Pakistan

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1. What are the key laws and regulations that govern mergers and acquisitions in your jurisdiction?

Mergers and acquisitions in Pakistan are primarily governed by the following laws:

1. The Companies Ordinance, 1984 ("Companies Ordinance")
2. The Competition Act, 2010 ("Competition Act")
3. The Competition (Merger Control) Regulations, 2007 ("Merger Regulations")
4. Listed Companies (Substantial Acquisition of Voting Shares and Take-overs) Ordinance 2002 ("Takeover Ordinance")
5. Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations 2008 ("Takeover Regulations")

2. What are the government regulators and agencies that play key roles in mergers and acquisitions?

The major regulators of mergers and acquisition in Pakistan are the:

1. The Competition Commission of Pakistan ("Competition Commission")
2. The Securities and Exchange Commission of Pakistan ("SECP")
3. State Bank of Pakistan ("SBP")

3. Are hostile bids permitted? If so, are they common in your jurisdiction?

Yes, however they are relatively uncommon.

4. What laws may restrict or regulate certain takeovers and mergers, if any? (For example, anti-monopoly or national security legislation).

Competition Act

The Competition Act provides that where an undertaking intends to acquire shares or assets of another undertaking or two or more undertakings intend to merge the whole or part of their business and meet the premerger thresholds prescribed in the Merger Regulations, the concerned undertaking must seek a clearance from the Competition Commission.

Takeover Ordinance and Takeovers Regulations

The Takeover Ordinance and Takeover Regulations contain detailed provisions in relation to acquisition of shares of a listed company. Where an acquirer intends to acquire more than 25 per cent of voting shares or control of the listed undertaking the acquirer is compulsorily required by the Takeover Ordinance to make a public announcement of offer to acquire at least 50% of the remaining voting shares of the company. A few types of transactions are exempt from making a public offer. For instance, acquisition of shares through a scheme of arrangement or exercise of an option by a bank or a financial institution does not require the acquirer to make a public offer.

Companies Ordinance

Schemes of arrangements for mergers or demergers are dealt with under sections 284 to 287 of the Companies Ordinance, 1984. These provisions inter alia allow one or more companies to enter in to a compromise or arrangement with its members or creditors in respect of a merger or demerger of the concerned companies. Under the relevant sections, a company involved in a business combination has to file a petition with the High Court for an order to hold an extraordinary general meeting (EOGM) where shareholders approve the business combination. Once the shareholders have approved the combination, the company must petition the court for its approval on the scheme of arrangement, which lays out the particulars of the combination including issues of property, liabilities and debts of the companies, share swaps, the continuation of any legal proceedings, and dissolution, without winding up, of one or more of the concerned entities

Section 196 of the Companies Ordinance provides that the directors of a public company, or of a subsidiary of a public company, shall not, except with the consent of the shareholders in a general meeting, either specifically or by way of an authorisation, sell, lease or otherwise dispose of the undertakings or a sizeable part thereof (unless the main business of the company comprises of such selling or leasing).

5. What documentation is required to implement these transactions?

Competition Act

If the transaction relates to an acquisition of shares or assets, such transaction would be implemented by way of agreements or instruments. Wherever such acquisition or merger meets the premerger thresholds prescribed in the Merger Regulations the concerned undertakings are required to submit a pre-merger application to the Competition Commission. Such application is to be in the form prescribed in the Schedule to the Merger Regulation and is to be supported by the following supporting documents:

1. Written proof of the representative‘s authority to act on the applicant(s)‘ behalf (if applicable);

2. Copies of the final or most recent version of all documents bringing about the merger, whether by agreement between the merger parties, acquisition of a controlling interest or a public bid;

3. In the case of a public bid, a copy of the offer document; if it is unavailable at the time of notification, it should be submitted as soon as possible and not later than when it is posted to shareholders;

4. Copies of the most recent annual report and accounts (or equivalent for unincorporated bodies) for all the merger parties ;

5. Copies of all analyses, reports, studies, surveys, and any comparable documents prepared by or for any member(s) of the board of directors (or equivalent) or other person(s) exercising similar functions (or to whom such functions have been delegated or entrusted), or the shareholders‘ meeting, for the purpose of assessing or analysing the merger with respect to market shares, competitive conditions, competitors (actual

and potential), the rationale of the merger, potential for sales growth or expansion into other product or geographic markets, and/or general market conditions. For each of these documents, indicate (if not contained in the document itself) the date of preparation and the name and title of each individual who prepared the document; and

6. Copies of all business plans for each merger party for the current year and the preceding 5 years.

Takeover Ordinance

Pursuant to the Takeover Ordinance where an acquisition of shares of a listed company, a number of notices, undertakings and disclosures are required to be made to the Stock Exchanges, SECP and the target company. Some of the key filings are listed below:

1. Disclosure to the stock exchange and target company on acquisition of 10 per cent or more voting shares of a listed company;

2. A person intending to acquire voting shares of a company beyond 25 per cent is required to make a public announcement of intention in the newspaper. The draft of public announcement of intention has to be filed with the SECP and stock exchange at least two working days before issuance in the newspapers;

3. Prior to acquisition of 25 per cent of voting shares or control the acquirer must make a public offer. The public announcement of offer has to be made within 180 days of the making of the public announcement;

4. A person who has more than 25 per cent of the voting shares of a target company but less than 51 per cent of the voting shares or control of the target company is required to make a public announcement of intention before acquiring any additional shares or control. The draft of public announcement has to be filed with the SECP at least two working days before its issuance; and

5. The acquirer is required to furnish security for performance of its obligations under the public offer. Such security can be in the form of a deposit of cash or securities or can take the form of a bank guarantee;

6. The manager to the offer has to file a due diligence certificate with the SECP prior to the public offer;

7. Public announcements of offer are required to be filed with the SECP along with the supporting documents specified in Schedule VII of the Takeover Regulations.

Companies Ordinance

As discussed above, if the acquisition involves a sale or disposal by the directors of a public company, or a subsidiary of the public company, of its undertakings or a sizeable part thereof, such sale must be authorized by a resolution of the shareholders passed in a general meeting.

In the case where one or more companies are looking to enter in to a Scheme of Arrangement under Sections 284 to 287 of the Companies Ordinance, the concerned companies are required to file a petition with the Court along with the Scheme of Arrangement which lays out the particulars of the combination including issues of property, liabilities and debts of the companies, share swaps, the continuation of any legal proceedings, and dissolution of, without winding up, of one or more of the concerned entities.

6. What government charges or fees apply to these transactions?

Competition Act

Every pre-merger application made to the Competition Commission is required to be accompanied by a processing fee which varies depending on the turnover of the applicant. Regulation 5 of the Merger Regulations prescribes the following fees:

Turnover of the applicant undertaking	Amount of fee
Up to 500 million rupees	200,000 rupees
More than 500 million but not exceeding 750 million rupees	400,000 rupees
More than 750 million but not exceeding 1,000 million rupees	500,000 rupees
More than 1,000 million but not exceeding 5,000 million rupees	700.000 rupees
More than 5,000 million but not exceeding 10,000 million rupees	1,000,000 rupees
Exceeding 10,000 million rupees	1,500,000 rupees

If the application is being made by an asset management company, the fee shall be charged on the basis of the value of assets under the management of merger parties, at the following rates:

Assets	Amount of fee
Up to 5 billion rupees	200,000 rupees
More than 5 billion but not exceeding 7.5 billion rupees	400,000 rupees
More than 7.5 billion but not exceeding 10 billion rupees	500,000 rupees
More than 10 billion but not exceeding 50 billion rupees	700.000 rupees
More than 50 billion but not exceeding 100 billion rupees	1,000,000 rupees
Exceeding 100 billion rupees	1,500,000 rupees

Takeover Ordinance and Takeover Regulations

With respect to the acquisition of shares of a listed company, where an acquirer intends to acquire more than 25 per cent of voting shares or control of the listed undertaking, he or she is compulsorily required by the Takeover Regulation to make a public announcement of offer to acquire voting shares or control of such company. The public offer is required to be submitted to the Securities and Exchange Commission of Pakistan along with a non-refundable processing fee of 500,000 rupees.

Companies Ordinance

The order of the court passed under sections 284 to 287 of the Companies Ordinance sanctioning a Scheme of Arrangement has to be filed with the registrar within thirty days of the passing of the order. A nominal fee is payable for filing the order with the registrar.

Sale of Shares

The instrument providing for sale of shares is chargeable to stamp duty. In the province of Sindh, such duty is chargeable in the case of physical shares, at 1.5 per cent of the face value of shares and in the case of shares held electronically through a central depository, at 0.1% of the face value of shares.

The capital gain on disposal of shares of a company not being a public company* is chargeable to tax. In the event that shares are held for one year or less, 100 per cent of the gain is taxable and if held for more than one year, 75 per cent of the gain is taxable. The amount of such gain is added to the tax payer's total taxable income for a tax year, and is not taxed separately. The capital gain arising on disposal of shares of a public company* held for less than one year shall be chargeable to income tax at the following rates

Tax year 2014

Holding period	Rate of tax
Where holding period is less than 6 months	10%
Where holding period is more than 6 months but less than 12 months	8%
Where holding period is 12 months or more	0%

Tax year 2015

Holding period	Rate of tax
Where holding period is less than 12 months	12.5%
Where holding period is more than 12 months but less than 24 months	10%
Where holding period is 24 months or more	0%

* Public company means a company in which not less than 50% of the shares are held by a government (Federal, Provincial, or foreign), a company whose shares were traded on a registered stock exchange in Pakistan at any time in the tax year and which remained listed at the end of that year and a unit whose units are widely available to the public and any other trust defined in the Trusts Act, 1882

Sale of Assets

A sale of assets, if comprising of goods that are not exempt from sales tax, may incur sales tax if the sale is made by an importer, manufacturer, wholesaler (including dealer), distributor or retailer.

Instruments for sale of movable property are chargeable to stamp duty at rates applicable in the relevant province. The gain on the disposal of any moveable property, other than stock-in-trade, consumable stores, raw materials held for the purpose of business, depreciable assets or intangibles, is chargeable to tax. In the event that such property is held for one year or less, 100 per cent of the gain is taxable and if held for more than one year, 75 per cent of the gain is taxable. The amount of such gain is added to the person's total taxable income for a tax year, and is not taxed separately.

Instruments providing for the conveyance of immoveable property are chargeable to stamp duty at rates applicable in the relevant province. The normal rate of such duty, as applicable in Sindh, is 2 per cent of the value of the property as determined in accordance with prescribed valuation tables. Such instruments are required to be registered in order for the conveyance to take effect. Registration fee, as currently applicable in Sindh, is 1 per cent of the value of the property as determined in accordance with prescribed valuation tables. Any conveyance of immovable property is also subject to capital value tax at the rates applicable in the relevant province. The gain arising on the disposal of immoveable property held for a period of up to one year shall be chargeable to tax at the rate of 10 per cent, and where the holding period of the immoveable property is more than one year but not more than two years, tax shall be charged at a rate of 5 per cent.

7. Do shareholders have consent or approval rights in connection with a deal?

Sale of Assets

Section 196 of the Companies Ordinance provides that the directors of a public company shall not, except with the consent of the shareholders in a general meeting, either specifically or by way of an authorisation, sell, lease or otherwise dispose of the undertakings or a sizeable part thereof (unless the main business of the company comprises of such selling or leasing). Furthermore a sale of assets by a company may be subject to restrictions imposed by the constitutional documents of the company.

Scheme of Arrangement

Under Section 284 of the Companies Ordinance, the shareholders must approve of the scheme of merger or amalgamation in an EOGM. The scheme of arrangement is considered approved 'if a majority in number representing three-fourths in value of the creditors or class of creditors, or members, as the case may be, present and voting either in person or, where proxies are allowed, by proxy at the meeting, agree to any compromise or arrangement'.

Private Company

A sale or issue of shares by shareholders of a private company may be subject to restriction under the constitutional documents of the company e.g. existing shareholders may have pre-emption rights or other subscription rights.

8. Do directors and controlling shareholders owe a duty to the stakeholders in connection with a deal?

Scheme of arrangement

Section 286(1)(a) of the Companies Ordinance requires directors and chief executives to disclose to affected creditors and shareholders, the directors' or chief executive's material interest in the merger.

Takeover Ordinance

Section 14 of the Takeover Ordinance restricts the board of directors of the target company from taking certain actions during the offer period. The board of directors may not:

- sell, transfer or otherwise dispose of the undertaking or any part thereof (except for that which is in the course of ordinary business);
- encumber any asset of the company or its subsidiary;
- issue any rights or bonus voting rights during the offer period; or
- enter into any material contracts.

Controlling shareholders have a duty of good faith to minority shareholders. Also, section 13(2) of the Takeover Ordinance restricts shareholders participating in a share purchase agreement with the acquirer from participating in the public offer.

9. In what circumstances are break-up fees payable by the target company?

The laws of Pakistan do not specifically regulate break-up fees. The Contract Act 1872 allows compensation for any loss or damage caused by the breach that naturally arose in the usual course of business (including any loss that the parties knew about when they made the contract) but not for any remote or indirect loss sustained by the reason of such breach. Transaction parties are allowed to agree to amounts of liquidated damages which would be payable upon termination of the transaction by the target company. However, liquidated damages clauses may not be enforced by the courts in cases where such clauses impose liquidated damages by way of a penalty and not as a genuine pre-estimation of the actual loss that will be suffered by the acquirer.

10. Can conditions be attached to an offer in connection with a deal?

With regard to unlisted companies, the parties are free to establish conditions to the business combination that do not contravene the provisions of the Companies Ordinance.

For listed companies, an acquirer may make the public offer conditional upon a 'minimum level of acceptance' from the tendering shareholders (Regulation 14 of the Takeover Regulations). Under current regulations, the acquirer can impose a 'minimum level of acceptance' of not more than 35 per cent of the remaining voting shares of the target company.

For a listed company, conditional financing is unlikely under the Takeover Ordinance. Before proceeding with a public announcement of offer, a potential acquirer must appoint a manager to the offer. The manager to the offer is required by law to ensure that before the public announcement of offer is made, the acquirer has made firm arrangements for funds for payments to shareholders under the public offer.

Conditions attached with any deal would also have to satisfy the provisions of the Contract Act, 1872. This is particularly relevant in the case of contingency contracts. Contracts which are contingent on the occurrence of future events may not be enforceable till such events occur or may become void if the occurrence of such future conditions becomes impossible.

11. How is financing dealt with in the transaction document? Are there regulations that require a minimum level of financing?

Generally, a buyer has arranged for financing separately and the subject is not dealt with in the transaction documents.

12. Can minority shareholders be squeezed out? If so, what procedures must be observed?

Yes, but only in limited circumstances. Where a scheme or contract involving the transfer of shares or any class of shares in any company (the transferor company) to another company (transferee company) has, within 120 days after the making of the offer on that basis by the transferee company, 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, at any time within 60 days after the expiry of the said 120 days, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his or her shares. When such a notice is given the transferee company shall, unless, on an application made by the dissenting shareholder within 30 days from the date on which the notice was given, the court thinks fit to order otherwise, 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. The squeeze-out provisions are subject to certain additional conditions prescribed in the Companies Ordinance

13. What is the waiting or notification period that must be observed before completing a business combination?

Competition Act

The Competition Act prohibits undertakings from proceeding with a merger which meets the pre-merger notification thresholds until such undertakings have obtained clearance from the Competition Commission.

Section 11(3) of the Competition Act states that, "the concerned undertakings shall submit a pre-

merger application to the Competition Commission as soon as they agree in principle or sign a non-binding letter of intent to proceed with the merger."

Once this application has been submitted, the Competition Commission shall conduct a first phase review and it shall, within 30 days of receipt of the application, issue an order either allowing the merger or initiating a second phase review. If the Competition Commission chooses to initiate a second review it may require the merger parties to provide such information as it considers necessary. The Competition Commission shall, within 90 days of the receipt of the requested information, make an order either allowing or rejecting the merger.

Takeover Ordinance

The Takeover Regulations provide a fairly comprehensive timeline regarding the public offer for acquisition of shares of a listed company.

An acquirer must publish a public announcement of offer within 180 days of publishing a notice regarding its intention to acquire voting shares. The acquirer's offer statutorily expires on the 60th day of the publication of the public announcement of offer. The acquirer is required to make payment for the tendered shares within 30 days of expiry of acceptance period (60 days from the announcement of public offer).

Scheme of Arrangement

There is no definite waiting period for a merger or amalgamation under the Companies Ordinance. The parties to a business combination must petition the court for an order to hold a shareholders meeting to approve the merger. The time and place of the meeting is determined by the court. Once the requisite number of shareholders have agreed to the merger, the companies must then seek the court's sanction regarding the scheme of arrangement that provides the details of the proposed merger.

14. Are there any industry-specific rules that apply to the company being acquired?

Below are some industry specific regulations on mergers and acquisitions.

Non-Banking Finance Companies

Yes. For example, amalgamation of non-banking finance companies (NBFCs) are subject to approval by the SECP under section 282(L)(4) of the Companies Ordinance. Also, unlike the general provisions where a majority representing 75 per cent of the value of shares present at the meeting must approve of the merger, for the mergers of NBFCs, a majority representing two thirds in value of the shareholders of each NBFC, present either in person or by proxy, must approve of the scheme.

Insurance Companies

With respect to insurance companies, the Insurance Ordinance, 2000 provides that in the case of an acquisition of shares of more than 10% in an insurance company, or, in the case of a non-life insurer of the whole or any part exceeding 10%of the business located in Pakistan of the insurer, such acquisition shall not proceed unless the acquirer has obtained approval from the SECP. The Insurance Ordinance further provides that the life insurance business of an insurer shall not be transferred to any person or transferred to or amalgamated with the life insurance business of any other insurer except in accordance with a scheme sanctioned by the Court having jurisdiction over one of the concerned parties.

Banking Companies

Merger and acquisition of banking companies would also be governed by the Banking Companies Ordinance, 1962 ("BCO"). Pursuant to its powers under the BCO, the SBP regulates share acquisitions of banking companies e.g. SBP approval is required to hold more the 5% of the voting shares of a banking company. Similarly the merger or amalgamation of banking companies requires approval from the SBP.

Broadcast media
Companies providing broadcast media and related distributions services are required to be licensed under the Pakistan Electronic Media Regulatory Authority Ordinance 2002 which prohibits the grant of a license to companies owned, controlled or managed by foreign nationals or companies. This in effect prevents any foreign entity from acquiring such companies in Pakistan.

15. Are cross-border transactions subject to certain special legal requirements?

Transactions involving foreign exchange and cross-border transfer of securities are also governed by the Foreign Exchange Regulation Act, 1947 ("FERA"). Section 18(1) of FERA prohibits a person resident in Pakistan from doing any act whereby a company which is controlled by persons resident in Pakistan ceases to be so controlled. The SBP has not granted any general permission for such transactions as such any transaction involving a change of control of a company from a resident person to a non-resident person requires the special permission of the SBP.

Section 13(1) of FERA restricts, except with the general or special permission of the State Bank of Pakistan, inter alia, the transfer of securities (including shares) to or in favour of a person resident outside Pakistan. Chapter XX of the Foreign Exchange Manual provides a general exemption from restrictions under section 13(1) in relation to transfer and export of securities on a repatriation basis provided the issue price or purchase price is paid in foreign exchange through normal banking channels, the purchase price is not less than the price quoted in the stock exchanges of the country or in the case of an unlisted company not less than the break-up value of the shares as certified by a practising chartered accountant.

16. How will the labour regulations in your jurisdiction affect the new employment relationships?

The laws governing labour and employee benefits do not specifically provide for business combinations. In the event that the business combination entails termination of more than 50 per cent of the work force or the closing down of the whole of the establishment, prior permission of the Labour Court shall be required under the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance 1968 (Standing Orders). Standing Orders apply to every industrial establishment or commercial establishment wherein twenty or more workmen are employed. The term 'workman' has been defined in the Standing Orders to mean any person employed in any industrial or commercial establishment to do any skilled or unskilled, manual or clerical work for hire or reward

17. Have there been any recent proposals for reforms or regulatory changes that will impact M&A activity?

We are unaware of any recent proposals for reforms of regulatory changes what will impact M&A activity.

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