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Cross-Border Private M&A in Pakistan

Seven Key Legal and Regulatory Considerations

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Cross-Border Private M&A in Pakistan

As the privatisation drive continues in Pakistan and this resource rich, yet capital starved, jurisdiction becomes ripe for investment, instances of cross-border M&A in Pakistan are only likely to expand. While Pakistan's legal framework is generally supportive of foreign investment, transactions involving Pakistani targets require careful structuring and an informed understanding of requirements and processes in Pakistan. We have set out below seven key legal and regulatory matters that foreign buyers and sellers should consider in connection with cross-border M&A activity in Pakistan.

01 | Foreign investment regime and sectoral restrictions

Pakistan's foreign investment regime is not consolidated into a single legal framework, having instead evolved through a series of domestic statutes and regulatory instruments that must be considered together in their proper context. As a general matter, 100% foreign ownership is permitted across most sectors without prior governmental approval, but subject to compliance with certain foreign exchange requirements.

However, certain activities remain prohibited or restricted, including (i) arms and ammunition, (ii) security printing, currency and minting, (iii) operations involving radioactive materials and (iv) manufacturing consumable alcohol. In regulated sectors, such as banking, insurance, telecommunications, aviation, and energy foreign ownership caps, licensing requirements, and sector-specific regulatory approvals will apply.

In addition, a cross-border M&A transaction involving the sale of a state-owned entity or its assets to a private party is subject to Pakistan's privatisation regime. This entails, among other requirements, a pre-qualification process followed by a transparent and competitive bidding procedure. Accordingly, an early assessment of whether the target operates in a restricted, regulated or public sector is critical, as this can materially influence deal structuring, approval pathways, and transaction timelines.

02 | Transaction structuring

M&A transactions in Pakistan can be structured as share transfers, asset sales or schemes of arrangement. However, share transfers tend to be the preferred structure particularly where the continuity of licences, contracts and tax attributes is important, there is a single shareholder and the target has a limited creditor base.

Share transfers must comply with the Companies Act 2017, the target's articles of association and any applicable shareholders' agreements. The legislation and these documents contain the relevant restrictions and requirements including pre-emption rights, tag-along and drag-along provisions, change of control clauses, and board and shareholder approval thresholds, which have to be addressed prior to completing the relevant share transfer. From a procedural perspective, in Pakistan, completion of a share transfer involves, among other things, the execution and stamping of prescribed transfer instruments, delivery of share certificates, approval and registration of the transfer by the company's board and updating of statutory registers.

Post-completion filings have to be made with the Securities and Exchange Commission of Pakistan (SECP) within the prescribed timelines, including filings reflecting changes in shareholding and, where applicable, management or control.

Asset sales may be appropriate where the acquirer seeks to ring-fence historical or contingent liabilities, or where regulatory or contractual restrictions limit the transferability of the corporate vehicle itself. In practice, however, asset transactions in Pakistan are often more operationally complex and time-consuming than share transfers. For example, and among other things: (i) each category of asset must be individually identified, transferred and, where applicable, re-registered in the name of the buyer, often involving multiple conveyance instruments and associated formalities; (ii) fresh regulatory approvals may be required, as regulators in Pakistan typically issue licences and consents on an entity-specific and non-transferable basis, and licences in regulated sectors may lapse or require reissuance on the transfer of underlying assets – an outcome that may not be commercially feasible where uninterrupted operations are critical; (iii) employment arrangements may need to be redocumented, with fresh contracts or employee consents being required and subject to applicable statutory protections; and (iv) asset deals may be less tax-efficient than share sales, as stamp duty is generally payable on each transfer instrument, often at higher aggregate rates than would apply to a share transfer, and, depending on the nature of the assets and transaction structure, asset transfers may also give rise to sales tax, withholding tax and/or capital gains tax in Pakistan.

Schemes of arrangement are also used in Pakistan as a structured option for implementing mergers and acquisitions, including transactions with a cross-border element.

A scheme of arrangement is a statutory process under the Companies Act 2017 that allows mergers, amalgamations and other corporate reorganisations to be carried out with the approval of shareholders and creditors and the sanction of, depending on the size and sector of the target and whether the target is a publicly owned company, either the court or the SECP. For a scheme to be approved, it must be sanctioned by a majority in number representing at least 75% in value of the shareholders and creditors (as applicable) present and voting at the relevant meetings. Once sanctioned, the scheme operates by force of law and is binding on all affected stakeholders. In cross-border contexts, schemes of arrangement may provide a coordinated framework for completing more complex transactions involving Pakistani companies and foreign counterparties, particularly where multiple stakeholder approvals and regulatory considerations need to be addressed within a single process. However, schemes of arrangement are generally more time-consuming and procedurally intensive, may involve a greater level of public disclosure potentially at an early stage, and offer less deal flexibility once the scheme is circulated.

03 | Regulatory approvals and consents

Depending on the nature of the target's business and the size of the transaction, regulatory approvals will be required.

Pakistan operates a mandatory pre-merger notification regime where prescribed asset or turnover thresholds are met. Transactions that trigger these thresholds cannot be completed until clearance is obtained from the Competition Commission of Pakistan (CCP). Such clearance is required prior to closing and applies to share acquisitions, asset purchases, mergers and joint ventures that result in a change of control or significant market concentration.

Failure to notify can result in fines and potential remedial measures. Competition analysis should consider market definition, competitive overlaps and potential concerns arising from horizontal or vertical integration. Early engagement with appropriate antitrust advisers can help manage clearance risk and avoid delays.

As noted above, sector-specific approvals may also be required examples of some of which are set out in the table below.

Sector	Regulator
Aviation	Pakistan Civil Aviation Authority
Banking / financial services	State Bank of Pakistan
Insurance	Securities and Exchange Commission of Pakistan
Mining	Provincial regulatory authorities
Oil & Gas	Oil and Gas Authority
Power	National Electrical Power Regulatory Authority
Telecommunications	Pakistan Telecommunication Authority
Pharmaceutical	Drug Regulation Authority

Cross border transactions involving state owned entities or their assets are also governed by privatisation laws, which are administered by the Privatisation Commission. In addition to the procedural elements in the pre-qualification stage noted above, these typically require federal governmental approval.

A non-resident buyer and any non-Pakistani directors to be appointed by it would also be required to obtain security clearance through filings with the Ministry of Interior pursuant to the SECP Companies Regulation 2025.

04 | Foreign exchange and repatriation considerations

Where the transaction involves non-resident buyers or sellers, additional considerations arise under Pakistan's foreign exchange regime. These include amongst other things: (i) compliance with State Bank of Pakistan (SBP) requirements governing the pricing of the transaction, (ii) the routing of consideration and related payments through SBP-authorised dealer banks, and (iii) adherence to the applicable rules on repatriable and non-repatriable investments. As the authorised dealer banks are required to ensure SBP compliance, they usually conduct appropriate due diligence with respect to cross-border transactions and may require a copy of the share purchase documents, valuation reports and previous compliance with SBP related requirements. The result is that, even if proceeding with completion would otherwise be permitted under the transaction documentation, processing of remittances or filings may be withheld by the banks until their checks are complete, effectively making this step a transaction closing condition as well.

In addition, post-closing obligations typically apply, including reporting of the foreign investment, share transfers and remittances through authorised dealer banks, to ensure the transaction is properly recorded within Pakistan's foreign exchange framework and to facilitate future profit distributions or exit-related repatriation.

05 | Due diligence and risk allocation

Legal due diligence in relation to targets in Pakistan, in addition to the usual categories, requires particular scrutiny with respect to (i) land title and ownership disputes, (ii) licensing requirements, (iii) tax and regulatory compliance, (iv) enforceability of contracts, and (iv) litigation. This becomes important as record keeping, despite requirements to comply, may be fragmented. Additionally, publicly available information may be out of date or incomplete or not easy to access. As a result, foreign investors tend to rely on a robust set of warranties, indemnities and, at times, price adjustment and deferred consideration mechanisms to allocate and mitigate risk.

Warranty and indemnity (W&I) insurance has not been publicly documented in connection with cross-border private M&A transactions involving Pakistan. However, an absence of public examples does not preclude its potential availability as a risk-mitigation tool. In practice, W&I insurance has become an increasingly common feature of the international private M&A market, including in jurisdictions with regulatory, diligence and enforcement characteristics comparable to Pakistan, typically subject to bespoke underwriting and exclusions.

06 | Tax structuring and acquisition costs

As noted above, tax considerations play a significant role in determining transaction structure. Capital gains tax applies to share transfers in Pakistan, with rates varying based on the applicable holding period and nature of the seller. In addition, withholding taxes, stamp duties, and indirect tax exposures may arise depending on how the transaction is implemented. Some taxes may be federal and others provincial. Double taxation treaties may offer relief for foreign investors in the long term, but careful structuring and advance tax planning at the transaction stage are essential to minimise leakage and manage post-closing tax risk.

07 | Employment and labour considerations

Employment issues are particularly relevant in asset deals or transactions involving operational restructurings as there is no automatic transfer of employees on a transfer of a business by operation of law. Pakistani labour laws are found in provincial as well as federal legislation and provide for statutory protections relating to terminations, severance payments and employee benefits, and non-compliance can lead to claims and penalties.

Even in share acquisitions, change-of-control provisions in employment contracts can delay completion while collective bargaining arrangements or informal workforce practices can constrain post-completion restructurings. Early and targeted employment due diligence is therefore essential to identify these risks, assess their commercial impact and implement an employment strategy that preserves operational continuity and minimises disruption.

Comment

Cross-border M&A activity in Pakistan presents significant opportunities, but successful execution depends on understanding and managing local legal and regulatory considerations. By addressing these issues at an early stage and engaging experienced international and local advisers, investors and sellers can enhance deal certainty, reduce execution risk and unlock value in Pakistan's evolving market.

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