of new shares;
- significant transfers of shares;
- amendments to constitutional documents; and
- all special resolutions passed by shareholders.

All companies are required to maintain a register of ultimate beneficial ownership and to submit declarations of compliance to the RoC on an ongoing basis.

In terms of financial reporting, all companies are required to file copies of annual audited financial statements with the RoC, except private companies whose paid up capital is not greater than PKR10 million. Listed companies are required to file quarterly audited accounts, to post them on their websites and to send them to the stock exchange. Listed companies are also subject to additional disclosure requirements under the Securities Act, 2015 and the rule book of the Pakistan Stock Exchange in respect of price-sensitive information.

3.4 Management Structures

Companies have a two-tier management structure in Pakistan, with the two principal decision-making organs being:

- the shareholders or members in the general meeting; and
- the board of directors.

The shareholders are the ultimate authority. Under the Companies Act, 2017, certain decisions are required to be made by the shareholders, including:

- the election of directors;
- the adoption of financial statements;
- declarations of dividends;
- the appointment of auditors; and

- the disposal of the undertaking of the company or a sizeable part thereof or of its subsidiary.

The articles of association of a company can broaden the scope of matters that require shareholder approval.

The board of directors is responsible for day-to-day management, including decisions regarding:

- the issuance of shares;
- borrowing;
- the investment of funds;
- the approval of financial statements;
- capital expenditure; and
- major acquisitions.

The board also appoints the chief executive officer of the company.

3.5 Directors', Officers' and Shareholders' Liability

Directors' and Officers' Liability

The Companies Act codifies directors' duties, which include the duty to act in accordance with the company's articles and to act in good faith to promote the objects of the company for the members as a whole, and in the best interests of the company and various stakeholders. Directors are required to avoid conflicts of interest, and to account for any undue gains to the company. Contraventions of such duties, without prejudice to other consequences, constitute an offence liable to a monetary penalty. Furthermore, if a company carries on any business or transaction that is ultra vires, every person acting as an officer who is responsible for such action(s) is guilty of an offence carrying a substantial penalty, and is also personally liable for the consequences of such action. The Companies Act also sets out grounds on which a person may be disqualified from acting as a director, including persistent non-compliance with the filing requirements under the Companies Act and conducting business with a company of which they are a director in a manner that deprives the shareholders of a reasonable return.

The vast majority of the provisions of the Companies Act imposing liability for acts or omissions of a company on its officers do so only towards those officers who are responsible for, authorise or permit them.

The Companies Act protects independent and non-executive directors of listed companies and public sector companies by providing that they shall be liable only in respect of acts or omissions that occurred with their knowledge and consent, or where they had not acted diligently.

Shareholders' Liability

As a general rule, the liability of members or shareholders (other than of an unlimited liability company) is limited to the extent of the amount of their shares or guarantee. In certain limited circumstances, courts disregard a company's separate legal personality and may "pierce the corporate veil" in order to impose liability on shareholders. This is typically done where the shareholders have used the corporate structure to avoid liability for wrongdoing or to defraud creditors. Courts have always been cautious and circumspect in this regard.

4. Employment Law

4.1 Nature of Applicable Regulations

Prior to the 18th Amendment to the Constitution in 2010, both Parliament (the federal legislature) and the Provincial Assemblies could enact legislation on labour. Following the amendment,

labour became an exclusively provincial subject, meaning that only the various Provincial Assemblies can enact legislation on the subject for their respective provinces, while Parliament can enact laws only for the federal capital territory. In practice, prior to the 18th Amendment, laws concerning labour and employment were mostly enacted by Parliament for application across Pakistan, and thus these laws were uniform across the country. Since the 18th Amendment, the various provinces have enacted their own statutes, which are by and large the same statutes previously enacted by Parliament, with some modifications.

Legislation on labour and employment in Pakistan distinguishes between workers (also referred to as "workmen" under some laws) and other employees. An employee performing primarily skilled or unskilled, manual or clerical work is treated as a worker. Other employees regulated by labour law are those engaged in the business of an establishment, but excluding those whose roles are supervisory or managerial. The laws relating to labour and employment afford greater protection to workers, and many such laws are applicable only to workers. Federal legislation applies only in the Islamabad Capital Territory and, on subjects such as industrial relations, to trans-provincial establishments, which are employers employing workers in more than one province.

Managers and Supervisors

There are no laws specifically regulating the employment of persons engaged as managers, supervisors or similar roles; their employment relationship is governed largely by their contracts of employment. Some statutes are generally applicable to employment, including the various provincial Shops and Establishments statutes, which require weekly holidays, working hours, overtime, wage periods, day care, leave and termination of employment. Please refer to **4.3 Working Time** for further detail.

Workers

There are a number of statutes governing the employment relationship of workers. The contracts of employment of workers cannot be inconsistent with the provisions of such statutes. The main statutes are:

- Shops and Establishment Acts and Ordinances – as above;
- Standing Orders and Terms of Employment Ordinances and Acts, which govern the classification of workers and require the terms and conditions of employment to be given in writing, specifying group incentive schemes, compulsory group insurance, the payment of bonuses, an employer's liability for wages in the event of the stoppage of work, the closure of establishments, the termination of employment, misconduct and retrenchment;
- Factories Acts, which apply to factories and make provisions for health and safety, daily and weekly working hours, weekly holidays, overtime, paid leave and the employment of adolescents; and
- Industrial Relations Acts, which provide for the formation of trade unions, the determination of collective bargaining agents, the representation of workers and their participation in management, strikes and lock-outs, collective bargaining agreements and the settlement of industrial disputes, as well as entitling workers to apply for redressal of individual grievances.

Certain terms of the employment relationship of workers may also be contained in collective bargaining agreements, which are negotiated by unions with employers and usually provide for

employment benefits that are generally applicable to workers employed in the establishment, including bonuses, allowances, enhanced health coverage and holidays.

4.2 Characteristics of Employment Contracts

Workers

Contracts for the employment of workers must be in writing and must contain job descriptions and terms and conditions. Such contracts cannot impose obligations that are inconsistent with mandatorily applicable statutes. The primary statutes are mentioned in **4.1 Nature of Applicable Regulations**.

Managers and Supervisors

There are no requirements specifically applicable to the employment contracts of employees who are not classified as workers. Such contracts are not required to be in writing. For those employees in supervisory or managerial positions, contracts may also contain non-disclosure, non-compete and non-solicitation provisions, where required.

Generally

In practice, most contracts of employment are written. They cover the roles and responsibilities of the employee, the duration of employment, remuneration and benefits, the obligation to abide by the HR policies framed by the employer and termination provisions.

4.3 Working Time

There are no minimum working hours for salaried employees. The limits on daily and weekly regular and overtime working hours and for adults and adolescents vary between different parts of Pakistan, and are set out in the applicable Shops and Establishments/Terms of Employment legislation, which applies to non-managerial employees of commercial and industrial establishments, and in the Factories Acts, which apply to workers employed by factories.

Shops and Establishments/Terms of Employment Legislation

Working hours

Adults can work nine hours per day (except in Khyber Pakhtunkhwa, where the limit is eight hours per day) and 48 hours per week. Adolescents and young persons can work seven hours per day and 42 hours per week.

In Sindh and Khyber Pakhtunkhwa, adolescents are defined as persons between the ages of 14 and 18, while in Punjab they are defined as persons between the ages of 15 and 18. In Balochistan and Islamabad Capital Territory, young persons are defined as persons between the ages of 14 and 17.

Overtime

In Khyber Pakhtunkhwa, there is a limit of 24 hours per week for adults; adolescents cannot work overtime.

In Sindh, there is an annual limit of 150 hours of overtime work for adults and 100 hours for adolescents.

In Punjab, there is a limit of 624 hours per year for adults; adolescents cannot work overtime.

In Balochistan and Islamabad Capital Territory, the annual limit is 624 hours of overtime work for adults and 468 hours for young persons.

Time of day restrictions

Under the Shops and Establishments/Terms of Employment legislation applicable across various parts of Pakistan, establishments (which do not include factories) must be closed at 9pm

in Khyber Pakhtunkhwa and 8pm in the rest of Pakistan.

Records

Employers are required to maintain registers of employment and remuneration, for recording, inter alia, the number of hours of regular and overtime work. The legislation has not kept pace with the practice of remote work, which became common in the corporate sector during Pakistan's COVID-19 lockdowns.

Factories Acts

Working hours

Regular hours for adult workers throughout Pakistan are as follows:

- nine hours per day (including breaks) in non-seasonal factories and ten hours in seasonal factories;
- 48 hours per week in non-seasonal factories and 50 hours per week in seasonal factories; and
- 56 hours per week where a worker is engaged in work that must, for technical reasons, be continuous throughout the day.

Overtime

There are no limits on overtime work in factories.

Records

Employers are required to maintain registers of employment and remuneration, for recording, inter alia, the number of hours of regular and overtime work.

4.4 Termination of Employment Contracts

Workers

Termination

Under the Standing Orders/Terms of Employment legislation, which applies to workers employed by commercial and industrial establishments other than factories, the employment of workers may be terminated only through giving notice in writing, stating the reason for such termination. Workers are entitled to challenge their termination (for any reason) as an individual grievance, depending on the part of Pakistan in which they are employed, before either the National Industrial Relations Commission or the Labour Court.

Where any worker is to be retrenched due to redundancy, the employer is required to first retrench the worker who is the last person employed in that category of workers. With respect to collective redundancy, employers are required to seek the permission of the government (in Sindh and Khyber Pakhtunkhwa) or the Labour Court (in the rest of Pakistan) before closing down an establishment or terminating the employment of more than 50% of the workers, except in the event of fire, catastrophe, stoppage of power supply, epidemics or civil commotion.

Benefits

If the employment of a permanent worker (defined as a worker who has been employed for at least nine months) is terminated by the employer for any reason other than misconduct, the employer is required under the Standing Orders legislation to give one month's notice or payment in lieu and payment in lieu of accumulated unused leave, and to contribute to either a gratuity or a provident fund, as explained below.

Gratuity

The employer is required to pay a gratuity, equivalent to one month's salary for every year of service or part thereof exceeding six months. The gratuity is calculated on the basis of the salary paid to the worker in the last month of service.

Provident fund

If the employer has established a provident fund to which the employer and worker make matching contributions, the employer is not required to pay a gratuity to that worker for the period during which the provident fund has been in existence. In Sindh and Khyber Pakhtunkhwa, the amount distributed from the provident fund must not be less than the amount of gratuity that would have been paid to the worker had there been no provident fund.

Misconduct

Any worker terminated for misconduct that is proven in accordance with the law, after a proper inquiry at which the worker is given a right of hearing, is not entitled to any gratuity except the amount standing to their credit in the provident fund, including the contributions of the employer to such fund.

Practical aspects

It is common practice for employers to obtain a waiver and release from liability from workers whose employment is terminated at the time of the payment of benefits.

Additional benefits introduced in Punjab and Balochistan

The laws regulating Shops and Establishments, Terms of Employment and factories, as applicable in the province of Punjab, have been substantially amended to extend several additional protections to adolescents, such as restrictions on working overtime, the fixing of work hours and the maintenance of a specific register relating to adolescents at the workplace. Furthermore, the Shops and Establishments law of Punjab has imposed obligations on employers to ensure that employees are:

- properly vaccinated;
- not required to lift excessive weight;
- provided with a canteen facility; and
- provided with separate toilets for male and female employees.

Similarly, the province of Balochistan has recently introduced revised versions of the Factories Act and Shops and Establishments law, as applicable to said province, incorporating extensive protections and benefits specifically for adolescents.

Managers and Supervisors

The termination of employment of other employees who fall within the ambit of labour laws requires either the employer or the employee to give one month's notice in writing, or the employer to give payment in lieu thereof.

In practice, employers obtain a waiver and release of liability and standard indemnities from employees who are not classified as workers whose employment is terminated. In appropriate cases, employers also obtain non-compete, non-disclosure and non-solicitation undertakings from employees on termination, where the contract of employment does not otherwise so provide.

4.5 Employee Representations

The law requires workers to be represented, and to be consulted by management. There is no corresponding requirement in relation to employees who are not workers.

The applicable legislation is the Industrial Relations Act, which has separately been enacted by every province and by the federal Parliament. It applies to workers who are employed in the Islamabad Capital Territory and by any employer that carries on business in more than one province or territory of Pakistan.

Unions and Collective Bargaining Agents (CBAs)

All Industrial Relations Acts entitle workers employed in an establishment or an industry to form and join a trade union. The purpose of trade unions is to regulate relations between workers and between workers and employers, and, in the case of unions in respect of industries, to impose restrictive conditions on the conduct of any trade or business. A trade union whose members comprise at least a specified proportion of the total workers employed by the establishment (varying between 20% and 33%, depending on which Industrial Relations Act is applicable) is entitled to be registered as a CBA. The CBA's role is to:

- negotiate with the employer on the terms and conditions of employment;
- represent workers in any dispute with the employer;
- declare strikes; and
- suggest names of workers for representation on the boards of trustees of provident funds and workers' profit participation funds (required by legislation to be established by industrial undertakings that meet certain specified thresholds).

Works Councils

Works councils are made up of representatives of the management and the workers, and are required to be established in every establishment employing at least 50 workers. The council is a forum for discussions between management and workers on matters affecting the welfare of workers, such as working conditions, health and safety.

Workers' Participation in Management of Factories

Workers in factories employing 50 or more persons are entitled to nominate (where there is a CBA) or elect representatives to the management committee. Such representatives have the right to participate in meetings of the management committee, except those that discuss commercial or financial transactions. Management is required to seek the advice, in writing, of workers' representatives before taking any decision regarding HR policies, changing physical working conditions, training, recreation and welfare, regulation of working hours and breaks, and other matters relating to the conduct of workers at the factory.

Joint Management Board

The Industrial Relations Acts applicable to Khyber Pakhtunkhwa, Balochistan and the Islamabad Capital Territory and employers carrying on business in more than one province or territory of Pakistan require the management in every factory owned by a company and every other factory in which 50 persons are employed to set up a joint management board with at least 30% worker representation. The board is required to attend to matters relating to improving productivity and efficiency, remuneration methods and providing minimum facilities to workers employed through third-party contractors. The joint management board may call for information about the working of the company from management.

5. Tax Law

5.1 Taxes Applicable to Employees/Employers

Income Tax

Salary is defined under the Income Tax Ordinance, 2001 (ITO) as any amount received by

an employee from employment, whether of a revenue or capital nature. Salary is chargeable to income tax on progressive rates. For tax year 2024 (1 July 2023 to 30 June 2024), the highest tax bracket applies to annual salaries of above PKR6 million. Under the ITO, employers are obliged to withhold tax from salaries paid to employees.

Professional Tax

Persons engaged in any profession, trade, calling or employment are required to pay professional tax to the provincial government. Companies are charged professional tax on the basis of their paid-up capital, while factories and certain commercial establishments are charged on the basis of the number of their employees. The rates of tax for service providers are fixed. This tax is required to be paid annually.

Social Security Contributions

Employers of workers (as defined in **4.1 Nature of Applicable Regulations**) are required to contribute to the Employees' Social Security Fund. The prescribed contribution on the part of the employer is 6% of the wage limits determined by the government, with reference to the applicable minimum wage.

Employees' Old Age Benefits Contributions

Employers of workers (as defined in **4.1 Nature of Applicable Regulations**) who employ at least five persons are required to contribute to the Employees' Old Age Benefits Fund in respect of every worker in their employment. In provinces other than Sindh, the threshold for the application of the Employees Old Age Benefit Act, 1976 to an employer set up after 1 July 2006 is the employment of 20 persons. The current prescribed rate of contribution for employers is 5% of the minimum wage and 1% for workers.

5.2 Taxes Applicable to Businesses

Companies are subject to a number of taxes, depending on the nature of their business. The major taxes levied are described below.

Income Tax

A company resident in Pakistan is liable to pay the prescribed rate of income tax on its global income. The rate of tax applicable to the taxable income of a company in Pakistan (other than a banking company) is currently 29%, while the tax rate applicable to small companies is currently 20%.

High-earning persons including companies are also required to pay super tax on their total income, regardless of whether it is exempt from income tax, subject to final tax at a lower rate or earned from a business subject to a special regime of income tax (such as insurance, the exploration and production of petroleum, banking or the trading of listed securities). The rate of such super tax for tax year 2024 ranges from 1% to 10% of such total income on a sliding scale of PKR150 million to over PKR500 million.

Furthermore, the Finance Act 2023 levies an additional tax on any company that has made windfall income, profits or gains due to any economic factor(s) during the three years preceding tax year 2023 and onwards. The federal government has been authorised to determine the business sectors to which such tax will apply and the rate of such tax, not exceeding 50% of such income, profits or gains.

Certain kinds of income of a company are subject to income tax separately at lower rates of 15% to 25%, such as dividend and interest income.

In addition, companies are subject to withholding obligations on a number of payments, including payments for goods and services, interest, dividends, royalties to resident persons and payments to non-residents. Companies are also required to pay advance income tax when making a number of different kinds of payment, including for imports and electricity bills. Such taxes are usually adjustable against the tax liability of the person from whose income they are withheld or collected.

General Sales Tax

Sales tax (a value-added tax on the sale of goods) is levied under the Sales Tax Act, 1990 at the rate of 18% (unless a different rate of tax is applicable thereto under the 1990 Act) on local supplies and the import of goods.

Sales Tax on Services

Sales tax on services is levied under provincial legislation on the provision and receipt of specified services within such province. The standard rates of sales tax on services range from 13% to 16% of the value of service. For instance, in the province of Sindh, the sales tax on service (other than the telecommunication sector) is chargeable at 13%. See **9.1 Upcoming Legal Reforms** regarding the development of a unified tax return for sales tax on both goods and services.

Customs Duty

Customs duty is leviable under the Customs Act 1969 on goods that are imported into Pakistan. A regulatory duty under the Customs Act 1969 is also chargeable on certain goods imported into or exported from Pakistan. The rates of custom duty and regulatory duty on various goods are set out in the First Schedule of the Customs Act 1969.

Excise Duty

Federal excise duty is levied under the Federal Excise Act 2005 on specified goods produced or manufactured in Pakistan, imported into Pakistan, manufactured in non-tariff areas and brought to tariff areas for consumption and on certain services. The general rate is 15%, except where otherwise provided in the Act.

Infrastructure Cess

Each of the four provinces of Pakistan levy infrastructure cess under legislation enacted for that purpose on goods entering or leaving a province. In Punjab, such cess is also levied on goods manufactured, produced or consumed in the province.

Organisation for Economic Co-operation and Development – Pillar Two Solution

Pillar Two of the Organisation for Economic Co-operation and Development's Two Pillar solution has not been implemented in Pakistan.

5.3 Available Tax Credits/Incentives

Income Tax Credits and Incentives

The ITO allows a tax credit for foreign income tax not exceeding the lesser of the foreign income tax paid and the amount of local tax payable on such income. Other tax credits are available under the ITO for the following, subject to applicable requirements:

- investment by greenfield industrial undertakings engaged in manufacturing or ship-building in new machinery, buildings, equipment, hardware and software, except self-created software and used capital goods;
- persons engaged in coal mining projects in Sindh supplying coal exclusively to power generation projects; and
- start-ups as defined in the ITO for the tax year in which the start-up is certified by the

Pakistan Software Export Board and the next two tax years.

Taxpayers are also allowed tax credits in respect of such withholding or advance taxes as may have been paid by them during the tax year and which are allowed to be adjusted under the terms of the ITO.

Other incentives are available under the ITO, including most notably:

- an initial depreciation allowance of 25% in respect of new plant and machinery, which may be taken advantage of in the first year in which a person first uses this for purposes of business or the year in which commercial production is commenced, whichever is later; and
- a first-year depreciation allowance of 90% in respect of plant, machinery and equipment installed for the generation of alternate energy by an industrial undertaking set up anywhere in Pakistan.

In addition, the Second Schedule to the ITO contains numerous specific tax exemptions or incentives that have been introduced over time to meet specific policy objectives of the federal government. For instance, the income of companies establishing power generation projects in accordance with the policies of the federal government is exempt from taxation if certain conditions in the exemptions are complied with.

Special Economic Zones

Enterprises set up in special economic zones set up under the Special Economic Zones Act, 2021 are entitled to the following benefits:

- a one-time exemption from customs duties and taxes on the import of plant and equipment (except motor vehicle and their parts) into the zone for installation in the zone, subject to verification by the Board of Investment; and
- an exemption on taxes on income for zone enterprises for a period of ten years commencing from the date of commencement of commercial production.

Special Technology Zones

Profits and gains of zone enterprises are exempt from income tax for a period of ten years from the date a licence is issued by the Special Technology Zones Authority.

Export Processing Zones

The incentives available to businesses established in export processing zones include the duty free import of machinery, equipment and material, and an exemption from sales tax on input goods, including electricity. Under certain conditions, zone enterprises are allowed to sell up to 20% of products manufactured by them to customers within Pakistan.

5.4 Tax Consolidation

Under Section 59AA of the ITO, a holding company and any wholly owned subsidiaries thereof may opt to be subjected to income tax as one fiscal unit. The facility of group taxation may only be exercised by companies that are incorporated in Pakistan.

5.5 Thin Capitalisation Rules and Other Limitations

The rules of thin capitalisation are provided under Section 106 of the ITO, which stipulates that, when the foreign debt to foreign equity ratio of a foreign-controlled resident company (at least 50% of the ownership of which is held by any non-resident person(s)) exceeds 3:1 at any time during a tax year, a deduction that would

otherwise apply to the profit on debt (ie, interest) paid by the company in that year would not be allowed on that part of the debt which exceeds the foregoing ratio, and any amount in excess thereof would be included in the taxable income of such company.

The above rule on thin capitalisation applies to all foreign controlled companies incorporated in Pakistan, excluding financial institutions, banking companies and branches of foreign companies in Pakistan.

5.6 Transfer Pricing

Section 108 of the ITO read with Chapter 6 of the Income Tax Rules 2002 (the "2002 Rules") sets out the rules in relation to transfer pricing that are applicable to transactions undertaken between associates or related parties in Pakistan. These rules give the Commissioner of the Federal Board of Revenue the power to distribute, apportion or allocate income, deductions or tax credits between the associated or related persons as is necessary to reflect the income that the persons would have realised in an arm's length transaction.

Under the 2002 Rules, the following methods may be followed by the Commissioner for the purposes of determining an arm's length result:

- the comparable uncontrolled price method;
- the resale price method;
- the cost-plus method; or
- the profit split method.

5.7 Anti-evasion Rules

Anti-avoidance or anti-evasion rules are prescribed under the ITO, Section 109 of which defines a "tax avoidance scheme" as "any transaction where one of the main purposes of a person in entering into the transaction is the avoidance or reduction of any person's liability to tax under this Ordinance".

For these purposes, "reduction in a person's liability to tax" means a "reduction, avoidance or deferral of tax or increase in a refund of tax and includes a reduction, avoidance or deferral of tax that would have been payable under this Ordinance, but are not payable due to a tax treaty for the avoidance of double taxation".

Powers of the Commissioner

As part of the anti-avoidance rules, the Commissioner may determine a person's liability to tax by:

- recharacterising a transaction or a part thereof that may have been entered into under a tax avoidance scheme;
- disregarding a transaction for not having a substantial economic effect;
- recharacterising a transaction where the form of the transaction does not reflect the substance;
- disregarding an entity in Pakistan (for tax year 2018 onwards) that, inter alia, has been set up as a part of tax avoidance scheme; or
- from tax year 2018 onwards, treating a place of business in Pakistan as a permanent establishment, if said place fulfils the conditions specified in the definition of permanent establishment.

6. Competition Law

6.1 Merger Control Notification

Requirement to Obtain Clearance

Section 11(2) of the Competition Act, 2010 requires clearance to be sought from the Competition Commission of Pakistan (CCP) where an undertaking intends to acquire the shares or

assets of another undertaking, or where two or more undertakings intend to merge the whole or part of their business, and meet the pre-merger thresholds prescribed under the Competition (Merger Control) Regulations, 2016 (the "Merger Regulations").

The Competition Act applies to undertakings across the world and to all actions and matters that take place in Pakistan and distort competition in Pakistan. Therefore, clearance is not required to be sought in respect of an acquisition or merger that meets the pre-merger thresholds but to which the Competition Act does not apply.

Where a pre-merger clearance requirement applies, the merger parties may not proceed with the merger or acquisition unless clearance is obtained from the CCP.

Relevant Definitions

The term "merger" is defined to mean "the merger, acquisition, amalgamation, combination or joining of two or more undertakings or part thereof into an existing undertaking or to form a new undertaking; and the expression 'merge' means to merge, acquire, amalgamate, combine or join, as the context may require". Furthermore, the term "acquisition" has been defined as "any change of control of any undertaking by way of acquisition of shares, assets or any other means".

Pre-merger Thresholds

Merger parties (excluding asset management companies, for which different thresholds apply) are not required to make an application for clearance from the CCP unless:

- the value of gross assets of the undertaking, excluding goodwill, is not less than PKR300 million, or the combined value of the undertaking and the undertaking(s) whose shares are proposed to be acquired or the undertakings being merged is not less than PKR1 billion;
- the annual turnover of the undertaking in the preceding year is not less than PKR500 million, or the combined turnover of the undertaking and the undertaking(s) whose shares are proposed to be acquired or the undertakings being merged is not less than PKR1 billion;
- the transaction relates to the acquisition of shares or assets of the value of PKR100 million or more; or
- in the acquisition of shares by an undertaking, if an acquirer acquires voting shares, which – taken together with voting shares, if any, held by the acquirer – shall entitle the acquirer to more than 10% of voting shares.

If either of the first and second and either of the third and fourth thresholds listed above are applicable to the respective merger or acquisition and the Competition Act applies, it is necessary to seek the approval of the CCP, unless the transaction is exempted under Regulation 5 of the Merger Regulations.

6.2 Merger Control Procedure

Timing

Pre-merger applications are required to be filed by the undertakings concerned as soon as they agree in principle or sign a non-binding letter of intent to proceed with the merger.

Forms and Filing Fee

The application is required to be made in the form prescribed by the CCP, along with all supporting documents and payment of the requisite fee. The fee is set on a sliding scale in proportion to the turnover of the merger parties. The highest fee slab is PKR4.5 million and applies where the

turnover of the merger parties exceeds PKR10 billion.

First Phase Review and Timing

The CCP conducts a first phase review to make a preliminary assessment of whether the transaction should be allowed. Under the Competition Act, the CCP is required to decide the application within 30 days of receipt by issuing an order allowing the merger or initiating a second phase review, failing which the CCP is deemed not to have any objection to the merger. The CCP treats the 30-day period as commencing only upon receipt of a complete application and, as a matter of practice, considers the 30-day period to consist of 30 working days. As the CCP may request further documentation, thereby rendering the previously submitted application incomplete, parties ordinarily wait for the decision of the CCP.

Second Phase Review and Timing

If the CCP decides to initiate a second review, it may require the merger parties to provide further information. The CCP is required to decide the second review within 90 days of receipt of the requested information, failing which it is deemed that the CCP has no objection to the merger.

6.3 Cartels

Section 4 of the Competition Act applies to anti-competitive agreements and practices, which are defined as agreements or decisions in respect of the production, supply, distribution, acquisition or control of goods or the provision of services that have the object or effect of preventing, restricting or reducing competition within the relevant market. Under Section 4(1), such agreements and practices are prohibited unless exempted by the CCP.

Section 4(2) of the Competition Act provides an illustrative, non-exhaustive list of anti-competitive agreements and practices, which include actions typical of cartels in relation to the production, distribution or sale of goods or services, such as:

- fixing prices and quantities;
- imposing other restrictive conditions;
- dividing markets;
- limiting technical development or investment; and
- collusive tendering or bidding.

Other anti-competitive agreements and practices listed in Section 4(2) include making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Under Section 9 of the Competition Act, the CCP may exempt anti-competitive agreements and practices that contribute substantially to production or distribution, promoting technical or economic progress while allowing consumers a fair share of the resulting benefit, or whose benefits clearly outweigh the adverse effect on competition.

6.4 Abuse of Dominant Position

The Competition Act prohibits any undertaking from abusing a dominant position. The “dominant position” of one undertaking or several undertakings in a relevant market is deemed to exist if such undertaking(s) has or have the ability to behave to an appreciable extent independently of competitors, customers, consumers and suppliers, and the position of an undertaking will be presumed to be dominant if its share of the relevant market exceeds 40%. An abuse

of dominant position is deemed to have been brought about, maintained or continued if it consists of practices that prevent, restrict, reduce or distort competition in the relevant market.

Section 3(3) of the Competition Act provides the following non-exhaustive list of practices that constitute abuse of a dominant position:

- limiting production or sales, and implementing unreasonable increases in prices or other unfair trading conduct;
- price discrimination by charging different prices for the same goods or services for different customers in the absence of an objective justification that may justify different prices;
- tie-ins, where the sale of goods or services is made conditional on the purchase of other goods or services;
- making conclusions of contracts subject to the acceptance by other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of the contracts;
- applying dissimilar conditions to equivalent transactions for other parties, placing them at a competitive disadvantage;
- predatory pricing, driving competitors out of a market, preventing new entry and monopolising the market;
- boycotting or excluding any other undertaking from the production, distribution or sale of any goods or the provisions of any service; and
- refusal to deal.

7. Intellectual Property

7.1 Patents

Patents are regulated under the Patents Ordinance 2000, Section 7 of which stipulates that "an invention is patentable if it is new, involves an inventive step and is capable of industrial application".

Length of Protection

The prescribed term in respect of a registered patent is 20 years from the date of filing of the application for registration.

Registration of Patents in Pakistan

An application for registration of an invention for a patent may be filed at the Patent Office by submitting:

- the prescribed forms for regular applications and applications under the Paris Convention for the Protection of Industrial Property (the "Convention"); and
- the specifications of the invention.

After the application is accepted, it is advertised in the official gazette.

A notice of opposition may be filed by a third party opposing the patent application on the grounds set out under Section 23 of the Patent Ordinance. If no opposition is received, the applicant is required to file a prescribed form, after which the patent is "sealed" and granted to the applicant.

Enforcement and Remedies

A patent holder may initiate proceedings of infringement at the Intellectual Property Tribunal against any person who unlawfully makes, sells or uses their duly registered patented invention or counterfeits it. In certain instances, patents may also be enforced by the Controller of Patents. In suits involving the infringement of patents in Pakistan, the tribunal may grant, inter alia, damages, injunctions or accounts.

7.2 Trade Marks

Trade marks are governed in Pakistan under the Trade Marks Ordinance 2001 read with the Trade Mark Rules 2004. The term "trade mark" is defined under Section 2 (xlvii) of the Ordinance as "any mark capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings".

Length of Protection

A trade mark is registered for a period of ten years from the date of application, and is renewable for further periods of ten years.

Process for Registration of a Trade Mark in Pakistan

An application to register a trade mark of goods or services of a particular class may be filed with the Trade Marks Registry in the prescribed form, along with:

- a cover letter requesting the registration of the proposed mark;
- representation of the proposed mark;
- an affidavit containing the prescribed undertakings in relation to the proposed mark; and
- a power of attorney by way of Form TM-48 if the applicant wishes to appoint an authorised agent for the registration of the proposed mark.

The registrar then examines the documents. After acceptance of the application, the proposed mark is advertised in the Trade Marks Journal and is subject to any opposition from any person, to which the applicant may respond within a period of up to one month. If any objection is filed, the Registrar – at their discretion and after giving both the opponent and the applicant an opportunity to be heard – may either approve or reject the registration. Upon approval of the registration, the applicant is provided with a certificate of registration.

Enforcement

A proprietor of a registered trade mark may institute proceedings against the infringement of their registered trade mark at the Intellectual Property Tribunal. Furthermore, the proprietor of a "well-known" trade mark in terms of the Convention is also entitled to restrain by injunction the use in Pakistan of a mark that is identical or deceptively similar to the well-known trade mark in the following circumstances:

- in relation to identical or similar goods or services, where the use is likely to cause confusion; or
- where such use causes dilution of the distinctive quality of the well-known trade mark.

Remedies

In suits involving the infringement of trade marks in Pakistan, the tribunal may grant reliefs of, inter alia, damages, injunctions, accounts or otherwise as are available in respect of the infringement of any other proprietary right. For well-known trade marks, the holder is entitled to injunction only.

Recent Developments

The Trade Marks Ordinance, 2001 has recently been amended by the Trade Marks (Amendment) Act, 2023 to, inter alia, incorporate the provisions of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (the "Madrid Protocol"), which has been ratified by Pakistan.

The Trade Marks (Amendment) Act, 2023 incorporates necessary provisions to the Trade Marks Ordinance, 2001 to enable local proprietors in Pakistan to seek registration of their respective

trade marks in the relevant contracting states that are signatories to the Madrid Protocol, by filing a unified application of registration, subject to the provisions of the Ordinance. Foreign entities also have the ability to designate Pakistan in their applications for the recognition of their respective trade marks in the country through the International Bureau of the World Intellectual Property Organization.

7.3 Industrial Design

The term "design" has been defined in Section 2I of the Registered Designs Ordinance 2000 as "features of shape, configuration, pattern ornament applied to an article by any industrial process or means, being features which in the finished article appeal to and are judged solely by the eye, but does not include a method or principle of construction or features of shape or configuration which are dictated solely by technical and functional considerations".

For the purposes of the 2000 Ordinance, the term "article" means "any article of manufacture and includes a part of an article if made and sold separately".

Length of Protection

The prescribed term in respect of a registered design is ten years from the date of registration. The initial period of protection may be extended for a further two periods of ten years each.

Procedure for Registration

A regular or Convention application may be made in a prescribed form (the Convention application must be filed within six months of the first application filed in the Convention country) at the Patent Office. Such application must be accompanied by the drawings, photographs or a specimen, an affidavit and a separate form if the design is in respect of any set of articles that will be made on the requisite form. A copy of the representation or specimen of the design filed in the Convention country must be filed with the application or within three months of the application. Upon acceptance of the application, the registrar supplies the applicant with a certificate of registration.

Enforcement and Remedies

Any person aggrieved by infringement of their registered design may initiate proceedings against the infringer at the Intellectual Property Tribunal. Relief available to the proprietor of registered designs includes injunctions and damages.

7.4 Copyright

Copyrights are governed by the Copyright Ordinance 1962 read with the Copyright Rules of 1967, in terms of which the term "copyright" entails exclusive rights in, inter alia, literary, dramatic or musical, artistic or cinematographic works.

Length of Protection

Copyright in respect of any literary, dramatic, musical or artistic work (other than a photograph) published in the name of and within the lifetime of the author subsists for 50 years, starting from the beginning of the calendar year immediately following the year in which the author dies. In all other cases, the copyright in the works subsists for a period of 50 years from the beginning of the calendar year in which that work is published.

Steps for Registration of a Copyright in Pakistan

An application for registration of a copyright may be filed with the Registrar by way of a prescribed form. Upon submission, the application is examined by the Registrar. If such application pertains to artistic work, it is published by the applicant

in a newspaper where the applicant resides or carries on business, whereafter the application remains open to any objection by any person on specified grounds for a period of 30 days from the submission of the application. Upon being satisfied with the particulars of the application, the Registrar registers the work of the applicant in the Register of Copyrights and issues a certificate of registration.

Enforcement and Remedies

Copyrights may be enforced in Pakistan by way of filing a suit with the Intellectual Property Tribunal. A proprietor may also approach the police to seize the infringing material. In suits involving the infringement of copyrights in Pakistan, the tribunal may grant reliefs of, inter alia, damages, injunctions or accounts, or reliefs as are otherwise available in respect of the infringement of any other right.

7.5 Others

In addition to the IP rights discussed throughout the rest of **7. Intellectual Property**, Pakistan also recognises other intellectual property, such as layout designs of integrated circuits (protected under the Registered Layout-Designs of Integrated Circuits Ordinance, 2000) and plant breeders' rights (protected under the Plant Breeders' Rights Act, 2016).

However, rights to any information of a confidential nature (such as trade secrets) do not have statutory protection in Pakistan, but may be protected by contractually binding the persons to whom such information is disclosed.

PIP 2023 sets out that the Intellectual Property Organisation will establish a window for the facilitation of foreign investors, to assist companies in obtaining patents, trade marks and copyrights, and to respond expeditiously to requests for enforcement of infringements.

8. Data Protection

8.1 Applicable Regulations

Data Protection

There is currently no generally applicable data protection legislation in Pakistan.

The Prevention of Electronic Crimes Act 2016 (the "2016 Act") regulates various kinds of electronic crimes and mechanisms for investigation, prosecution and adjudication in relation to offences committed electronically.

While the 2016 Act criminalises the unauthorised access, sale, use and transmission of data, it does not specifically regulate the rights and obligations of controllers and processors of data in Pakistan.

Disclosure of Information

The disclosure of personal information that has been obtained by any person as part of a lawful contract or otherwise in accordance with the law is also prohibited under the 2016 Act to the extent that such disclosure is made without the consent of the person concerned, or if such data is disclosed with the intent to cause – or knowing that it is likely to cause – harm, wrongful loss or gain to any person or compromise the confidentiality of such data.

8.2 Geographical Scope

The 2016 Act extends to every citizen of Pakistan and to any act committed outside Pakistan by any person, provided that such act constitutes an offence in terms of the 2016 Act and affects any person or property located in Pakistan.

8.3 Role and Authority of the Data Protection Agency

Pakistan does not currently have any enforcement agency or authority with the specific purpose of regulating and protecting data. The Federal Investigative Agency has been designated by the federal government to investigate offences prescribed under the 2016 Act. The Pakistan Telecommunication Authority has also been conferred limited powers under the 2016 Act.

9. Looking Forward

9.1 Upcoming Legal Reforms

Development of Unified Tax Return for Sales Tax on Goods and Services

Pakistan's tax power is distributed between federal and provincial governments. Federal taxes include customs duty, sales tax on goods, excise duty and most income and capital gains taxes. Sales tax on services is provincial. Both are value-added taxes with inter-adjustable input liability but different compliance requirements.

In April 2021, the Federal Board of Revenue and provincial revenue authorities agreed to enable taxpayers to file a single National Sales Tax Return (NSTR) for all sales tax. Further legislation is required by Parliament and provincial assemblies to harmonise sales tax legislation, and technical issues need to be resolved in order for the NSTR to become operational. The NTSR will substantially reduce the compliance burden.

Provincial sales tax laws sought to tax services originating and received in the province, leading to double taxation issues. The federal and provincial governments issued nearly identical Place of Provision of Services Rules to determine the place of provision for specific services like advertising, insurance, franchising and the transportation of goods. This is a positive development and will help to settle conflicts on the taxation of services provided from one province to another.

Data Protection Bill

The Prevention of Electronic Crimes Act 2016 criminalises the misuse of personal data (including personal data processed by a third party in its capacity as a service provider) without consent (see **8. Data Protection**), but there is currently no generally applicable data protection legislation in Pakistan.

The Ministry of Information and Technology has finalised the Personal Data Protection Bill 2023 (the "PDP Bill"), but it is yet to be passed by the Parliament.

If and when enacted, the PDP Bill shall provide for and regulate the processing of personal data, confer rights on data subjects and restrict data controllers from processing personal data without the consent of the data subject. The PDP Bill proposes the establishment of a National Commission for Personal Data Protection with the power to, inter alia, seek information from data controllers in respect of data processing, impose penalties for non-compliance and non-observance of data security practices and order a data controller to take such reasonable measures as it may deem necessary to remedy any failure to implement the provisions of the PDP Bill once promulgated.

Companies Regulations 2024

The SECP has recently promulgated the Companies Regulations, 2024, which aim to facilitate both local and foreign companies operating in Pakistan by providing a consolidated and updated framework for company incorporation, compliance, reporting, licensing, group registration,

buyback of shares and registration of intermediaries. The streamlined process is expected to make it easier for companies to navigate regulatory requirements.

With the promulgation of the regulations, the SECP has also launched the ezfile online portal (replacing the e-services system) in an attempt to provide a comprehensive regulatory platform designed to facilitate easy compliance with the regulations and provide a centralised system for companies to fulfil their regulatory obligations, reducing the administrative burden and improving efficiency.

Cannabis Control and Regulatory Authority Ordinance, 2024

The Cannabis Control and Regulatory Authority Ordinance, 2024 represents a landmark legislative development in Pakistan, aimed at regulating the cultivation, extraction, refining, manufacturing and sale of cannabis derivatives for medical and industrial purposes. This ordinance establishes the Cannabis Control and Regulatory Authority (CCRA), a dedicated body tasked with overseeing the legal cannabis industry in Pakistan. Ordinances are temporary legislation that lapse within 120 days unless enacted by Parliament. Before making any decisions, businesses will look to see whether the Ordinance is enacted as an Act of Parliament.

Arbitration Bill

In 2023, the Chief Justice of Pakistan's Supreme Court directed the formation of the Arbitration Law Review Committee to prepare a new Arbitration Bill to modernise Pakistan's arbitration regime. In May 2024, the Committee finalised a draft Arbitration Bill, which seeks to align Pakistan's arbitration framework with international standards, particularly the UNCITRAL Model Law.

The Bill is inspired by the arbitration laws of India and other common law jurisdictions, and covers both international and domestic arbitration across Pakistan. It distinguishes between international commercial arbitration and domestic arbitration, allowing greater party autonomy and less court intervention for international arbitrations. The Bill promotes arbitration by limiting challenges to the arbitral process, clarifying arbitrability, streamlining arbitrator appointments and providing for interim measures by courts and tribunals. Importantly, it limits the scope for setting aside awards, making awards automatically enforceable unless set aside or suspended. The Bill is currently with the Federal Law Minister to be placed before Parliament for enactment; if passed, it will significantly modernise Pakistan's arbitration regime.

CHAMBERS GLOBAL PRACTICE GUIDES

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