






Investment Trends


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Eco.Indicators

Jul., 2012-13	US\$
FDI	42.0 m
Export	22.6 B

Board of Investment webpage

Investment Trends

Choice of vehicle

Foreign companies can choose between setting-up a liaison office, branch office or incorporate a Pakistani company as either its wholly owned subsidiary or joint venture with a Pakistani / overseas partner.

Liaison office (LO)

The activities of a LO of a foreign entity are restricted to undertaking promotional activities, provision of technical assistance, exploring the possibility of joint collaboration and export promotion on behalf of its parent company in Pakistan. Such an office is strictly restricted from entering into revenue generating activities and is required to meet its operational expenses through remittances from its parent company through normal banking channel and converted to local currency account.

A foreign company desirous of setting up a LO in Pakistan is required to obtain permission from the BOI by submitting an application on a specified format. The permission for opening of liaison office is granted by the BOI for an initial period of three to five years. Further extension is granted after reviewing the performance of the entity during the initial period. The request for renewal / extension with complete documentation is processed and disposed off within two weeks.

Branch office (BO)

A foreign entity can operate in Pakistan by establishing a BO. A BO is set up specifically to execute the contracts awarded to the foreign entity; therefore activity is restricted to the extent stated in the signed agreement / contract. A BO cannot indulge in commercial /trading activities.

Revenue generated / profit earned from BO activities can be repatriated to the Head Office, subject to payment of applicable taxes. Such repatriation should be in compliance with the procedure mentioned in the Foreign Exchange Regulations of the SBP through an authorized dealer (banker) under normal banking channels and Tax regulations.

All expenses incurred from BO activities will be met out of funds transferred from abroad through normal banking channel and converted to local currency account, or from the amounts received through execution of the agreement / contract. A foreign company desirous of setting-up a BO in Pakistan is required to apply for permission to the BOI on a specified

application format along with the prescribed documents / information. The BOI normally takes six to eight weeks to issue the permission letter after receiving the application, however, in case of anticipated delay; 3 months provisional permission can be granted on the request of the company.

Further extensions are granted by the BOI after reviewing and examining the past performance of foreign companies. Request for renewal / extension is generally processed by the BOI within two weeks, provided the requests are supported with complete documentation.

Registration with SECP

A foreign company (LO / BO) is required to file prescribed returns / documents with the Registrar of Companies in the city where principal place of business is situated, within 30 days after obtaining permission from BOI, as per the provisions of the Companies Ordinance, 1984.

Accounts of BO and LO

The requirements relating to preparation of accounts, audit and submission of accounts to Registrar of Companies are also applicable to the branch / liaison office of a foreign company.

Tax registration and work visa

LO and BO are required to be registered with the Tax Authorities in Pakistan. Every expatriate engaged as an employee by LO and BO operating in Pakistan is required to obtain work visa prior to commencement of employment in Pakistan.

Pakistan subsidiary / joint venture

A foreign company can set up its own wholly owned subsidiary in Pakistan or establish a joint venture company with a Pakistani or foreign partner, subject to fulfilling the policies for FDI (see Chapter 4) and requirements of the Companies Ordinance, 1984. A subsidiary or a joint venture company can be formed as a private company or a public company (see Chapter 9).



Key differences between a public company and private company are highlighted below:

S.No	Particulars	Private Company		Public Company	
		Single member	Other private	Un-listed	Listed
1	Minimum number of members (shareholders)	1	2	3	7
2	Maximum number of members (shareholders)	1	50	Unlimited	Unlimited
3	Minimum number of directors	1	2	3	7
4	Limitations for share transfers	Restricted	Restricted	Allowed	Allowed

Source: Companies Ordinance 1984

Salient features of work visa policy

Work Visas are granted to foreign technical and managerial personnel for the purpose of imparting technical know-how and skills to the local population. To facilitate such foreign nationals to travel and stay in Pakistan, business visa policies are considerably relaxed.

Missions abroad are authorized to grant five year validity (multiple) visa within 24 hours to businessmen of various countries on Business Visa List (BVL), with the duration of each stay restricted to three months. The foreign nationals seeking a business visa need to produce one of the following documents:

- Recommendation letter from Chamber of Commerce & Industry of the respective country of the applicant
- Invitation letter from business organization duly recommended by the concerned Trade Organization / Association in Pakistan
- Recommendation letter by Honorary Investment Counsellors of BOI
- Recommendation letter from Pakistani Commercial Attaché posted in Pakistan High Commissions / Embassies / Consulates General abroad.
- Business-persons and investors from any of the BVL listed countries will also be granted a thirty-day landing permit on arrival at any airport in Pakistan.

Work visa procedures

Work visas are granted subject to a constructive plan to train Pakistani personnel to take over the technical and managerial responsibilities over a reasonable period of time.

The multiple-entry work visa is issued for a period of one year or up to the date of expiry of the applicant's passport, whichever is earlier. The concerned Pakistani Mission abroad will grant work visas to the applicant, whereas extension in work visa is endorsed by the Regional Passport Office of the city where the expatriate is working, upon authorization by the Ministry of Interior.

Business visa conversion into work visa

For the purpose of changing the category of visa of foreign national employees and investors from business visa to work visa, the concerned expatriate is no more required to leave the country. The Ministry of Interior will process such requests, upon receiving verification from the BOI.

Granting of Pakistan citizenship to foreign nationals (Investors)

Any person of a country recognized by Pakistan may obtain Pakistani Citizenship by investing a minimum of USD0.75 million in tangible assets and USD0.25 million (or equivalent in major foreign currency) in cash on a non-repatriable basis, and by fulfilling the conditions of the Pakistan Citizenship Law. Investment on a non- repatriable basis means that the amount is brought to Pakistan through normal banking channels, converted into Pakistan Rupees, and never remitted back.



A photograph of a paved path winding through a lush green field. The path starts in the foreground, curves to the right, and then back to the left, disappearing into the distance. The field is vibrant green, and there are some trees and bushes in the background. The sky is a clear, bright blue. The overall scene is peaceful and scenic.

Mergers, Acquisitions



Mergers, Acquisitions

Merger

Merger is a combination of two or more companies into a single company where one company survives and the other loses its corporate existence. The survivor acquires the assets as well as the liabilities of the merged company.

Acquisition

An acquisition is a transaction where one of the enterprises, the buyer, obtains control over the net assets and operations of another enterprise, the seller, in exchange for the transfer of assets or issue of equity.

Mode of acquisition

A business entity can be acquired in its entirety either by way of an asset deal or a share deal.

Asset deal

Under the asset deal, the buyer directly acquires the assets and liabilities from the seller. The transaction may involve buying of all or selected assets / liabilities of the seller. The book value of the net assets purchased is recorded in the books of buyer at the fair market value. The excess of purchase price over fair value of net assets acquired is recorded as goodwill in the books of buyer.

Share deal

Under the share deal, the buyer acquires the shares in the corporate entity. The share deal is generally less complex and time consuming than the asset deal.

Benchmark level of control

The most important factor in formulating the strategy for acquisition is to determine the level of control desired by the acquirer. The benchmark levels of control that are generally relevant for an investor are as follows:

- Shareholding higher than 25% provides a shareholder the power to block / veto a special resolution, which requires 75% or more votes. Special resolutions are required for important business matters to be approved by shareholders e.g. investment in associated companies, changes in articles and memorandum, removal of chief executive, voluntary winding up, etc.



Consolidation of holdings

No acquirer, who has acquired more than 25% but less than 51% of the voting shares or control of a listed company, shall acquire additional voting shares or control unless such an acquirer makes a public announcement of offer to acquire voting shares or control in accordance with this Ordinance.

Provided that such acquirer shall not be required to make a fresh public announcement of offer within a period of 12 months from the date of the previous announcement.

Offer size

When an acquirer is required to make a public announcement of offer, the acquirer shall make a public announcement of offer to acquire such number of voting shares, which together with the existing voting shares held by the acquirer will oblige the acquirer to acquire at least 50% of the total voting shares of the target company.

Other provisions

In addition following are the important provisions of the takeover laws:

- Disclosures by the target company on possibilities of its acquisition to the stock exchange
- Timing of public announcement of intention and of offer to purchase shares of the target company beyond the specified threshold appointment of manager to the offer contents of public offering documents
- Procedures for withdrawal of public announcement of intention and of offer for purchase of shares
- Size of offer, minimum offer price, mode of payment to shareholders on acquisition of shares
- Form / nature of security for performance of obligation under the public offer
- Obligations of acquirer, board of directors of the target company, manager to the offer
- Other procedural matters including penal provisions, reporting requirements, and powers of the SECP in the area of substantial acquisitions.

- Shareholding higher than 50% generally enables the beneficial owner to elect more than 50% of the board of directors and to appoint a chief executive of its choice thus enabling day to day management control.
- Shareholding higher than 75% is generally the maximum that is needed to execute all decisions, including special resolutions. It is the converse of the 25%+ benchmark.

Substantial acquisition of voting shares and takeover of listed companies

In order to provide for a fair and equal treatment to all the investors as well as a transparent and efficient system for substantial acquisition of voting shares and takeovers of listed companies and matters ancillary thereto or connected therewith, the SECP has promulgated following legal framework:

- The Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002; and the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Regulations, 2008.

Takeover laws and regulations are intended to minimize price manipulation and insider trading. Following is the summary of some important sections of the Ordinance:

Acquisition of more than 10% voting Shares of a company but up to 25%

Any person who acquires voting shares in a listed company as a result of which his aggregate holding exceeds 10% of the voting shares, must disclose the aggregate shareholding to the said company and to the stock exchange on which those shares are listed, within two working days of the acquisition. Any additional acquisition by the above person during the next 12 months need not be disclosed until such time as the shareholding does not cross 25%.

Simply, the disclosure is triggered on crossing the 10% voting rights threshold. Any further purchases in the 12 months thereafter, up to 25% of the voting rights need not be disclosed.

Additional acquisition of voting shares – beyond 25% (substantial acquisition)

When the acquirer plans to cross the 25% threshold or gain control of a listed company, he is required to make a public announcement of offer to acquire additional voting shares or control of such company; such person shall make requisite disclosures as mentioned above.

Tax considerations for mergers and acquisitions

The buyer and seller may need to consider following tax aspects:

Treatment of gain on disposal of assets / issue of shares

No gain or loss shall be taken to arise on disposal of asset from one company to another company and no gain or loss shall be taken to arise on issue, cancellation, exchange or receipt of shares as a result of operation of a Scheme of Arrangement and Reconstruction under sections 282L and 284 to 287 of the Companies Ordinance, 1984 or section 48 of the Banking Companies Ordinance, 1962, if the conditions stipulated in the tax laws are satisfied.

Treatment of capital gain

In case of share deal, where individual shareholders (sellers) receive cash in consideration of sale of their investments in the target company which result in gain (capital gain) in the hands of the sellers:

- if the target company is a listed company; capital gain is exempted from tax up to 30 June 2010
- if the target company is an unlisted company and the holding period of investment in the hands of the sellers is less than one year; gain on sale of shares is 100% taxable
- if the target company is an unlisted company and holding period of investment in the hands of the sellers is more than one year; 25% of the gain is exempted from tax.

Treatment of carry forward losses

Any assessed loss (excluding capital losses) for the tax year (i.e. not including brought forward losses) of an amalgamating company or companies shall be set off against business profits and gains of the amalgamated company, and vice versa, in the year of amalgamation. Any unadjusted loss shall be carried forward up to six tax years succeeding the year of amalgamation. The set off is subject to continuation of the business of the amalgamating company for at least five years.

In the case of amalgamation of banking companies or non-banking finance companies, modarabas or insurance companies,

accumulated business losses, except speculation business losses of an amalgamating company or companies, shall be set off or carried forward against business profits and gains of the amalgamated company and vice versa for up to six tax years immediately succeeding the tax year in which the losses of the amalgamated company or amalgamating company or companies were first computed.

Typical steps of a business entity acquisition

Acquisition of an entity may involve various steps depending on the nature, size, and complexity of the transaction and the target entity. Following are the typical phases of acquisition of an entity:

- Signing of Letter of Intent / Memorandum of Understanding between the potential buyer and the seller
- Seeking required regulatory approvals
- Undertaking financial, legal, commercial and operational due diligence
- Assessing value and negotiating price
- Signing of Sale and Purchase Agreement
- Closing the deal.

The intended buyer and seller usually engage financial consultants and legal advisors to assist them on various phases of merger and acquisition transactions, particularly; to perform due diligence, assess business value, transaction structuring; and to assist on legal matters.

Competition law

The Competition Ordinance, 2007 requires that where an undertaking, intends to acquire the shares or assets of another undertaking, or two or more undertakings intend to merge the whole or part of their businesses, and meet the pre-merger notification thresholds stipulated in regulations prescribed by the Competition Commission, such undertaking or undertakings shall apply for clearance from the Competition Commission of the intended merger.

The aim of the Competition Ordinance and Competition Commission established under this Ordinance is to provide for a legal framework to create a business environment based on healthy competition towards improving economic efficiency, developing competitiveness and protecting consumers from anti-competitive practices.

Recent merger and acquisition transactions in Pakistan

There has been considerable merger and acquisition activity in the recent past. The concentration of M&A activity has been observed in the financial services and telecom sectors

Key M&A transactions during 2004-09

Target name	Sector	Acquirer name	Stake
Orascom Construction Industries' stake in Pakistan Cement Company Limited	Cement	Laflarge S.A	69%
Pure Terephalic Acid divested by AkzoNobel	Chemical	KP Chemical Corporation	75%
Tameer Microfinance Bank	Financial Services	Telenor Pakistan	51%
PICIC & PICIC commercial Bank Limited	Financial Services	Tamasek through 74% stake in NIB	100%
Saudi Pak Commercial Bank (now Silk Bank)	Financial Services	International consortium comprising Bank Muscat SAOG, International Finance Corporation, Nomura European Investments Limited & Sinthous Capital	86.55%
Crescent Commercial Bank (now Samba Bank)	Financial Services	Samba Group	68.4%
Union Bank	Financial Services	Standard Chartered Bank	95.37
Arif Habib Bank Limited	Financial Services	Suroor Investments led by Mr. Hussain Lawai	60%
Bosicor and associated companies (now Byco Petroleum & Byco Chemicals Pakistan Limited)	Oil & energy	Abraaj Capital & Bosicor Corporation Limited	40% & 60% respectively
Karachi Electric Supply Corporation	Power generation	Abraaj Capital	35.8%
Pakistan Telecommunication Company Limited	Telecom	Emirates Telecommunications Corporation - Etisalat	26%
Paktel	Telecom	China Mobile	100%
Lakson Tobacco Company Limited	Tobacco	Philip Morris International	97.62%

Sources: Company Reports; company websites; newspaper articles



The background is a complex collage. On the left, a globe shows the Americas. Overlaid on the globe and extending to the right are several interlocking mechanical gears. The entire scene is bathed in a warm, golden-yellow light. In the lower right quadrant, there are horizontal lines of binary code (0s and 1s) in a glowing yellow font. The title 'Foreign Exchange' is centered in the lower right, rendered in a large, black, outlined font.

Foreign Exchange



Foreign Exchange

Foreign Exchange regulations

Foreign exchange dealings are regulated under the Foreign Exchange Regulation Act, 1947. Foreign currencies are made available to persons / companies doing business in Pakistan for all purposes under rules which have been clearly defined by SBP. There are no restrictions on availability of foreign currency for imports (except for import of banned items or for imports from Israel). Business houses can buy foreign currencies for all other commercial transactions like payments for export claims, commission payment to foreign agents on exports, royalty, franchise / technical fees and dividends (as subsequently described in detail), software licenses / maintenance / support fee, advertisement abroad in newspapers and magazines, business travel etc.

Foreign investment in Pakistan enjoys full protection and repatriation facilities. The Foreign Private Investment (Promotion and Protection) Act, 1976 provides guarantees for repatriation of foreign investment to the extent of original investment, profits earned on such investment, and appreciation of capital.

The important foreign exchange regulations pertaining to foreign investment are covered in detail hereon.

Issuance of share certificates to foreign investors

SBP has given general permission to non-residents to purchase shares of Pakistani companies quoted on the stock exchange irrespective of the nature of their business, and shares of those private companies which are engaged in manufacturing, power generation and approved segments of service sectors. This facility is available to the following categories of non-residents, subject to payment being made in foreign currency and the price being not less than break-up value as certified by a practicing Chartered Accountant in the case of unlisted shares and the market price in case of quoted shares;

- A Pakistan national resident outside Pakistan
- A person who holds dual nationality including Pakistan nationality, whether living in or outside Pakistan
- A foreign national, whether living in or outside Pakistan
- A firm (including a partnership) or trust or mutual fund registered and functioning outside Pakistan, excluding entities owned or controlled by a foreign government.

Remittance of dividend

- Companies are required to nominate a bank through which they would like to make remittance of dividends to non-resident shareholders. On receipt of nomination of a bank from the company SBP authorizes the concerned bank to effect remittance of dividends to the non-resident shareholders of the company without its prior approval.

Royalty & technical fee

- Manufacturing sector

The SBP has laid down certain conditions for remittance of Royalty and Technical Fee by the manufacturing sector to facilitate the execution of agreements for transfer of technology. The local firm would designate any of the Authorized Dealers (Banks) in foreign exchange in Pakistan, through whom payments will be made.

- Non-manufacturing sector

Payment of royalty, franchise / technical fee by the non-manufacturing sector opened for foreign direct investment like International Food Franchises is permissible, subject to the maximum limit of USD100,000 as the initial lump-sum payment, irrespective of number of outlets, and maximum 5% of net sales. The initial period for which such fees will be allowed should not exceed five years.

- Financial sector

Remittance of royalty / franchise and technical fee or commission / service charges for the financial sector may be allowed by the SBP, on case-to-case basis, in respect of foreign collaborator's branded financial products / services. The one-time lump sum up-front royalty / technical fee / franchise fee should not exceed USD500,000. Continuing payments should not exceed 0.25% of customers billing.

- Foreign currency borrowing for plant and machinery

Private foreign currency loans

- Private sector entrepreneurs are permitted to obtain foreign currency loans from banks / financial institutions abroad, parent companies of the multinationals and as suppliers' credit, not involving government guarantee, for financing foreign currency cost of the projects covered by the government's industrial and investment policies. The repayment period of such loans / credit should not be less than five years. Loan agreements and repayment schedules are registered with SBP which enables banks to allow remittance of interest and loan instalments, after deduction of applicable tax, without further approval of SBP.



Engro Expansion Plant

Other foreign private loans - any purpose

- Individuals, firms, companies resident in Pakistan including foreign controlled companies and branches of foreign companies but excluding banks may obtain foreign currency loans from abroad on repatriable basis for any purpose subject to SBP – Foreign Exchange regulations.

Short term foreign private loans

- Repatriable foreign currency loans by foreign controlled companies for working capital

Foreign controlled companies (i.e. branches of foreign companies and companies incorporated in Pakistan with 50% or more foreign share holding, or 50% or more directors of foreign nationality) are allowed to contract foreign currency loans from banks / financial institutions abroad or from their HO or from other overseas branches / associates abroad for meeting their working capital requirements, subject to the conditions that the repayment period should not exceed twelve months and the interest should not exceed 1% over LIBOR. Such loans can however be rolled over for further periods not exceeding 12 months each (branches of foreign companies are not allowed to pay interest on such loans).

- Foreign currency loans for working capital by Pakistani firms
- Pakistani firms and companies functioning in Pakistan, excluding banks, may obtain foreign private loans on non-repatriable or repatriable basis.

Prepayment of foreign private loans

The SBP allows prepayment of foreign private loans (other than the Government guaranteed loans), on a case-to-case basis. This facility can be availed by those borrowers who have the rupee counterpart available with them or they have the capacity to generate rupee funds themselves.

Possession of foreign currency

There is no restriction on residents and non-residents on bringing in, and holding foreign currency. However, there is a ceiling of USD10,000 on taking foreign currency out of Pakistan.

Foreign currency accounts (FCA)

Companies and individuals are allowed to maintain foreign currency accounts with banks in Pakistan with minimum regulations.

Local borrowings by foreign controlled companies

- Lending to foreign controlled companies for working capital
- Authorized Dealers are allowed to grant Rupee loans and credits to foreign controlled companies for meeting their working capital requirements.
- Lending to foreign controlled companies for capital expenditure

Foreign controlled companies engaged in manufacturing are allowed to obtain Rupee loans for meeting capital expenditure requirement from banks, development financial institutions and other financial institutions or by issuing Participation Term Certificates, etc. However, other foreign controlled companies require special permission to obtain medium and long-term Rupee loans.

Loans against guarantees of non-residents

Authorized Dealers have general permission under the Foreign Exchange Regulations to grant Rupee loans to their clients (including foreign controlled companies) against guarantees of non-residents / guarantees received from banks functioning abroad subject to compliance with the Prudential Regulations of SBP.





Company
Law



Company Law

Types of Business Entities

Business activities may be carried out through a company, modaraba, branch, partnership or sole proprietorship. Companies incorporated in Pakistan and branches or liaison / representative offices of foreign companies are regulated by the Companies Ordinance, 1984, and Rules framed there under, administered by SECP.

Forms of companies

The Companies Ordinance, 1984 mentions the following types of companies:

- Company limited by shares

The personal liability of shareholders is limited to the amount (if any) unpaid on their shares. Effectively, the shareholder's liability does not exceed the amount committed, when taking up the shares in the company.

- Company limited by guarantee

In this type of company, the memorandum binds each member to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

- Unlimited company

The law also allows formation of company with unlimited liability of its members.

From a practical perspective, the limited liability company with share capital would be the type of company contemplated by a non-resident interested in investing in Pakistan.

A company incorporated in Pakistan, may either be a "Public Company" or a "Private Company". A public company can also be a listed company. Companies are required to get registered under the tax laws and obtain a National Tax Number (NTN).



Telenor Office Islamabad

Private company

A private company can be easily formed by a minimum of two members (except for a single member company) and may commence its business immediately after its incorporation. A private company, through its Articles of Association (AoA):

- restricts its members to transfer shares
- limits the number of its members to fifty
- prohibits any invitation to the public to subscribe for its shares or debentures.

Single-member company

An individual is entitled to obtain corporate status by forming a single member company and avail privileges of limiting the liability. The introduction of the concept of a single member company has facilitated sole proprietorships to obtain corporate status, giving them the privilege to limit the liability of their proprietors.

All the shares are vested with single member, however, he / she is required to nominate two individuals, one of whom shall become nominee director in case of death of the single member and the other shall become alternate nominee director to work as nominee director in case of non-availability of the nominee director.

Single-Member company is required to appoint a qualified company secretary and to write "SMC" in addition to Private Limited with its name.

Public company

A public company can be formed by three members or more. It is entitled to commence business after obtaining a commencement of business certificate from the Registrar of Companies.

A public company does not have restrictions with regard to maximum number of members and transferability of the shares. A public limited company should have a minimum of three members. Public companies have the option to get their securities listed on a stock exchange.

A company cannot be listed unless it has made a public issue which is subscribed by at least 500 members. However this is applicable for listing of shares. For listing of securities other than shares, minimum number of members is three.

A listed company may buy back its own shares subject to conditions specified in the Companies Ordinance, 1984.

Memorandum and Articles of Association

A company is governed by its Memorandum of Association (MoA) and Articles of Association. The MoA primarily specifies the framework of company's objectives and capital boundaries, whereas AoA transcribes rules for conducting its daily business in accordance with applicable laws e.g. transfer and transmission of shares, mode of alteration in capital, holding of meetings, voting, powers and duties of directors and chief executive, distribution of dividends, capitalization of profits and reserves, preparation of accounts, winding up, etc.

Share capital

The shares are moveable property of the member and are transferable in the manner provided in the company's AoA.

Company may have different kinds of share capital and classes of shares with distinctive rights attached thereto, if so provided in its constitutive documents i.e. MoA & AoA.

Management Directors

The management of companies is vested in the Board of Directors and they may exercise such powers as are specified in the AoA and the Companies Ordinance 1984. The Ordinance has vested in members certain powers, which cannot be exercised by the directors. The first directors are appointed by the subscribers to the MoA who shall remain in office until the first AGM, thereafter, directors are elected by the members for a period of three years.

A single member company is required to have at least one director, whereas every other private limited company should have at least two directors. A public company is required to have at least three directors in case of an unlisted company and seven in case of a listed company. All directors must be natural persons.

Chief executive

All companies are required to appoint a Chief Executive Officer (CEO) except for a company managed by a managing agent. The first CEO is appointed by the directors of the company at the date of commencement of business or within 15 days from the date of incorporation, whichever is earlier and thereafter within 14 days of the date of election of directors.

Telenor Group & Telenor Pakistan

Telenor Pakistan is 100% owned by the Telenor Group. Telenor Group is one of the world's major mobile operators with 140 million mobile subscriptions. It has mobile operations in 11 markets and in additionally 19 markets through our 31.67 per cent ownership in VimpelCom Ltd.

Telenor Group has a strong footprint in Central & Eastern Europe and Asia, and has the leading position in mobile, broadband and TV services in Nordic countries. It is one of the top 500 global companies by market value, and among the top performers on Dow Jones Sustainability Indexes. It has 30,000 employees worldwide.

Telenor Pakistan is the country's single largest European foreign direct investor, with investments in excess of US\$2 billion. It acquired a GSM license in 2004 for US\$291 million and began commercial operations in March 2005. Pakistan's second largest mobile operator, it has a subscriber base of 29.89 million and a SIM market share of nearly 25%. Telenor Pakistan acquired 51% of Tameer Microfinance Bank in November 2008. In 2009 it launched 'Easypaisa' to become Pakistan's first telecom operator to partner with a bank to offer a range of mobile financial services across Pakistan.

Since then, Easypaisa has helped provide people across Pakistan with access to convenient and secure financial services (Bill Payment, Money Transfer, Easyload, Donations, International & National Remittances, Mobile Accounts). By the end of Q4'11 (since launch in Oct 2009), 39m transactions had taken place with a total value of Rs76bn. Today, Easypaisa services are available at approximately 20,000 outlets in over 750 locations.

Awards

Telenor Pakistan has won a number of awards including the Prime Minister of Pakistan Trophy 2011 for Largest Foreign Direct Investment (Telecom Sector), Shaikat Khanum Social Responsibility Award 2011. Easypaisa has won the Best Mobile Money Transfer Entrant of the Year Award at the world's first Mobile Money Awards in 2011. It also got Best Place to Work Award by Pakistan's reputed HR associations; and the Best Practices Award, presented by The Data Warehousing Institute. Telenor Pakistan has also won Superbrand of the Telecom Industry Award, a recognition supported by the international brand arbiter Superbrands that operates in 55 countries; the awards recognize companies for Quality, Reliability, and Distinction.



Meetings

Statutory meeting is required to be held by a public company limited by shares or limited by guarantee having share capital, within a period of not less than three months nor more than six months from the date the company is entitled to commence business.

First Annual General Meeting (AGM) of the members (shareholders) is required to be held not later than 18 months from the date of incorporation and subsequently once every calendar year within a period of four months following the close of its financial year, and not more than 15 months after holding the last AGM.

Any general meeting other than the AGM shall be called an extraordinary general meeting (EoGM). The directors, at any time, may call an EoGM to consider any matter which requires the approval of the company in a general meeting and shall, on the requisition of members representing not less than one-tenth of the voting power on the date of the deposit of the requisition, forthwith proceed to call an EoGM.

The directors can meet as many times as they require, however, directors of a public company are required to meet at least once in each quarter of a year.

Accounts and audit

Some of the important provisions of the Companies Ordinance 1984, relating to accounts and audit are summarized as follows:

Accounts preparation & approval

- Every company is required to prepare annual accounts including balance sheet and profit & loss account whereas listed companies are also required to prepare cash flow statement and statement of changes in equity.
- Every listed company is required to prepare quarterly accounts within one month of the close of first and third quarter of its year of account and within two months of the close of the second quarter and transmit the same to the members and stock exchanges on which it is listed.
- The directors of every company shall present balance sheet and profit and loss account in the AGM not later than 18 months after the date of incorporation and subsequently once at least in every calendar year.
- Directors' report shall be attached with the accounts in the prescribed manner.

Audit of accounts

- Following companies are required to have their accounts audited by a Chartered Accountant;
 - a public company;
 - a private company, which is a subsidiary of a public company, or;
 - a private company having a paid-up capital of PKR3 million or more.
- The first auditor is required to be appointed by the directors within 60 days from the date of incorporation and thereafter in each AGM of the company.
- A public listed company shall ensure that its half-yearly financial statements are subject to limited scope review by statutory auditors.

Circulation & submission of accounts

- Every company shall send a copy of the audited accounts, directors' and auditor's reports to all members at least 21 days before AGM and shall keep a copy at the registered office of the company for the inspection of the members of the company during a period of at least 21 days before that meeting.
- A listed company shall, simultaneously with dispatch of the aforementioned accounts and reports, send five copies to SECP, the stock exchange and the registrar.
- Listed companies are required to submit three copies and other companies are required to submit two copies of annual accounts along with reports and documents required to be annexed to Registrar of Companies within 30 days from the date of AGM.
- In case of a private limited company having share capital not exceeding PKR7.5 million, there is no requirement to submit annual financial statements to Registrar of Companies.
- Under the code of corporate governance, all listed companies shall publish and circulate quarterly un-audited financial statements along with Directors' review on the affairs of the listed company for the quarter.



Filing requirements

The Companies Ordinance, 1984, requires companies incorporated in Pakistan to file various statutory returns relating to meetings of members, issuance and allotment of shares, appointment of and change in directors, chief executive and auditors, annual audited accounts, annual list of members etc. with the Registrar within the prescribed time limits.

Similarly, foreign companies (liaison offices and branch offices) are also required to file various statutory returns relating to their incorporation, principal place of business and particulars of Directors and Principal Officer, etc.

The SECP vigilantly monitors the affairs of entities under its purview. This is done through off-site monitoring of companies on the basis of reports and returns furnished by them as well as through on-site inspections of companies.

The effort is targeted at ensuring compliance of the regulated entities with applicable laws and regulations and protecting the interests of the investors, depositors and other stakeholders.

Recently SECP has developed an e-Services project which is an electronic data gathering and retrieval system that would perform automated collection, acceptance and forwarding of submissions by companies who are required by law to file forms and documents with the SECP. Its primary purpose is to increase the efficiency of the corporate sector for the benefit of investors, companies, and the economy by accelerating the receipt, acceptance and dissemination of time-sensitive corporate information filed with the SECP.

Main features of the system include online registration of companies, reservation of name, change in name and address of the company, online submission of annual, quarterly, and monthly returns by companies and tracking of complaints, etc. The system will also aim to reduce undue paper work and improve various processes within SECP.



Taxation
Good Taxing Creates equality



Taxation

Income tax

The Income Tax Ordinance, 2001 (hereinafter referred to as “the Ordinance”) is the tax code of Pakistan w.e.f. 01 July 2002, which governs the taxation of income. The procedures thereof are mainly contained in the Income Tax Rules, 2002. The financial policies and taxation measures are annually announced in accordance with the policies of Government and a Finance Act to this effect is promulgated.

Tax year

“Tax Year” means the period of 12 months ending on 30 June in respect of which assessment of income will be made. Where the accounting period (income year) of a person is different from the normal tax year or the person has been allowed by the Commissioner of Inland Revenue to use a period of 12 months other than the normal tax year, such a tax year will be called “Special Tax Year” and will be denoted by the calendar year in which the closing date of the special tax year falls.

Legal status of the tax payer

A taxpayer under the Ordinance may have any of the following status for charge of tax:

- Individual
- Company or Association of Persons (AOP)
- Federal Government, Foreign Government, a political sub-division of a Foreign Government or Public International Organization

The term “Association of Persons” includes a firm, a Hindu undivided family, any artificial juridical person and any body of persons formed under a foreign law.

Residential status

The total income chargeable to tax under the Ordinance is determined with reference to the residential status of the taxpayer as follows:

- A resident person is chargeable to tax in Pakistan for both Pakistan source income and foreign source income.
- A non-resident is chargeable to tax in Pakistan only to the extent of Pakistan source income.

Residency test

Individual

An individual is considered to be a resident in respect of a tax year if his aggregate stay in Pakistan is 183 days or more during that tax year; or he is an employee or official of the Federal Government or a Provincial Government, posted abroad in the tax year.

Company

A company is considered resident for a tax year if it is incorporated or formed by or under any law in force in Pakistan or the control and management of its affairs is situated wholly in Pakistan at any time in the year or if it is a Provincial Government or a Local Government in Pakistan.

Association of persons

An association of persons is considered resident for a tax year if the control and management of its affairs is situated wholly or partly in Pakistan at any time in the year.

Heads of income

Total income of a taxpayer can be charged to tax under any of the following heads:

- Salary
- Income from property
- Income from business
- Capital gains
- Income from other sources

Salary

Salary received by an employee in a tax year, other than exempt salary, shall be chargeable to tax in that year under the head “Salary”. For the purposes of computing salary liable to tax, the value of perquisites, allowances and benefits are determined in accordance with the prescribed rules. Salary income is subject to a progressive tax rate depending on the quantum of salary, ranging from 0.50% to 20%.

Foreign source income

If an individual, due to his employment becomes resident in Pakistan and his presence in Pakistan is for a period or periods not exceeding three years, his foreign income will not be taxed unless this income is derived from a business established in Pakistan or it is brought or received in Pakistan. Foreign source income of a resident (who is a citizen of Pakistan but was not resident in any of the four tax years preceding the tax year in which he became resident) shall be exempt from tax for two years, that is to say, in respect of the tax year in which he became resident and the next following tax year.

Any foreign source salary received by a resident individual is exempt from tax if the individual has paid foreign income tax in respect of the salary. Any foreign source salary earned by an individual (who is a citizen of Pakistan) during the tax year in which he leaves Pakistan and remains abroad is exempt from tax.

Income from property

Income from property includes rent received or receivable, other than exempt rent, by the owner of land or a building as a consideration for the use or occupation of the said property.

Income from business

Income from business or profession is taxed under the following regimes:

- Normal Tax Regime (NTR)
- Final Tax Regime (FTR)

Normal tax regime

Under the NTR, taxable income of the taxpayer is determined after reducing the related allowable expenses out of which some of the important allowable expenses are discussed below:

- Depreciation allowance

The Ordinance provides for depreciation to be allowable on the assets used in a business during a tax year. A transfer or export of the asset out of Pakistan shall be treated as a disposal of that asset and the cost of the asset shall be deemed to be the consideration received for that asset.

- Initial allowance

In respect of an asset, which has been placed into service in Pakistan for the first time in a tax year, a deduction namely “initial allowance” is available at the rate of 50%.

- First Year Allowance (FYA)

FYA of 90% of cost, in lieu of the initial allowance of 50% is allowed on plant, machinery and equipment installed and used by any industrial undertaking set up in specified rural and underdeveloped areas or installed for generation of alternate energy by an industrial undertaking set up anywhere in Pakistan.

- Intangibles

An amortization deduction is allowed for the cost of intangibles having useful life of more than one year, used wholly or partly for deriving income from business.

- Head office expenditure

Head office expenditure is allowed to a non-resident operating through a branch in Pakistan. This expense is generally allowed in the ratio of Pakistan turnover to global turnover of the entity.

- Apportionment of expenses

The rules provide that expenditure incurred for a particular class of income can only be allocated to that class. Further any common expenditure incurred for deriving more than one head of income shall be allocated to each class in the same proportion, which the gross receipts from that class of income bear to the total gross receipts from all classes of income.

- Tax liability

The standard tax rate for companies is 35%. Whereas, a small company, as defined in the Ordinance, is taxed at 20%. A society or a cooperative society is taxed at the rates applicable to a company.

The total income of a Modaraba, other than dividend income or income falling under the FTR, is taxable at 25%.

Final Tax Regime (FTR)

Under the FTR, the tax deducted or collected at source is deemed to be final tax in respect of income from sources chargeable under FTR. The amount chargeable to tax on gross receipt basis cannot be reduced by:

- Any deductible allowance; or
- Set-off of any loss; or
- Any tax credits available under the Ordinance.

Following is a brief overview of the sources of income, which are chargeable to tax under FTR.

- Dividends paid by a company

Every person who receives dividend from a company is chargeable to tax at 10% on gross receipt basis, unless the dividend is exempt from tax.

- Payment of ‘Royalty’ and ‘Fee for Technical Service’

Where a non-resident person receives any Pakistan-source royalty or fee for technical services, tax at the rate of 15% shall be charged on the gross amount of royalty or technical fee. However, the following receipts are not chargeable under FTR:

- Any royalty, where the property or right giving rise to the royalty is effectively connected to a permanent establishment in Pakistan of the non-resident person
- Any fee for technical services, where the services giving rise to the fee are rendered through a permanent establishment in Pakistan of the non-resident person
- Any royalty or fee for technical services, which is exempt under the Ordinance
- Any Pakistan source royalty or fee for technical services received by a non-resident person to whom presumptive taxation does not apply will be treated as “Income from Business” attributed to the permanent establishment in Pakistan of the non-resident person

- Shipping and air-transport income of non-residents

Every non-resident person carrying on the business of operating ships or aircraft as the owner or charterer is chargeable to tax as follows, unless the income is exempt from tax:

- case of shipping income, 8% of the gross amount received or In receivable, or
- In case of air transport income, 3% of the gross amount received or receivable

- Income of certain importers

The Ordinance provides for collection of advance tax at import stage by Collector of Customs from every importer of goods at 4% of the value of goods as determined under the Customs Act, 1969. The tax collected shall be final tax on income of importer arising from imports except where goods are imported by an industrial undertaking as raw material, plant, machinery and equipment for own use.

- Sale of goods and execution of contracts

The gross receipts on account of sale of goods and execution of contracts are covered under FTR subject to certain conditions. The tax rate on certain supplies and execution of contracts are given below:

- Where the recipient is a resident

- Payment on account of sale of rice, cottonseed or edible oil at 1.5%. Payment on account of sale of any other goods at 3.5%. However, sale of own manufactured goods by a company falls outside the ambit of FTR. Sale of goods (whether own manufactured or otherwise) by a listed company is also excluded from FTR.

- Payment on account of execution of contracts at 6%, other than a contract for the sale of goods or the rendering of services. However, tax deducted on payments for execution of contracts by a listed company is excluded from FTR. Whereas tax deducted from payments for execution of contracts by other companies is included in FTR.

- Where the recipient is a non-resident, on execution of:

- A contract or sub-contract under a construction, assembly or installation project in Pakistan, including a contract for the supply of supervisory activities in relation to such project at 6%.

- Any other contract for construction or services rendered relating thereto at 6%.

- A contract for advertisement services rendered by T.V Satellite Channels at 6%. Non-resident contractors do not fall under FTR, unless they opt for FTR by filing a written declaration within three months of the commencement of tax year and the declaration so filed shall remain irrevocable for three years.

- Income of exporters

The Ordinance provides that tax shall be deducted or collected at 1% as final tax on the income arising from export or sale to an exporter.

- Income of service providers

- Tax deducted from payments made to service providers does not fall under FTR. Service income of companies continues to be assessed under the NTR, while for non-company cases tax so deducted is treated as minimum tax.

- Income from prizes and winnings

- The gross amount of every prize on a prize bond is subject to withholding tax at 10%, whereas gross amount of winning from a raffle, lottery, prize on winning a quiz, prize offered by companies for promotion of sale, or cross word puzzle is subject to withholding tax at 20%.

- Goods transport business

- The tax collected at the time of collecting motor vehicle tax shall be final tax on the income of the owner of the goods transport vehicle from plying, or hiring out of such vehicle.

- Brokerage & commission income

- Tax shall be deducted or collected at 10% from gross amount of brokerage & commission, which would be considered as final discharge of tax liability.

- Services to an exporter / export house

- Income of a resident person arising on account of rendering / providing of services, such as stitching, dyeing, printing, embroidery, washing, sizing and weaving to an exporter or an export house is subject to tax at 0.50%.

- Insurance / re-insurance premium

Insurance / re-insurance premium received by a non-resident insurance / re-insurance company from a Pakistani insurance company is taxable at 5% of gross amount thereof.

Minimum tax based on turnover

If no tax is payable or paid by a resident company for a tax year or the tax payable or paid by the company for a tax year is less than 0.5% of the amount representing the company's turnover from all sources for that year, the aggregate of the company's turnover for the tax year, shall be treated as the income of the company and shall be taxed as in the following table:

Where no tax is payable or paid	An amount equal to 0.5% of turnover.
Where tax payable or paid is less than 0.5% of turnover	An amount representing the difference between tax payable or paid and 0.5% of turnover.

Exemptions have been provided to certain companies from the applicability of minimum tax. Furthermore, minimum tax paid can be carried forward for set off against future tax liability for three tax years, immediately succeeding the tax year for which the amount was paid.

Treatment of previous years' losses

Loss under a head of income, except speculation loss and capital loss, can be set off against income under any other head only for that year in which loss was sustained. In case of a business loss, which cannot be fully set off in a tax year, it can be carried forward up to six tax years immediately succeeding the tax year in which the loss was first computed. Business losses can be carried forward indefinitely for industrial undertaking set up in Export Processing Zones. Foreign losses can be set off only against foreign income.

Unabsorbed tax depreciation and initial allowance on tangible assets and unabsorbed amortization on intangibles can be carried forward to succeeding years, until completely set off.

In case of speculation and / or capital losses, unabsorbed losses can be carried forward up to six tax years and can only be adjusted against income from the same head in which the loss was sustained and not against income under any other head.

Group relief

A subsidiary company may surrender its assessed loss, excluding capital loss, for the tax year (other than brought forward losses and capital losses) to its holding company or its subsidiary or between another subsidiary of its holding company (collectively referred to as 'group') provided that the holding company shall directly hold at least:

- 55% of the subsidiary's share capital, where one of the group companies is listed, or
- 75% of the subsidiary's share capital, where none of the group companies is listed.

Loss surrendered by the subsidiary may be claimed by the holding company or another subsidiary for set off against its business income in the tax year and the following two tax years subject to the conditions specified in the Ordinance.

Moreover, the subsidiary shall not be allowed to surrender its assessed losses for set off against income of the holding company for more than three tax years; and where the surrendered losses are not adjusted against holding company's income in the said three tax years, the subsidiary company shall carry forward the unadjusted losses.

In case the holding company disposes of shares in the subsidiary during the specified five years that breaches the prescribed minimum shareholding criterion, the holding company shall offer the amount of profit, in the year of disposal, on which taxes have not been paid due to set off of losses surrendered by the subsidiary company.

Group taxation

Subject to fulfilment of certain rules and specified corporate governance requirements holding companies and subsidiary companies, both incorporated under the Companies Ordinance, 1984 and belonging to a 100% owned group, may opt to be taxed as one fiscal unit. In such cases, computation of income and tax payable shall be made on the basis of consolidated group accounts. The group companies shall give irrevocable option for taxation under this section as one fiscal unit. The relief would not be available for losses prior to the formation of the group.



Capital gains

Income arising on disposal of capital asset by a person in a tax year, other than a gain that is exempt from tax under the Ordinance, is chargeable to tax under the head “capital gains”.

Capital asset means property of any kind, but does not include stock in trade, consumable stores, raw materials held for the purpose of business, property on which depreciation or amortization is allowed and immovable property.

Income from other sources

Income in a tax year if not included in any other head, shall be chargeable to tax under the head “Income from Other Sources”. Some of the income included under this head are dividend, royalty, profit on debt, ground rent, etc.

In computing income from other sources, a deduction shall be allowed for any expenditure paid by the person in the year to the extent to which the expenditure is paid in deriving income chargeable to tax under this head.

Modes of payment of tax

A taxpayer makes payment of tax at four stages, i.e.

- deduction at source (withholding tax)
- advance payment of tax on quarterly basis
- payment of tax along with the return of total income
- payment of tax on demand as a result of amendment in assessment.

Withholding of tax

Under the Ordinance, virtually every amount received by a person is subject to withholding tax. Such withholding tax is treated as an advance tax in cases where income is chargeable under normal law and as a full and final discharge of tax liability, where income falls under FTR. Prescribed persons are treated as withholding tax agents who are required to withhold tax from specified payments.

Advance payment of tax

Advance tax is payable on a quarterly basis whereby advance tax due for a quarter shall be computed in the ratio of tax assessed to turnover for the latest tax year / assessment year as applied to turnover for the quarter.

Filing of income tax returns

The Ordinance specifies the persons who are required to file Income Tax Return on the specified dates.

It is mandatory for companies and AOPs to file return of income and withholding tax statements electronically.

Further, individual taxpayers are also required to e-file the return of income in certain cases. A wealth statement and its reconciliation shall also accompany the return of income if the last declared / assessed total income or total income / salary income for the current tax year, as the case may be, exceeds PKR500,000.

Avoidance of double taxation and unilateral relief

Pakistan has entered into agreements for avoidance of double taxation with a number of countries, including those where the conventions are restricted to the taxation of income from international air / shipping traffic.

A resident taxpayer shall be entitled to tax credit in respect of foreign source income chargeable to tax in Pakistan, if foreign income tax has been paid in respect of foreign source income equal to the lesser of:

- The foreign income tax paid, or
- Pakistan income tax payable in respect of the net foreign source income.

A credit shall be allowed under this provision only if the foreign income tax is paid within two years, after the end of the tax year in which the foreign income to which the tax relates was derived by the resident tax payer.

Anti avoidance

Transfer pricing

In order to avoid erosion of revenue through techniques of transfer pricing, revenue authorities in Pakistan introduced new provisions, empowering Commissioner of Inland Revenue (the Commissioner) with certain powers. Following is the summary of those provisions:

- For realization of arms length transaction, Commissioner may distribute or allocate income or tax credit between associates in the manner he deems fit.

- Reclassify transaction between related parties by applying the appropriate methods for tax avoidance or following the criteria of substance over form.

- Ignore transactions having no substantial impact.

- Thin Capitalization.

The concept of thin capitalization has been brought in Pakistan tax legislation so as to refrain foreign companies from injecting debt instead of equity in their subsidiaries formed in Pakistan. Thin capitalization rules apply to Foreign Controlled Resident Company (FCRC), that is a resident company in which 50% or more of the underlying ownership is held by a non-resident person (either alone or together with an associate) other than the financial institution or banking company.

- Where foreign debt to foreign equity ratio of a FCRC, at any time during a tax year, exceeds 3:1, profit on debt paid by the company in that year on the part of the debt exceeding 3:1 ratio will not be

allowed as deduction, while computing income of the FCRC. This rule is also applicable to the Pakistan branch of a foreign company.

- Thin capitalization is inapplicable if interest on foreign debt is chargeable to tax under the Ordinance and does not enjoy any exemption or reduced rate applicability.

Advance ruling

The Federal Board of Revenue (FBR) may, on application in writing by a non- resident taxpayer, issue to the taxpayer an advance ruling setting out the Commissioner's position regarding the application of the Ordinance, to the transaction proposed or entered into by the taxpayer.

Where the taxpayer has made a full and true disclosure of all aspects of the transaction relevant to the ruling and the transaction has proceeded in all material aspects as described in the taxpayer's application for the ruling, the ruling shall be binding on the Commissioner with respect to its application of the transaction.

Where there is any inconsistency between a circular and an advance ruling, priority shall be given to the terms of the advance ruling.

Taxation of special industries

The Ordinance contains special provisions for determination of total income of banking companies, insurance business, oil, natural gas and other mineral deposits concerns as follows:

Income, profits and gains of a banking company shall be taken to be the balance of the income, from all sources before tax, disclosed in the annual accounts required to be furnished to the State Bank of Pakistan subject to specified adjustments including provision for bad debts to be allowable etc. up to a maximum of 1% of total advances.

- The profits and gains of any taxpayer carrying on insurance business shall be computed separately from any other business and as per the rules for computation of total income given in the Fourth Schedule to the Ordinance. The computation of profit and gains of a life insurance business shall be the current year's surplus appropriated to profit and loss account, net of certain adjustments. The profit and gains of general insurance business shall be taken to be the balance of the profit disclosed by the annual accounts, net of certain adjustments.

- The profits and gains from the exploration and production of petroleum including natural gas and from refineries setup at Dhodak and Bobi fields, pipeline operations of exploration and production companies, and manufacture and sale of liquefied petroleum gas (LPG) and compressed natural gas (CNG) shall be computed in accordance with the rules contained in Fifth Schedule to the Ordinance. A business undertaking in any of these categories qualifies to be taxed separately from other business operations, if such business undertaking is carried out as a result of an agreement with the Government.

Indirect taxes

Sales tax

Sales tax law is governed by the Sales Tax Act, 1990 (the Act). It generally operates in Value Added Tax (VAT) mode. In certain cases, fixed sales tax and upfront value addition sales tax schemes are in place, where no input output tax adjustment is generally admissible. The fiscal policies and taxation measures are annually announced in accordance with the policies of the Government. The FBR is the regulatory authority. Government organizations, recipient of taxable advertisement services and persons registered with large taxpayer units are also entrusted with responsibility to withhold sales tax against the purchases of taxable goods and services from specified suppliers / service providers.

Sales tax is charged at 16% of the value of taxable supplies or services made by a registered person in the course or furtherance of any taxable activity carried on and on goods imported into Pakistan. Higher rates of sales tax are also applicable at 18.5% and 21% on specified taxable supplies.

Two conditions are essential to create a charge of sales tax:

- Taxable supply
- Taxable activity.

Taxable supply means supply of any goods, other than those, which have been exempted. Supplies made by an importer, manufacturer, wholesaler, dealer, distributor or retailer are covered under this term.

Taxable activity means any economic activity carried on by any person, whether or not for profit, and inter-alia includes an activity carried on in the form of business, trade or manufacture and involves the supply of goods, rendering of services or both.

Zero rating

Goods exported outside Pakistan are charged to sales tax at the rate of zero percent. Certain specified goods and persons as provided under various notifications are also charged to sales tax at the rate of zero percent. An exporter / supplier in respect of zero-rated supplies is entitled to claim refund of input tax paid against taxable purchases.

Exemptions

Sixth Schedule to the Act enlists goods, which are exempted from the levy of sales tax on import or supply or both stages. In few cases, these exemptions are subject to certain specified conditions. In respect of exempted goods the supplier is not entitled to claim refund for input taxes paid.

Registration

Following persons engaged in making taxable supplies in Pakistan (including zero rated supplies) in the course or furtherance of any taxable activity, are required to be registered under the Act:

- A manufacturer having annual turnover from taxable supplies exceeding PKR5 million during the last twelve months or whose annual utility (electricity, gas and telephone) bills during the last twelve months exceeds PKR700,000

- A retailer having annual turnover for the past twelve months exceeding PKR5 million

- An importer

- A wholesaler including dealer and distributor.

Manufacturers and retailers having annual turnover below the above-mentioned thresholds are not required to be registered and therefore, are not required to charge sales tax on supplies made by them. There is no threshold for importers, wholesalers, distributors or dealers and service providers.

Making of taxable supplies without obtaining registration, tantamount to tax fraud and exposes the supplier to penal actions under the Act.

Determination of tax liability

A registered person is entitled to claim input tax paid on goods used or to be used for taxable supplies made by him against output tax liability. However, the Federal Government is empowered to specify goods in respect of which input tax cannot be claimed. In certain cases, a registered person is not allowed to adjust input tax in excess of 90% of the output tax arising in a reporting month. However, excess input tax can be carried forward to next tax period and shall be refunded in accordance with the specified time limits, if it remains unadjusted in consecutive tax periods.

Returns

Every registered person is required to furnish a monthly sales tax return on or before 18th day of the month, following the tax period, provided that the payment of tax due is made by 15th day of the following month. Tax period has been defined as a period of one month.

Sales tax on services

Sales tax has been imposed on certain services. These services have been brought under sales tax net through Provincial Ordinances promulgated in the respective Provinces. This tax is charged, collected and paid at standard rate of 16% in the manner in which sales tax is collected on taxable supplies under the Act.

Federal excise duty

Federal Excise Duty (FED) is levied on specified goods imported or manufactured in Pakistan and specified services provided and rendered in Pakistan including excisable services originated outside but rendered in Pakistan at varied rates as prescribed under the Federal Excise Act, 2005. Generally FED is charged on the value or retail price basis, however it is charged on some items on the basis of weight or quantity. Zero-percent FED rate is applicable for exported good or specified goods. The goods which are subject to levy of FED inter-alia include edible oils, aerated water and concentrates, tobacco & cigarettes, cement, lubricants & fuel oils, liquefied gases, perfumes & toiletries, greases, viscose staple fibre, transportation vehicles, etc.

The services liable to levy of FED inter-alia include advertisements, air-travel, domestic air-cargo, shipping agents, telecommunication, insurance, non-fund services of banks and financial institutions, terminal & port operators, franchise services, and services provided by property developers or construction contractors. The standard rate of FED is 16% which is applicable in VAT mode. However, different rates are applicable for levy and payment of FED on franchise and telecommunication services.

Special excise duty

Special excise duty (SED) is applicable at uniform rate of 1% on goods produced or manufactured in Pakistan and goods imported into Pakistan, which is levied in addition to FED. However, SED is not chargeable on wholesale, distribution or retail stage. A list of goods or categories of persons is provided under an excise notification, which is exempt from levy of SED. These goods / persons inter-alia include all agricultural produce, edible oils and fats, POL products, meat & poultry, natural gas & LPG, fertilizers, tin plate, computer items, temporary imports, goods subject to zero-percent sales tax, supplies of the cottage industry, exportable goods, exempt imports, etc.



Labour Laws



Labour Laws

Industrial Relations Ordinance, 2008

This Ordinance relates to the formation of trade unions, the regulation of relations between employers and workmen and the avoidance and settlement of any differences or disputes arising between them or related matters. In its ambit the Ordinance includes trade unions and freedom of association, registration of trade unions, workers' participation and dispute resolution, labour courts, authorities, decisions, settlements and awards, penalties and procedures etc.

Employees' Old Age Benefits Act, 1976

Every industry or establishment with five or more employed persons is required to get registered under the Act. Recent amendments have extended the applicability of this Act for employees of banks or banking companies. The contribution is made at 5% of workers' wages by the employer and such contribution cannot be recovered in any manner from the employee; whereas, employee will make a contribution equal to 1% of his wages. Wage refers to wage defined in 'The Minimum Wages for Unskilled Workers Ordinance, 1969' which is PKR6,000. The minimum old-age benefit under this Act is PKR2,000 per month.

Employees' Cost of Living (Relief) Act, 1973

This act is applicable on every employee in the private sector, corporations and autonomous or semi-autonomous bodies whose terms and conditions of employment are negotiable through collective bargaining under the Industrial Relations Ordinance, 2008. The act entitles the employee a cost of living allowance equal to PKR100 per month to be paid by the employer.

Workers' Welfare Fund Ordinance, 1971

Under this Ordinance, any industrial establishment as defined in the Ordinance, having total income is PKR500,000 or more is required to pay 2% of its total income under the Income Tax provisions, to the Workers' Welfare Fund. The Ordinance has extended the scope of industrial establishment by including establishments formed under West Pakistan Shops and Establishment Ordinance, 1969, resulting in every business concern, having total income of PKR500,000 or more in a tax year, being liable to WWF.

The Minimum Wages for Unskilled Workers Ordinance, 1969

According to this Ordinance, the amount of minimum wages for unskilled worker should not be less than PKR 6,000.



West Pakistan Shops and Establishment Ordinance, 1969

The Ordinance provides for the wages, leaves, holidays, working hours, overtime, maintenance of statutory records of leaves etc. It applies to all shops and establishment where any workman is employed.

Companies Profits (Workers' Participation) Act, 1968

A company engaged in industrial undertaking, if the number of workers employed at any time during a year is 50 or more, or the paid up capital as on the last day of the accounting year is PKR5 million or more or the value of fixed assets as on the last day of the accounting year is PKR20 million or more, is required to establish a Workers' Profit Participation Fund and pay to it, 5% of its profits every year. A worker's share in the fund depends on the category of his average monthly salary.

Industrial and Commercial Employment (Standing Orders) Ordinance, 1968

Every industrial or commercial establishment, where 20 or more workers are employed, is required to comply with the conditions of employment of workmen and other incidental matters contained in the standing orders. Commercial establishment includes all kinds of commercial establishments such as, advertising agency, hotel, restaurant, bank, insurance company, etc., and an industrial establishment includes factory, mine, construction industry, etc. An amount equal to the wages of the workers has to be paid during the period of suspension.

The standing orders cover the following matters relating to employment of workmen:

- Classification of workmen into permanent, temporary, probationers, etc.
- Terms and conditions of service to be given in writing
- Publication of working time and holidays
- Details as to shift working, terms of attendance, leave, terms of wages and group incentive schemes
- Compulsory group insurance of permanent workmen against death, injury or disability not covered by Workmen Compensation Act, 1923
- Terms and conditions governing stoppage of work, closure of establishment, terms relating to termination of employment, governing payment of gratuity or other termination benefits
- Compulsory payment of bonus in case the employer is making profit.

Provincial Employees' Social Security Ordinance, 1965

- This Ordinance is applicable only to such areas, classes of persons, industries or establishments with regard to such benefits, as the Government may specify from time to time in this behalf. The benefits provided by this scheme are medical care, maternity benefit, death grant, pre-natal and post-natal care, injury benefit, disablement pension, disablement gratuity. Employees drawing wages up to PKR10,000 fall under the ambit of this Ordinance. Employer's Social Security contribution has been capped at 6%.

Factories Act, 1934

- The Factories Act is applicable to almost all the industries. According to the Act, "Factory" means any "Premises" or "Precincts" thereof, in which a manufacturing process is being ordinarily carried on with or without the aid of power.

The Act deals with following aspects relating to working conditions for workers:

- Daily and weekly working hours
- Intervals for rest
- Weekly holidays
- Compensatory holidays
- Extra pay for overtime
- Annual holidays
- Casual leave or sick leave
- Special provisions for adolescents and children
- Health and safety measures, etc.

Workmen's Compensation Act, 1923

Under this Act, the employer is liable to pay compensation to workers for accidents arising out of and during the course of employment. The rates of compensation for death, permanent total disablement, permanent partial disablement and temporary disablement have been given in the Act. The amount of death and permanent disablement grant is PKR200,000.



Other Legislations

Other Corporate Legislation

Apart from Companies Ordinance, 1984, there is a host of other Corporate Legislations in force regulating different aspects of corporate entities. These are enumerated as follows:

Non-Banking Finance Companies (NBFCs) and Notified Entities Regulations, 2008

These regulations are applicable to NBFCs carrying out leasing, investment finance services, housing finance services, asset management services, investment advisory services including their business activities and to the notified entities being managed by such NBFCs. NBFCs include Private Equity and REITs.

Private Equity (PE) and Venture Capital (VC) Fund Regulations, 2008

Fund Management Company (FMC) is licensed by Commission to operate as NBFC providing PE & VC Fund Management Services and its activities are governed by these regulations in addition to NBFC Regulations 2008. Minimum paid up capital requirement of FMC is PKR30 million and no fund is allowed to operate without registration with Commission. These regulations also cover matters like obligations of and restrictions on FMC, appointment of Trustee, cancellation of license or registration of fund, investment conditions and restrictions etc.

Real Estate Investment Trust (REIT) Regulations 2008

It regulates the activities of REIT Management Company (RMC) and the registration and regulation of REIT scheme and for matters connected there with and incidental thereto. There are two types of REIT schemes, namely rental and developmental. The minimum paid up capital at the time of application should be PKR50 million and is required to be increased to PKR500 million within 30 working days subsequent to registration of the REIT scheme. The minimum fund size of REIT scheme is PKR5 billion and real estate shall be within the limits or surrounding areas of Islamabad, Rawalpindi, Karachi, Lahore, Peshawar or Quetta. A REIT scheme shall not undertake more than one real estate project. An RMC shall not hold less than 20% and not more than 50% of the units of the REIT managed by it, unless otherwise permitted by the Commission.

Takaful Rules 2005

Takaful rules were issued by SECP for the conduct of takaful operations in the country. Takaful refers to Islamic way of insurance. A Takaful operator may underwrite any or all classes of Takaful business, provided approval is obtained from the Commission. A Takaful operator shall maintain and administer following funds, a) Participants' Takaful Fund; and b) Shareholders' Fund.

Each Takaful operator shall appoint a Shariah Board of not less than three members which shall be responsible for the approval of products, documentation as well as approval of all operational practice and investment of funds which shall be filed with the Commission.

Insurance Ordinance, 2000 and Insurance Rules 2002

Insurance Ordinance regulates the formation and activities of insurance companies. Insurance rules are issued in conjunction with Insurance Ordinance and contain detailed operational and reporting guidance and procedures.

Modaraba Companies and Modarabas (Floatation and Control) Ordinance, 1980

No Modaraba can be floated unless an authorization is obtained by the Registrar of Modaraba Companies under the provisions of this Ordinance.

Securities and Exchange Ordinance, 1969

The main law relating to the Stock Exchanges, Brokerage Houses, Central Depository and Credit Rating Agencies in Pakistan is the Securities and Exchange Ordinance, 1969 which regulates and governs the establishment and running of these entities in Pakistan.

Banking Companies Ordinance, 1962

The main law governing the establishment and operations of banking companies in Pakistan is the Banking Companies Ordinance, 1962.

Stock Exchange Regulations

A company that seeks to offer its shares to the public and wishes to apply for a listing on the Stock Exchange must comply with the listing requirements of the Exchange, in addition to compliance with the provisions of the Companies Ordinance, 1984. The requirements of the Exchange relate to management and company procedures, disclosures, provisions concerning the issue of prospectus for the issue of shares to the public, distribution of financial statements and other matters to keep the public and the exchange(s) adequately informed on all aspects of the affairs of the company, which may affect the market value of its shares.

Listing requirements & procedures

Issue of capital is mainly governed by the Companies Ordinance, 1984, Companies (Issue of Capital) Rules, 1996, Listing Regulations, and Regulations governing Over-The-Counter (OTC) market and criteria for listing framed there under.

The main requirements of listing on the ready market are:

- minimum paid up capital of PKR200 million
- public offer of equity has to be subscribed by at least 500 applicants
- the offering document has to be cleared by the KSE before it is submitted to the SECP for approval.

Time frame for listing

A maximum period of three months will be taken from the date of receipt of listing application completed in every respect along with offering document, for the grant of permission by KSE (Karachi Stock Exchange).

Offer of Capital to general public

Under the Listing Regulations, every company proposed to be listed on the stock exchanges shall make offer to the public as follows:

- In case capital of company is up to PKR500 million, at least 50% of such capital shall be offered to the public; and
- In case capital of company is beyond PKR500 million, public offer shall be at least PKR250 million or 25% of the capital, whichever is higher.

Code of Corporate Governance

The objective of code of corporate governance is to establish a framework of good corporate governance for the listed companies. This has been incorporated in the listing regulations and broadly covers the matters relating to board of directors, corporate ownership structure and divestiture of shares by sponsors / controlling interest, internal audit, external auditors, audit committee, corporate and financial reporting framework.

