LLM THESIS ON

EMERGING CONCEPT OF FOREIGN AND LOCAL EQUITY INVESTMENT IN PAKISTAN AND REDRESSAL OF INVESTORS' GRIEVANCES

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LIST OF ABBREVIATIONS

ADB	**Asian Development Bank**
ADPB	**The Agriculture Development bank**
AOP	**Association of Persons**
APTMA	**All Pakistan textile Mills Association**
ASP	**Agricultural Statistics of Pakistan**
BOI	**Board of Investment**
CAF	**Corporate Agricultural Farming**
C & F	**Cost and Freight**
CBA	**Collective Bargaining Agents**
CBR	**Central Board of Revenue**
CHPF	**Clearing House Protection Fund**
EFS	**Export Finance Scheme**
FDI	**Foreign Direct Investment**
EOBI	**Employees Old Age Benefits Institution**
EPB	**Export Promotion Bureau**
EPZ	**Export Processing Zone**
EPZA	**Export Processing Zone Authority**
FBS	**Federal Bureau of Statistics**
FPIA	**Foreign Private Investment (Promotion & Protection) Act**
FTA	**Free Trade Agreements**
GATS	**General Agreement on Trade in Services**
GATT	**General Agreement on Tariff and Trade**

GDP	**Gross Domestic Product**
GIP	**Gross Industrial Product**
GOP	**Government of Pakistan**
GSD	**Government Supplies Department**
GSP	**Generalised Scheme of Tariff Preferences**
HBFC	**House Building Finance Corporation Hydel Hydro Electric**
IAS	**International Accounting Standards**
ILO	**International Labour Organisation**
IMF	**International Monetary Fund**
IOSCO	**International Organisation of Securities Commission**
ISE	**Islamabad Stock Exchange**
KCCI	**Karachi Camber and Commerce and Industry**
KEPZ	**Karachi Export Processing Zone**
KESC	**Karachi Electricity Supply Company**
KSE	**Karachi Stock Exchange**
NAB	**The National Accountability Bureau**
NBP	**National Bank of Pakistan**
NCEL	**National Commodity Exchange Limited**
NDFC	**National development Finance Corporation**
NDND	**No-duty No-drawback**
NOC	**No Objection Certificates**
NSS	**National Saving Schemes**
NTN	**National Tax Number**

NWFP	**North West Frontier Province**
IPF	**Investor Protection Fund**
CHPF	**Clearing House Protection Fund**
SECP	**Securities and Exchange Commission of Pakistan**
OGRA	**Oil and Gas Regulatory Authority**
OIC	**Organization of Islamic Conference**

DEDICATION

This research work is dedicated to my late **Parents**, after them I am alone but living with their departed soul, as they are still blessing of my solitude and to all my **Teachers**, whose guidance, moral and spiritual support has been supportive to me during the course of this research work. Further, I dedicate my research work to my wife and children, Muhammad Daniyal Ayub, Aaman Minahil Ayub and Muhammad Bilal Ayub, who sacrificed at many different times and gave me the will power and determination to concentrate on my research work. May Allah bestow upon all of them high blessings in this world.

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ABSTRACT

This dissertation identifies and discusses problems, obstacles and hindrances faced by local investor, in general, and by foreign investor, in particular, in Pakistan. The basic objective of selecting this topic is that to throwh light on some emerging concept of investment in Pakistan and to discuss the grievances of the foreign investors, and their redressal by adopting measures to remove these grievances. This research work or dissertation will address all those issues and problems that are the main impediments in the way of foreign and local investment. There are many cultural, legal, institutional, and educational hurdles in subcontinent particularly in Pakistan that obstructs foreign investment and trade.

In Pakistan, the main problem is the weak regulatory frame work, inconsistent protection policies and loose enforcement and implementation procedures. Under the political pressure the regulatory bodies are unable to work properly. In my research work these sector/area have been identified which need proper attention with respect to segregation of powers, proper legislation, enforcement of policies and consistent polices, rule and regulation for the protection and restoration of foreign investor's confidence.

In my research I have addressed a lot of problems that need to be addressed promptly and besides all these focus is given to the development of infrastructure, security issues particularly threat of terrorism, deletion of monopoly, proper implementations of IPO's, Protection of Design, copy rights, patents, trade marks, and should introduce such dispute resolution mechanism which could restore the trust and confidence of the foreign investor to attract local and foreign investment in Pakistan.

I have concluded the issues by highlighting hindrances and obstacles in the way of foreign investment to Pakistan and my research work has addressed all those issues and problems, which are the main impediments because of which the foreign investors are reluctant to invest in Pakistan. We have to removes those obstacles to attract the local and foreign investors. In this regard, there is no proper legislation in our domestic law to deal with foreign arbitration, no consistent laws and regulations, strict implementation of IP laws, reduction in the cost of doing business, removal of procedural problems and bad perceptions of foreign investors about the litigation system of Pakistan. There are many cultural, legal, institutional, educational hurdles in sub-continent particularly in Pakistan that obstruct foreign investment and trade. The foreign investors would definitely come to Pakistan for investment when a proper business environment will be provided in Pakistan.

The Government should conduct training program to educate executives of regulatory bodies, law enforcing agencies and the institutions which are responsible to provide proper investment environment in the country. Further, we shall collectively prepare a human resource that would be having a more rationale, logical and solution oriented approach towards resolving problems regarding investments but also resolving international disagreements and disputes of the parties.

I have given an exposition of the mechanism as to how emerging concepts can be introduced, grievances can be removed and how confidence of the investor's be restored mainly to attract the investment. All these things have well been accommodated in this research work, starting from its history alongwith the brief analysis and the role of regulating bodies and institutions, the issues and problems of attracting foreign investment, the solutions and recommendations and lastly some suggestions with short conclusion of the topic.

CHAPTER 1

INTRODUCTION

1.1 Brief Introduction, Importance, definitions and Foreign and Local Equity Investment and its Historical Emergence

Pakistan is now a land of golden opportunities, an investment friendly destination. Pakistan has undergone significant economic and political transformation. Sound macroeconomic management, backed by market oriented policies and a conducive incentive regime, together with political stability and effective regulatory framework have enabled Pakistan to emerge as a viable and investment friendly destination. [1] Laws and regulations are being changed with global trends and demands. Infrastructure development has pulled from the concepts of mid–century mining and rail development to techniques of project financing through equity. Having been tested for a decade in the United States of America during the 1980s' and refined in Europe, the Middle East, Latin America and Asia through the 1990s' these techniques are now being applied and used in a wide range of industries, including power, mining and minerals, telecommunications, transportation, petrochemicals, oil and gas.

The efficiency of these techniques is, however, far reaching. Ambitious sponsors bridle at the cost of closing complex project financing through equity; members of the financial community express concern that lenders are ignoring credit fundamentals in structuring and pricing deals. Confidence in the technique may also be brought into

[1] www.sbp.gov.pk/about/speech/governors/dr.shamshad/2007/investment-friendly-Pakistan. 22 Feb. 2007.pdf

question as the robustness of project structures are tested in numerous emerging markets in the face of extraordinary currency and political volatility.[2]

Nonetheless, the attractiveness of a technique that applies significant diligence to the economic viability of a distinct project and that allows sponsor to raise highly-leveraged funding remains compelling. A number of rating agencies have noted that there have been relatively few losses within the project finance sector, although there can be no doubt that the vast majority of projects have had to address unanticipated challenges.

CONCEPTS OF AUTHORIZED AND PAID-UP CAPITAL, PAR VALUE, MARKET VALUE, EQUITY AND ITS EMERGING CONCEPTS

Authorized and Paid up capital

To handle a project in corporate sector, one of the methods is to invest 100% equity to finance such project. Such projects are called equity based projects. Such 100% equity would be its authorized capital of the company and as soon as the company will issue the shares either to the management or general public it will be converted into paid up capital and the portion of shares which are not issued will be an outstanding or unpaid share capital.

The paid up capital of any company can not exceed authorized capital, it can be equal to its authorized capital. If the company intends to enhance its paid up capital which is already equal to its paid up capital, such company has to increase its authorized capital first and than to increase its paid up capital. The authorized capital reflects cost of the project as soon as project moves forward the equity is injected by the issuance of more shares and by this way issued capital is increased.[3]

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[2] Extract from class notes, provided by Sir Ahmad Hassan, Corporate Finance 1
[3] Practical Approach to Companies Ordinance, 1984, Nazir Ahmad Shaheen, FCMA, Y2K Edition

The corporate charter of a company specifies the number of authorized shares of common stock, the maximum that the company can issue without amending its charter. Although amending the charter is not a difficult procedure, it does require the approval of existing shareholders, which takes time. For this reason, a company usually likes to have a certain number of shares that are authorized but un-issued. These un-issued shares allow flexibility in granting stock options, pursuing merger targets, and splitting the stock. When authorized shares of common stock are sold, they become issued shares. Outstanding shares refer to the number of shares issued and actually held by the public. The corporation can buy back part of its issued stock and hold it as treasury stock.

Par Value

A share of common stock can be authorized either with or without **Par value**. The par value of a share of stock is merely a recorded figure in the corporate charter and is of little economic significance. A company should not, however, issue common stock at a price less than par value, because any discount from par value (amount by which the issuing price is less than the par value) is considered a contingent liability of the owners to the creditors of the company. In the event of liquidation, the shareholders would be legally liable to the creditors for any discount from par value. Consequently, the par values of most stocks (if they have any par values at all) are set at fairly low figures relative to their market values.[4]

[4] Extract from class notes, provided by Sir Ahmad Hassan, Corporate Finance 1

Book Value and Liquidating Value

The book value per share of common stock is the shareholders' equity – total assets minus liabilities and preferred stock as listed on the balance sheet – divided by the number of shares outstanding. Suppose that XYZ is one year old company, has generated $100,000 in after-tax profit, but pays no dividend. Thus, retained earnings are $80,000; if the shareholders' equity is now $500,000 + $100,000 = $600,000; and the book value per share is $600,000 / 10,000 shares = $60.

Although one might expect the book value per share of stock to correspond to the liquidating value (per share) of the company, most frequently it does not. Often assets are sold for less than their book values, particularly when liquidating costs are involved. In some cases, certain assets – notably land and mineral rights – have book values that are modest in relation to their market values. For the company may not correspond to liquidating value, and, as we shall see, it often not correspond to market value.

Market Value

Market value per share is the current price at work for which the stock is traded. For actively traded stock, market price quotations are readily available. For the many inactive stocks that have thin markets, prices are difficult to obtain. Even when obtainable, the information may reflect only the sale of a few shares of stock and not typify the market value of the firm as a whole. For companies of this sort, care must be taken in interpreting market price information.

The market value of a share of common stock will usually differ from its book value and its liquidating value. Market value per share of common stock is a function of the current and expected future dividends of the company and the perceived risk of the stock on the part of investors. Because these factors bear only a partial relationship to the book value and liquidating value of the company, the market value per share may not be tied closely to these values.

EQUITY

A true statement is that mega projects require huge capital. There are two different options to arrange funds.

I. **Borrow from bank (Loan)**
II. **Sell shares to acquire capital.**

The second option is called investment through equity. For a layman, investment in equity means buying shares in a company. People get ownership in the business by contribution in the capital by purchase of shares in the form of dividends. Technically, the book value of shares is the shareholders' equity. Important is that how a book value of share is calculated, therefore, bifurcation of equity is essential:-

i. paid-up capital
ii. undistributed profits
iii. general reserves
iv. bonus shares issued

While in case of Fund Management Company includes paid up capital, general reserves, balance in share premium account, reserve for issue of bonus shares and unappropriated profits or accumulated losses as disclosed in latest audited financial statements, excluding deferred tax reserves, surplus on revaluation of fixed asset as described in Section 235 of the Companies Ordinance, 1984 and treasury stocks.[5]

This is an easy investment and by using this method of investment the investor can earn

[5] http://www.secp.gov.pk/Dec-05-Private Equity.pdf

profits in shape of dividends, profits and bonus shares etc. without involving him in the business activities of the company.

Emerging concept:

The Government is using this concept for deregulation and off-loading its investment in different government owned projects. i.e PTCL, wherein 26% shares were given to Atisalat along with management powers in accordance with the commitment made to the managing director of IMF through the letter of intent.[6] Following are few emerging concept:

1. De-regulation/privatization. The state owned equity is sold to the public or private businesses. The control and management is given to the private sector through the equity sale.
2. Now 100% equity investment projects are allowed, previously this ratio was 40% to 60%.
3. Risky and shy for any country as foreign investment in equity because it can easily shift across borders. Investors are usually shy and go to jurisdictions that are favorable and also move out swiftly in case of crises. E. g. The Korea and Russia crashes but saved by IMF.
4. If the state fails to see to the manipulation of the Stock Exchange by certain people who know its weaknesses, there is fear that the small investors / shareholders will lose confidence once loss occurs. This is exampled by the Karachi Stock Exchange crash in March 2005 and June 2006.

[6] http://www.sbp.gov.pk/m-policy/a-imf/2003/letter-intent(IMF).pdf (last visited 01-04-2007)

5. The government has to show that the Stock exchange quotations are dictated by only by market forces and the investors have to be made aware that the values of shares are not manipulated by the state or the big game players.
6. Equity investments by foreign companies have shown great success in many newly industrialized countries. E.g., Korea, Taiwan Thailand etc.

FINANCING THROUGH EQUITY

Defining financing through equity is a bit like describing an elephant, It is difficult to define, and perhaps not worth the exercise because you inevitably know it when you see it. Most definitions focus on the financing of a specific facility in which investors look principally to the revenues generated by the operation of the project

Project financing through equity are used most commonly in the development of large infrastructure projects (i.e., power generation, toll roads, telecommunications) and the exploitation of energy and other natural resources.

Although each financing is specifically designed to meet the requirements of a particular project and the objectives of its sponsors, the following features are common to most project financings:

i. the project is developed through a separate financial and legal

ii. entity;

iii. the debt of the project company is often completely separate (at least for balance sheet purposes) from the sponsors' direct obligations;

iv. the sponsors seek to maximize the debt to equity leverage of the project and the amount of debt is linked directly to the cash flow potential, and to a lesser extent the liquidation value, of the project;

iv. the sponsors' guarantees (if any) to lenders generally do not cover all the risks involved in the project;

v. Project assets (including contracts with third parties) and revenues are often pledged as security for the lenders.

The principal objective of private sector sponsors and foreign equity investors is to make profits. Their tolerance for assuming risk may vary, and many equity investors may have other, perhaps more compelling, interests in the project, including supply or off take contracts. Most sponsors assess their investment in a project based on an internal rate of return (IRR) analysis of the proposed investments, generally calculated on an after tax basis.

Equity investors generally invest through a project vehicle, which is mostly single purpose company, partnership, joint venture or trust, organized by its sponsors/equity owners with no assets other than the project. The shareholders or other equity interest may be held by consortium that may include local participants, foreign operators and equipment suppliers and other investors seeking sufficient returns to justify the risks being taken.[7]

SOURCES OF FINANCING

Sophisticated sponsors will dedicate substantial effort to assessing the financial markers in order to identify the optimal sources of funding for their project. The principal

[7] Corporate Finance, by Ahmad Hassan, Class Notes

determinant of how attractive a project will be to the financial markets is the robustness of the project's financial projections. In assessing the debt markets, key financing ratios will be considered, including the following:

1. the debt to equity ratio (being the ratio of aggregate project debt to the aggregate amount of equity invested in the project);
2. the average and minimum debt service coverage ratios (being the ratio of aggregate net cash flow to aggregate debt service for any period); and
3. the loan life coverage ratio (being the ratio of the net present value of the projected net operating revenues over the term of the project debt to the principal amount of that project debt).

The sensitivity of the coverage ratio to the technical, legal and political risks associated with the project will be considered. The outcome of this analysis will be weighed against current financial market conditions to determine the optimal financing plan. The more robust the outcome of this analysis, the greater will be the project's access to deeper and lower cost sources of financing. Sophisticated sponsors will leave their options open until financial close and, even thereafter, will regularly review refinancing options.

Among the principal sources of financing are:

EQUITY

Lenders generally require a project sponsor or a third-party equity participant (such as an equipment supplier or operator) to contribute a significant portion (often 5% to 25%) of the capital invested in the project. This contribution establishes the project's debt to equity ratio and, by reducing the aggregating debt requirement, can enhance the project's debt service coverage ratios. It also ensures that the investors will remain committed to the project through any difficulties that it may encounter. However, as the relative amount of the equity contribution increases, the rate of return on the equity investment may be depressed, and thus most sponsors will seek to minimize the level of equity commitment. Equity investors often prefer to defer making the equity contribution until after final completion of the project or a date certain when the project is generating cash, rather than making the contribution pro rata with the construction loans. Credit enhancement in the form of a parent guarantee or letter of credit may be required to support the investors' deferred equity funding obligation.

CAPITAL MARKETS

Projects have long sought access to the bond and commercial paper markets, generally backed by a commercial bank or other type of guarantee. Standard & Poor's Moody's and other agencies now regularly rate issues by the projects. Rating agencies have published details of the criteria they use to rate power projects, which are very similar to ones that commercial banks use in making their own credit assessments. This has significantly expanded the sources of capital available to projects, particularly in the period following the completion of construction, by encouraging the participation of investors whose capacities to undertake sophisticated credit analysis may be limited.

The public markets have become important sources of project financing. The growing investment requirements of insurance companies and pension and mutual funds have created a significant pool of capital seeking long-term, fixed income assets. Although to date the vast majority of project bonds have been placed in the U.S., recent issuances have been placed in the Sterling market, and the implementation of the Euro is expected to provide new markets for project and other high yield instruments. The participation by monocline credit insurers in project bond issuances has also allowed some projects enhanced access to the market. More recently, a number of export credit and other official credit agencies have also proposed project bond credit enhancement programs.

The capital markets have also demonstrated an ability to provide better economics for a project. Sponsors can more closely match the anticipated life of a projects cash flow using the longer tenors typically available in the bond markets. Sponsors are also attracted by fixed interest rates and the generally less restrictive covenant packages available in the bond market. Large amounts of debt can be raised in a short period of time by relying securities laws of Pakistan that also permit sales to institutional investors with a formal regulatory registration process or listing on a stock exchange. In short, capital market can represent an attractive periodic source of funds for a project that if properly evaluated and structured can be competitive with the alternative funding sources.

1.2 Description of the topic and elaboration on research - its importance and relevance

Financing through Equity either by foreign or local investors in corporate sector is the backbone and strong foundation for the bright future of Pakistan and obviously for its economic and industrial development. Redressal of Investors' grievances will strengthen the opportunities of investments and build confidence of investors in government policies.

The research in my thesis is focused on local and foreign investment with respect to investment in equity, through all of its stages, such as repatriations facilities available, taxations on capital, profits, dividends, bonus shares and other revenues, if any and to highlight the sectors for investments and to point out the investors' grievances and finally suggestions for their solutions.

This study will present a crystal clear comparison in order, not only to guide but, to attract the local and foreign investor to bring more equity investment in different sectors of Pakistan economy to earn more profits and obviously to take part in economic activities and development of our country.

Now first time in Pakistan, all the economic and industrial sectors except few have been opened to foreign direct investment and 100% investment in equity is also allowed, resultantly, no restriction on repatriation of profits, dividends and even capital amount provided that was brought through proper channels in to the country.[8]

This research will explore the nature, method, extent and types of equity investments, either at par, at discount or at premium. Further, issue of capital either through preference shares or through right issue to public at large or to light minded people (private placement), naturally, if issued to the foreigners/non-residents, the requirements of Foreign Exchange Manual of State Bank of Pakistan, chapter 20 and the Investment policy would be observed.

Different offensive measures have already been taken to protect foreign investment by promulgating the Foreign Private Investment (Promotion & Protection)

[8] www.pakboi.gov.pk

Act, 1976, Protection of Economic Reforms Act, 1992 and Foreign Currency Accounts (Protection) Ordinance, 2001.

At the end of my thesis I will conclude it with some suggestions and solutions to the investors' grievances and to highlight some measures to be taken by the policy makers to provide more room for investments in Pakistan's corporate sector.

1.3 Review of available information

Since the independence of Pakistan, it seems that there is no rapid development in foreign investment except during the past few years. Despite being a developing country, Pakistan has great attractions for investment in different sectors. However, because of lack of research culture, almost every sector badly requires improvement and development and obviously it can not be done with out investment, whether local or foreign.

The flow of accurate and timely data and information is necessary to help the local and foreign investor in order to form a conclusive and concrete decision. The government releases foreign trade, inflation and tax revenue figures on a monthly basis and the overall performance of the economy every quarter.[9]

However, a lot of data and information is not updated on timely basis and more transparency is required to help the local and foreign investors to take investment decisions which are not readily available. In different countries such type of literature is distributed through the private sector and are not sold by the governments as is the case with Pakistan.

[9] Dwan Economic & Business Review, timely data for analysis and policy makimg, January 15 – 21, 2007, By Dr. Abdul karim

This is the age of computer and internet, so obviously these tools will be used for review, research and use of relevant data and information by the students, researchers, investors and other relevant people, therefore, the information and data available on these sources should be correct and up to date, so the interested people could benefit from it properly. With due apology to the responsible institutions providing these data/information it is seen that research work is not always based on accurate and up to date data and only such data can be based for quick decision regarding investments. So, if we desire to attract huge and big investment in different sectors, we need to be properly institutionalize our data and information systems in order to provide a strong foundation and basis for research work not only for the stakeholders but also for the general public, students, local and foreign investors and to build such culture and environment that truly reflects the sincere efforts in the right directions of economic growth, prosperity and industrial development.

1.4 Methodology and objective of Research

Thesis writing consists of two styles of research hypothesis. One is the statistical and other is qualitative study. In statistical study we analyze and provide definite solutions or even proper answers in yes or no. Quantitative studies contain analysis, draw a framework and conclude with a theme.

I personally met Mr. Shaukat Hussain, Joint registrar of Companies, Islamabad, Mr. Abdul Rehman Qureshi, Ex-Chairman and Commissioner of SECP, Islamabad, Mr. Kamran Ali, Director General (Law), PTA, Islamabad, Executive Director, investment of BOI, Islamabad. I searched on internet and visited different web sites, list is given in the last. During this exercise I got statistical data from these sources and their point of views. Their point of view are available in different chapters and data in different tables and graphs. You will observe their expert opinion. There is absolutely no doubt that this practical study and research gave me a lot of help in writing this thesis. But without their help and co-operation, this task would have been impossible for me.

The aim of this thesis is to provide a better understanding of the perspective and present scenario of the foreign and local equity investment in Pakistan and financing through equity and its sources available in Pakistan. I will also analyze whether the present laws, rules, regulations and legislative measures are sufficient to protect the interest of the local and foreign investors in Pakistan or some new measures have to be adopted to attract and protect the investment in Pakistan.

The scope of my research is generalized. My research work does not focus on some particular and specific sector/arena of investment with respect to equity investment. Keeping in view the particular requirements and scope for the preparation of this dissertation, detailed cases and issues have not been discussed thoroughly rather a generalized approach has been adopted where possible and subject to the availability of relevant information and through discussion has been undertaken.

Although a lot of information is available but it is not possible to disclose all the data and material due to the limitation of the specific limited number of pages.. Only essential, appropriate and necessary information are given to enable the reader to understand the real problems, issues and solutions of the foreign and local investors in Pakistan, who are in real sense the backbone of the milieu.

1.5 Disposition of Thesis

This thesis consists of five chapters in total. The first chapter deals with brief Introduction, Importance and concept of equity and its par value, discount value and premium value, Foreign and Local Equity Investment. Difference between authorized and paid up capital and which amount of capital actually reflects the project cost and how and when it should be injected. It will also include an overview of the legal literature. The 2nd chapter will comprise of the National Regulatory Framework procedures, rules, regulations, laws, enforcement and protections with regard to investments, its return and its repatriation. The 3rd chapter will cover Institutional arrangements with respect to equity investment procedures, actual investment, proper return in form of profits, dividends or bonus shares, rules policies regarding indirect taxation The 4th chapter will explain actual grievances, problems, hindrances and obstacles being faced by the foreign as well as local investors when they start injecting equity and establishing industries in Pakistan.

Finally, in 5th, the last chapter, an attempt will be made to provide proposals and suggestions for improvements in the procedures.

CHAPTER 2

NATIONAL REGULATORY FRAMEWORK REGARDING INVESTMENT, PROTECTION AND ENFORCEMENT

2.1 Foreign Exchange Policy of Pakistan

A) POLICIES:

The Investment Policy has been formulated to provide an integrated strategy for creating an investor friendly environment with the focus on further opening up the economy and marketing the potentials for direct foreign investment. The essence of the policy is to keep Pakistan attractive in International Investment Market by improving the policy.

Previously only manufacturing sector was open to foreign investment. Now, the Policy Regime has been liberalized by opening up other economic sectors for FDI and mobilizing the domestic financial resources toward long-term investment.

The Investment Policy has been formulated to provide an integrated strategy for creating an investor friendly environment with the focus on further opening up the economy and marketing to keep Pakistan attractive in international Investment Market by improving the policy.1

i) Manufacturing Sector

1. Foreign investors are allowed participation in industrial projects on the basis of 100 percent foreign equity basis without any permission of the Government.

2. No government sanction is required for setting up an industry in any field, place and of size, except for the prohibited sectors.

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1 Pakistan Investment policies, November 2000, Chapter 2, page 17

3. There is no requirement for obtaining no objection certificate (NOC) from the provincial governments for locating the project any where in the country except the areas which are notified as negative areas.

PROHIBITED SECTORS

- Arms and ammunitions.
- High Explosives.
- Radioactive substances.
- Security printing, Currency and Mint (establishment of new units for the manufacture of alcohol, except industrial alcohol, is banned).

ii. Others :

Foreign investment on repatriable basis is now allowed in under-mentioned activities of Agriculture, Service, Infrastructure and Social Sectors subject to the conditions indicated below provided these companies have been registered under the Companies Ordinance 1984 with Securities & Exchange Commission of Pakistan and BOI:

a) SERVICES SECTOR:

Activities: Wholesale Distribution and Retail Trade, Transportation, Storage and communications, Real Estate Development (Development of Commercial Buildings, Apartment, Housing Projects, Super Markets/Shopping Malls, Urban Development, Development of New Communities), Technical Testing Facilities, Audio-visual Services, Sporting and other recreation Services, Rental Services relating to Transport Equipment and Machinery, Equipment and Tools for Land development and Agricultural purposes, Environmental Services.2

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2 Pakistan Investment policies, November 2000, page 19

Conditions

- The amount of foreign equity investment in the company/project shall be at least US$ 0.5 million.

- Foreign investors are allowed to hold 100% foreign equity subject to condition that the repatriation of profits will be restricted to a maximum of 60% of total equity or profits and it will be mandatory to meet the condition that minimum 40% of the equity is held by Pakistani investors (including sale of shares in stock exchange) within two years time.

- Companies involved with real estate projects will not make these projects unless title of property is transferred in the name of foreign company.

- Inter-Provincial Regulatory Authority at Federal level will regulate and monitor the land and real estate development by foreign companies.

b) INFRASTRUCTURE SECTOR/HOTELS & TOURISM

Infrastructure Projects including Development of Industrial Zones, Telecommunications

Hotels & Tourism or Tourism

Conditions

The amount of foreign equity investment in the company/project shall be at least US$ 0.5 million.

100% foreign equity is allowed on repatriable basis.

c) SOCIAL SECTOR

Social Sector includes Education, Technical/Vocational Training, Human Resource Development (HRD) as well as Hospitals, Medical and Diagnostic Services.

Conditions

The amount of foreign equity investment in the company/project shall be at least US$0.5 million.

100% foreign equity is allowed.

d) AGRICULTURE SECTOR

Land Development/Reclamation of barren land, desert and hilly areas for Agriculture purpose and Crops Farming, Reclamation of Water Front Areas/Creeks, Crops, Fruits, Vegetables, Flowers, Farming/Integrated Agriculture (Cultivation and Processing of Crops), Modernization & Development of Irrigation Facilities and Water Management, Plantation, Forestry, Horticulture, Dairy small ruminants (sheep, goat) and all other livestock farming and breeding.

Conditions

- The amount of foreign equity investment in the company/project shall be at least US$ 0.5 million.

- A minimum of 40% of the equity shall be held by the Pakistan Company or individuals in the Company.

- There is no upper ceiling of land holding for registered agriculture companies. However, the income of these companies would be, taxable.

- The proposals related to foreign investment in Agriculture Sector are processed by the BOI in consultation with the respective Provincial Governments for approval by the competent forum.

- The land for agriculture purpose can be obtained on lease basis for long periods, i.e., initially upto 30 years, extendable for a further period of 20 years.

- Foreign company making investment in agriculture sector is not allowed to transfer such land to any other foreign company unless specifically permitted by the Federal and concerned Provincial Government.

B) INCENTIVES

To keep Pakistan competitive in international market and make the investments viable, following incentives are available to both foreign as well as local investments:-

Manufacturing sector has been prioritized in four categories:

a) Value Added or Export Industries.

b) Hi-Tech Industries

c) Priority Industries and

d) Agro-based Industries

The units which annually export minimum average 50% of their production or more in first ten (10) years or attain minimum value-addition of 40% of production value (which may be specified from time to time), are treated as Export of value-added Industry. The indicative list for such industries is shown in Category (A). Any industry other than indicated in the list for Category (A) shall also be entitled for the same incentives provided it fulfills the above laid down criteria Level of Valued-addition in the Board of Investment. Those investors who intend to avail the incentives of this category, should apply to BOI, on the prescribed Form well in time before importing / placing orders for the machinery/equipment.

TRANSFER OF TECHNOLOGY

a) There is no restriction on payment of royalty and/or technical service fee for manufacturing sector. However, such agreements shall be registered with the State Bank of Pakistan.

b) The payments on account of royalties & technical service fees to foreign companies be taxed @ 15%. However, reduced rates under the treaties with different countries will remain applicable.

INTELLECTUAL PROPERTY RIGHTS:

The laws are being amended for the protection of Intellectual and Industrial Property Rights in conformity to WTO Agreements and a mechanism will be devised to enforce the law.

a) **TRADE MARKS ACT:**

A new legislation, the Trade Marks Ordinance, 2001 and the Trade Marks Rules, 2004 have been promulgated and enforced .

b) **PATENT & DESIGN ACT:**

Necessary amendments required to fulfill the obligations under WTO (TRIPS) have already been carried out. Patents Ordinance, 2000 and the Patents Rules, 2003 have been promulgated.

c) **COPYRIGHT ACT:**

Ministry of Education is preparing the Copyright Act, and the Copyright Ordinance is still enforced and will be replaced in near future. Some amendments have been enforced in 2002 in existing Law.

ii) **EXCHANGE CONTROL**

a) Full repatriation of capital, capital gains, dividends and profits, is allowed with the approval of State Bank of Pakistan.

b) The facility for contracting foreign private loans (which does not involve any Guarantee by the Govt. of Pakistan) is available to all those foreign investors, who make investment in approved sectors (open to foreign investment), for financing the cost of imported plant and machinery required for setting up the project. However, loan agreements should be registered by the State Bank of Pakistan.

c) Foreign controlled Semi-manufacturing concerns, the borrowing entitlement has been increased to 75% (of paid-up capital including reserves) and in case of foreign controlled non-manufacturing concerns (trade/services), it has been increased to 50%.3

The term investment includes all kind of assets invested by the individual investors/companies for the purpose of business, investment in particular although not inclusively, shares etc., moveable and immovable assets, intellectual property rights, licensing, know-how, goodwill contract for search to cultivate, extract or exploit natural resources.

Dispute Settlement Mechanism

A dispute settlement procedure exists to settle any dispute between a host country and the investor of the other country. If the dispute is not settled through mutual consultation the investor concerned can take his case to the competent court of the respective country or adhoc court of arbitration established under rules of UN Commission in International Trade Law or International Centre for Settlement of Investment Disputes (ICSID) or Court of Arbitration of Paris International Chamber of Commerce.

PROTECTION TO DOMESTIC MANUFACTURING:

The Concept to keep the domestic manufacturing competitive will continue to be followed in adjusting tariff structure. The duty on finished products will attract higher rate than the imported raw materials/inputs. Therefore, incidence of duties and taxes on locally produced goods would be less than the incidence of duties and taxes on finished imported goods. A reasonable tariff protection will be available to domestic manufacturing depending upon value addition.

3 BOI, Investment policy of Pakistan, page 25

PROTECTION TO INVESTMENT:

The economic policies, and the existing legal cover for foreign and Pakistan investment will be extended to new areas/sectors. The benefits and incentives for investment provided by the Government shall continue in force and will not be reduced or altered to the disadvantage of investors. Accordingly Foreign Private Investment Act, 1976 and the Furtherance and Protection of Economic Reforms Act, 1992 shall be amended.

2.2 Companies Ordinance, 1984 and General Forms and Provisional Rules, 1985, Equity Investment, its form and nature

Section 86 of the Companies Ordinance, 1984 describes that for further issue of capital the directors of the Company decide to increase the capital of the company by resolution. Such shares shall be offered to the members in proportion to the existing share held by each of member, irrespective of class, and such offer shall be made by the notice, as per given annexure VII, specifying the number of shares to which the member is entitled and limit of time within which the offer either has to be accepted, if not, will be deemed to be declined.4

Under section 73 of the Companies Ordinance, 1984 whenever a company having a share capital makes any allotment of its shares such company has to comply with legal formalities regarding such issuance, i.e filing of a return of allotment, i.e Form III, Annexure VIII is attached.5

4 Corporate Laws and Secretarial practices, Nazir Ahmad Shaheen, November 2002
5 Companies (General Provisions and Forms) Rules, 1985

Issue of Shares

Share issues are initially sold in the capital market. We shall get to know public issues of securities placed through investment bankers, privileged subscriptions to the company's own shareholders, and private placements by the firm to institutional investors.

A large company typically raises funds both publicly and privately. With a public issue, securities are sold to hundreds, and often thousands, of investors under a formal contract overseen by federal and state regulatory authorities. A private placement, on the other hand, is made to a limited number of investors, sometimes only one, and with considerably less regulation. An example of a private placement might be a loan by a small group of insurance companies to a corporation. Thus the two types of security issues differ primarily in the number of investors involved and in the regulations governing issuance.

When a company issues securities to the general public, it usually uses the services of an investment banker. The investment banker acts as a middleman in bringing together parties who need funds with those who have savings. The principal function of the investment banker is to buy the new securities from the issuing company (at wholesale) and then resell them to investors (at retail). For this service, investment bankers receive the difference between the price they pay for the security and the price at which the security is resold to the public. Because most companies make only occasional trips to the capital market, they are not specialists in the distribution of securities. On the other hand, investment-banking firms have the expertise, the contacts and the sales organization necessary to do an efficient job of marketing securities to investors. Because they are continually in the business of buying securities from companies and selling them to investors, investment bankers can perform this service at a lower cost than the individual firm.

There are three primary means by which companies offer securities to the general public: a traditional (or firm commitment) underwriting, a best efforts offering, and a self registration. In recent years, the shelf registration has come to dominate, at least for larger corporations. Let us explore these three methods for offering bonds and stock to investors.

Traditional Undertaking

As investment banker or group of investment bankers buying a security issue underwrites the sale of the issue by giving the company a cheque for the purchase price. At that time, the issuing company is relived of the risk of not being able to sell the issue to the general public at the established price. If the issue doest not sell well, either because of an adverse turn in the market or because it is overpriced, the underwriter, not the company, takes the loss. Thus, the investment banker insures, or underwrites, the risk of adverse price fluctuations during the period of distribution.

Often, the investment banking institution with which a company discusses the offering does not handle the underwriting alone. To spread the risk and obtain better distribution, other investment bankers are invited to participate in the offering. The originating investment banker is usually the manager and has the largest participation. Other investment bankers are invited into the underwriting syndicate, and their participation is determined primarily on the basis of their ability to sell securities.

METHODS OF ARRANGEMENTS OF EQUITY

Private Placement

Rather than sell new securities to the general public or existing shareholders, a corporation can sell the entire issue to a single purchaser (generally a financial institution or wealthy individual) or a group of such purchasers. This type of sale is known as a **private (or direct) placement**, for the company negotiates directly with the investor(s) over the terms of the offering, eliminating the underwriting function of the investment banker. A financial intermediary is the term that might best describe the many types of financial institutions that invest in private placements. Dominant private placement investors in this group include insurance companies, bank trust departments, and pension funds.6

One of the more frequently mentioned advantages of a private placement is the speed with which the private deal is transacted. A public issue must be registered with the SECP, red herrings and final prospectuses prepared and printed, and extensive negotiations undertaken. All this requires time. In addition, public issues always involve risks with respect to timing. Private placement, on the other hand, are not subject to SECP registration requirements, because it is felt that persons or institutions with enough capital to buy an entire security issue should be able to acquire on their own the kind of information that registration would disclose. Also, with private placements the terms can be tailored to the borrower's needs, and financing can be consummated quickly.

6 Fundamentals of Financial Management, James C. Van Horn and Jhon M. Wachowicz, Jr., Eleventh Edition, Chapter 19, page 534

However, we need to remember that the qualified large corporation can also tap the public market quickly, and with limited paperwork, through a shelf registration.

Because the private placement of debt is negotiated, the exact timing in the market is not a critical problem. The fact that there is most often only a single investor or small group of investors. If it later become necessary to change any of the terms of the issue, it is much easier to deal with one investor (or a small group) than with a large number of security holders.

Another advantage of a privately placed debt issue is that the actual borrowing does not necessarily have to take place all at once. The company can enter an arrangement whereby it can borrow up to a fixed amount over a period of time. For this credit arrangement, the borrower will pay a commitment fee. This type of arrangement gives the company flexibility, allowing it to borrow only when it needs the funds. Also, because the private placement doest not have to be registered with the SECP, the company avoids making public certain information that it may deem better left confidential, such as sources of raw materials, a unique manufacturing process, or executive compensation.

Initial Financing

When a company is formed, it obviously must be financed. Often the seed money (i.e., initial financing) comes from the founders and their families and friends. For some companies, this is sufficient to get things launched, and by retaining further earnings they need no more external equity financing. For others, infusions of additional external equity are necessary. In this section, we look at venture capital and initial public offerings.

Venture Capital

Venture capital represents funds invested in a new enterprise. Wealthy investors and financial institutions are the major sources of venture capital. Debt funds are sometimes provided, but it is mostly common stock that is involved. This stock is almost always initially placed privately. Rule 144 of the 1933 Act currently requires that newly issued, privately placed securities be held for at least two years or be registered before they can be resold without restriction. (Limited quantities of privately placed securities can be resold beginning one year after issuance). The aim of this rule is to protect "unsophisticated" investors from being offered unproven securities. As a result, however, investors in these securities have no liquidity for period of time. The hope of investors is privately placed stock (known as **letter stock)** so that the company will thrive and, after five years or so, be large and profitable enough to have the stock registered and sold in the public market. 7

Initial Public Offerings

If the new enterprise is successful, the owners may want to "take the company public" with a sale of common stock to outsiders. Often this desire is promoted by venture capitals, who want to realize a cash return on their investment. In another situation, the founders may simply want to establish a value, and liquidity, for their common stock.

Whatever their motivations are, the owners may decide to turn their firm into a public corporation. There are exceptions to this pattern of events; some large, successful

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7 Fundamentals of Financial Management, James C. Van Horn and Jhon M. Wachowicz, Jr., Eleventh Edition, Chapter 19

companies choose to remain privately held. For example, Bechtel Corporation is one of the largest construction and engineering companies in the world, but its common stock is privately held.

Most initial public offerings (IPOs) are accomplished through underwriters. In an IPO, because the common stock has not been previously traded in the public market, there is no stock price benchmark to use. Consequently, there is more price uncertainty than there is when a public company sells additional common stock. Empirical studies suggest that, on average, IPOs are sold at a significant discount (over 15 percent) from the prices that ultimately prevail in the after-issued market. For the corporation, the implication is that the initial public stock offering will need to be priced significantly below what management believes it should be based on its true value. This difference is the price of admission to the public market. Any subsequent public offering will not need to be under priced by as such, because a benchmark price will exist, and thus there will be less price uncertainty.

Attracting New Capital

Project financings of new infrastructure facilities by private developers, with limited or non-recourse loans from overseas banks and equity capital provided by foreign investors: (i) increase the flow of capital to the host country; (ii) avoid or limit expenditures by state-owned entities for the construction and financing of new facility (although a certain level of subsidy may be necessary at the inception of some projects); and (iii) reduce or eliminate government borrowing.

Maximising Return On Equity

Virtually all sponsors seek opportunities to obtain attractive rates of return on their investment. To attract private foreign investment, host countries may need to afford and offer investors' high returns than are available internationally in other markets. There is, of course, a natural limit to the returns available to investors in that the real cost of a project (manifested, for example, in monthly energy bills) may be a large part of a local consumer's basic cost of living. One can easily imagine the political sensitivity in a developing country to increase in retail electricity rates to satisfy the demands of foreign investors.

2.3 Companies (Issue of Capital) Rules, 1996

Policy Equity based-projects:

A company which owns an equity-based project and proposes to raise capital through public offer for the first time shall comply with some conditions. In equity based projects, contributories are not only the sponsors but they can be general public, financial and non-institutions and other companies. Therefore, to collect equity for equity based projects the Companies (Issue and Capital)Rules, 1996 has described some restrictions and conditions which must be adhered to the followings, while generating equity investment.:-

(i) The fixed capital expenditure shall be entirely financed by equity.

(ii) The project shall be appraised by a financial institution or a commercial bank or an investment bank.

(iii) The appraisal report shall be accompanied by a certificate from the company's auditors confirming that –

(a) the capital allocated to sponsors, foreign and local investors, if any, has been fully paid: and

(b) the land for the project has been acquired, letters of credit have been established and shipment schedule of plant and machinery has been finalized by the suppliers.

(iv) The issue shall be fully underwritten and the underwriters, not being the associated companies, shall include at least two financial institutions, including commercial banks and investments banks and the underwriters shall evaluate the project in their independent due diligence report.

(v) The sponsors shall retain at least twenty-five percent of the capital of the company for a period of five years from the date of public subscription.8

2.4 Securities and Exchange Commission of Pakistan

Securities & Exchange Commission of Pakistan (SECP) was establishment on 1 January 1999. It is a regulatory and an autonomous body which is responsible to take necessary steps and actions, if necessary to protect the local and foreign investors in Pakistan. It has taken different measures for the protection of investors' interest.9

Protection of investor interest

The SECP has successfully implemented broad based market reforms in the fields of risk management, governance, transparency and investor protection. Furthermore, the observance of enhanced accounting standards, reliable audits, as well as institutional strengthening and capacity building of the SECP, have been critical features of the capital market reform program. The stock exchanges in Pakistan are now largely compliant with

8 Companies (Issue of Capital) Rules, 1996
9 www.secp.gov.pk

the 30 IOSCO principles of Securities Regulation that constitute the International Standards adopted by the Financial Stability Forum. In this regard, the Commission has been actively co-operating with regulators across the globe in pursuit of a safe, transparent and dynamic international financial environment. Some of the significant reform measures introduced by the SECP to safeguard the investor interests are:-

The Investor Protection Fund (IPF) and Clearing House Protection Fund (CHPF) have been set up to ensure effective risk management in the secondary market and to protect investors' interests in case of default by the members of the exchange. The Commission observed that these funds were not fully funded by the exchanges and therefore directed the stock exchanges to ensure that their IPF and CHPF are fully funded by June 30, 2007. Up till June 30, 2002, the exchanges funded at least 50% of the actual contribution towards the IPF and CHPF. This was increased to 75% in 2003 and 100% from 2004 onwards. By June 2007, both funds should be fully funded.

- The SECP promulgated the Brokers and Agents Registration Rules in May 2001 to establish a direct regulatory nexus with brokers and agents for ensuring investor protection. Section 5-A of the Securities and Exchange Ordinance, 1969 provides that no person can act as a broker or agent to deal in the business of effecting transactions in securities market unless registered with the Commission. The registration of brokers and agents has brought about a positive impact in stock market by creating awareness among brokers to exercise high standards of integrity and to exercise skill and care in the conduct of business.

- The implementation of new two-tier Arbitration Procedure at KSE and ISE for the expeditious resolution of investor complaints provides for swift redress of investor complaints. Under the new procedure, all claims/disputes over Rs. 0.5 million arising out of transactions made subject to the Rules and Regulations of the exchange, which are not otherwise amicably settled, shall be referred to the Advisory & Arbitration Committee for their resolution/decision. However, claims/disputes up to Rs. 0.5 million shall be referred for arbitration to the Managing Director of the exchange. All claims/disputes exceeding Rs. 0.5 million forwarded to the Advisory and Arbitration Committee will be referred to a panel of arbitrators appointed for arbitration proceedings. Also, all claims and disputes referred to the panel of arbitrators shall be resolved / decided by majority and such decisions shall be deemed to be the award in the arbitration.

The primary objective of the SECP is to have a fair, transparent and efficient stock market to attract capital and restore investor confidence.

The Commission has granted approval for registration of the National Commodity Exchange Limited (NCEL). In this regard it may be noted that single stock futures have already been introduced on June 9, 2001. The NCEL will be dealing in derivative products, mainly in futures contracts in commodities and the specific approval of the Commission will be required for each type of futures contract traded on the Exchange. Promoting the growth of new products such as options, futures and other derivatives, will provide the necessary means to hedge risk and deepen the stock market. Hence, the emergence of trading in futures contracts in commodities in Pakistan would add greater depth to the capital market, providing investors/stakeholders with basic hedging instruments as well as enabling economic players to lock in costs, and would provide stimulus to the investment climate of the country.10

Investment regulations

The Board of Investment (BOI) is the central investment promotion and facilitation agency of the Government. It is headed by the Prime Minister and overseen by the Minister of Industries. A Cabinet Committee on Investment (CCOI) headed by the Finance Minister has been formed and is concerned exclusively with matters relating to private sector investment. Various regulations regarding licensing, approvals for investment in the negative list of industries, regulations on minimum equity requirements, and extent of foreign investment in specific sectors as well as conditions with regard to royalty, technical fees and franchising are principally determined through the BOI which provides for the first point of approval wherever necessary.

2.5 Foreign Private Investment (Promotion & Protection) Act, 1976, (FPIA)

This act was passed for the promotion and protection of foreign private investment in Pakistan and for the economic development of the country.

This Act has been enacted to promote and protect foreign private investments in the country. FPIA 1 provides protection to foreign investors with respect to their industrial establishments in Pakistan, precludes the Government from acquiring foreign capital or foreign investments in an industrial undertaking except under due process of

10 New Business Opportunities In Pakistan, an investor's guide book, Philippe Guitard, 2005

law with adequate compensation. It upholds the principle of equal treatment to foreign owned industrial undertakings with regard to laws, rules and regulations. Furthermore, it confirms the availability of permission for repatriation of capital and profits in foreign exchange.11

Under this Act the Federal Government opened industrial undertakings for the foreign private investment and mainly provide the protections to their agreements and repatriation facilities in a limited manner, which include original investment, profit earned on such investment, any additional amount resulting from the reinvested profits and a creditors of the industrial undertaking was allowed to repatriate its loan and interest on it.

Further, remittance by foreign employees was also allowed for the maintenance of their dependents obviously according to the rules and regulations issued by the Federal Government or The State Bank Of Pakistan. Field for foreign private investment include industrial undertakings which will contribute to the development of capital technical and managerial resources of Pakistan. Tax concession, avoidance of double taxation and equal treatment were such steps which built the confidence of the foreign investor and heavy foreign investment was introduced during this period.

2.6 Protection of Economic Reforms Act, 1992

This is an Act to provide for furtherance and protection of economic reforms. The basic object of this Act was to create a liberal environment for savings and investment and various economic reforms were introduced and for doing this it was essential to provide

11 www.pakboi.gov.pk

legal protection to these reforms in order to create confidence in the establishment and conformity of the liberal economic environment.12

This Act was enacted mainly to provide legal cover for economic reforms related to privatization and deregulation and other fiscal incentives introduced on and after 07 November 1990, through various policies, programmes and regulations of the Government. The Act allows all Pakistani and foreign nationals to bring in and take out of the country foreign exchange without any restrictions. Foreign currency account holders in Pakistan are assured that no restrictions will be placed on their deposits by the central bank. The law assures the investors that the fiscal incentives allowed to them through rules and regulations shall continue for the term specified therein and shall not be altered to their disadvantage. Contrary to the FPIA, which allows the federal Government a take-over under due process of law, this law clearly lays down that no industrial or commercial enterprise or any equity investment in a company or financial institution shall be compulsorily acquired or taken over by the Government.

Under this Act, the following measures were taken:-

i. Freedom was given to all citizens of Pakistan, residents or otherwise, to bring, hold, sell and take out foreign exchange within or out of Pakistan.

ii. All citizens, who hold foreign currency accounts, in Pakistan, resident or otherwise, shall continue to enjoy immunity against any inquiry from the Income Tax Department or any other authority, but this facility was not available on such foreign currency

12 http://www.khanassociates.com.pk/images/laws/law-6.htm (Last Visited 30-01-07)

accounts opened on or after 16 December,1999.

iii. The balance amount in such accounts and income on these both were declared exempted from the Income Tax.13

iv. SBP or any other bank was not authorized to impose any restriction on such accounts.

v. Protection of transfer of ownership to private sector, fiscal incentives for setting up of industries, foreign and Pakistani investment, secrecy of banking transaction and protection of financial obligation was given to the citizen under this Act.

This Act, in real sense, was a milestone and this step of the government had not only attracted the foreign investment but also established the trust and confidence of the local and foreign investor.

2.7 Foreign Currency Accounts (Protection) Ordinance, 2001.

If one fine morning you come to know that your foreign currency has been frozen and you are no more authorized to handle your own account, how would you feel? Obviously very bad, you will not only criticize the decision/policies of the Government but also you will try to withdraw your investment and if you are foreigner, you will quit as early as possible with your every thing.

The above Ordinance truly gave the real confidence not only to the local but also to the foreign investors, which was broken by the policies of proceeding government.

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13 Protection of Economic Reforms Act, 1992

To provide protection to foreign currency accounts the President Gen. Pervaiz Musharaf passed this ordinance to protect the foreign currency accounts in order to build and establish confidence to the local as well as the foreign investors. According to this Ordinance, No person holding a foreign currency account shall be deprived of his right to hold or operate such account or in any manner be restricted temporarily or permanently to lawfully sell, withdraw, remit, transfer, use as security or take out foreign currency there from within or outside Pakistan.14

This step of the government restored the confidence of the general public and investors. After this positive step many positive steps were taken to bring more and more investment in the country and because of the positive policies of the government , today Pakistan is attracting huge capital foreign investment and big local and foreign investment is coming into different mega sectors, like , oil & gas, energy and power, IT projects, Agri & Agro-based projects, textile sector, Infrastructure, Industrial Infrastructure, Health Projects, Mining & Minerals, Privatization, Service Sector, Tourism Projects, Other focused industry like telecommunication, SMEs, Automotive parts, relocation of Electronic Industry (Home Appliances), Edible Oil, Afghanistan related projects, Rail link with Afghanistan, Gas pipeline from Turkmenistan through Afghanistan, Power export and a new mega project of gas line from Iran, among Pakistan, Iran And India and many mega projects which are awaiting in the city of Gwader are also the results of good government policies.15

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14 http://www.pak.gov.pk/ 2001 (Last Visited 30-01-07)

15 http://www.pakboi.gov.pk/Biz_Guide/investment_opportunities.html (Last Visited 30-01-07)

CHAPTER 3

INSTITUTIONAL ARRANGEMENTS

3.1 Securities and Exchange Commission of Pakistan

The Securities and Exchange Commission of Pakistan (SECP) was established under the Securities and Exchange Commission of Pakistan Act, 1997, which was passed and promulgated by the Parliament in 1997. Unlike its predecessor the Corporate Law Authority (CLA), which was an attached department of Ministry of Finance, the SECP is an autonomous body, SECP started operations from January 1999, and CLA stood dissolved from that date.

The 1997 Act give the SECP the responsibility for:-

i. regulating the issue of securities
ii. regulating the business of stock exchanges and other security markets
iii. supervising depository and clearing houses
iv. registering stock brokers and sub-brokers
v. regulating investment schemes and funds
vi. preventing frauds in securities market
vii. regulating share acquisition and merger/takeover of companies, and
viii. regulating the issues of securities

The Act thus makes the SECP the apex body for regulating the corporate and equity markets. The State Bank of Pakistan (SBP) and SECP jointly announced that, from 1 July, 2002 SECP would perform supervisory functions for most Non-Bank Financial

Institutions (NBFIs'), including investment banks, discount houses and housing finance companies. So, other than commercial banks and DFIs, all companies come under the supervision of the SECP.[1]

SECP is organized in to six divisions:-

- *. Securities market division
- *. Specilised companies division (Including NBFIs but not Insurance)
- *. Company law administration division
- *. Enforcement division
- *. Insurance division
- *. Support services division

3.2 Central Board of Revenue (CBR)

The government introduced a new Income Tax Ordinance 2001 to bring the laws in Pakistan at par with modern day needs. Simplification and Automation of procedures has been adopted, and arbitrary decisions and discretion of the officers have been checked. Taxpayer confidence, transparency and facilitation are the basic criteria of the reform program being implemented. International tax credits are allowed and the foreign investor needs have been incorporated, and the legislation and procedures are in line with the international best practices. This has provided confidence in the investor's and the tax compliance requirements have been made transparent by providing of SRO's , forms and their submission using the internet. E-filing has been introduced and the declared results

[1] www.secp.gov.pk (Last Visited 29-01-07)

are accepted as the true business status unless contrary definite information comes up to the knowledge of the department.[2]

3.3 Board of Investment (BOI)

The BOI was established with broad based responsibilities of promotion of investment in all sectors of economy; facilitation of local and foreign investors for speedy materialization of their projects and to enhance Pakistan's international competitiveness and contribute to economic and social development

The BOI assists companies and investor which intend to invest in Pakistan as well as facilitates the implementation and operation of their projects. The wide range of services provided by BOI includes providing information on the opportunities for investment and facilitating companies which are looking for joint venture partners

The BOI acts as a focal point of contact for the prospective investors, both domestic and foreign to provide them all necessary information and assistance in coordinating with other Government Departments/Agencies.

The BOI also evaluates the following applications of investors:

- Work / Business Visa
- Branch / Liaison Office
- Security clearance

Functions of Board of Investment

In order to streamline and co-ordinate the process of investment and to create an investor friendly culture in the country, the government established the BOI as the central investment promotion and facilitation agency.

[2] www.cbr.org.pk (Last Visited 29-01-07)

The main functions of the Board are to promote investment opportunities in all sectors of the economy and to provide investment facilitation services to local, foreign and Overseas Pakistani investors. The BOI acts as the focal point of contact between potential investors and all the agencies of the government concerned with investment proposals and responsible for providing infrastructure and other facilities.

The following steps have been taken recently to address key investment-related issues:

(i) The Cabinet Committee on Investment (CCOI) has been formed, headed by the Minister for Finance and Economic Affairs and tasked exclusively to deal with matters relating to private sector investment.

(ii) Recognising the importance of the investment promotion process, Provincial Committees on Investment have been re-constituted, led by the Heads of Provincial Governments. To ensure close co-ordination between the BOI and the Provinces, the participation of the BOI on the Provincial Committees has been ensured.

(iii) Under an Ordinance, promulgated in March 2001, the BOI has been restructured to bring in private sector perspectives and expertise in the day-to-day functioning of the BOI. The Members of new Board of BOI have been notified. Out of total 27 members, 11 members are from private sector.[3]

[3] www.pakboi.gov.pk (Last Visited 29-01-07)

Facilitation Services

A key role of the BOI is to provide services to investors to assist them set up or expand their businesses in Pakistan.

BOI officers have access to an investor road map that helps them provide investors with the relevant information needed to set up a company. The appropriate forms are also available at BOI offices.

Investors looking for potential domestic or foreign joint venture partners can access BOI's investor matchmaking database.

If investors have problems arising out of a federal government agency's interpretation of a law or regulation, a senior BOI executive can take the issue up with the concerned agency. If satisfactory progress is not made, the matter can be referred to the Cabinet Committee on Investment and / Governing Body of BOI, Headed by the Prime Minister of Pakistan.

Similarly, any problems that arise out of a provincial agency's interpretation of a law or regulation can be taken up initially with the concerned provincial agency and, if necessary, the Provincial Investment Committee. In the event that the BOI considers the response is unsatisfactory, the matter can also be referred to the Cabinet Committee on Investment and / to the Governing Body of BOI. [4]/[5]

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[4] http://www.pakboi.gov.pk/fdi/month_wise_fdi_flow.html (Last Visited 30-01-07)

[5] http://www.pakboi.gov.pk/About_us/board_members.html (Last Visited 30-01-07)

Foreign Direct Investment (Month Wise)
(November 2006)

US $)

S.No	Months	2006-07	2005-06	2004-05	2003-04	2002-03	2001-02	2000-01
1	July	133.2	119.6	52.2	32.0	42.4	24.4	-13.0
2	August	242.2	106.2	56.6	40.4	30.4	26.4	26.0
3	September	653.6	102.9	72.3	44.5	97.4	21.9	22.3
4	October	207.3	137.0	94.2	53.4	228.9	46.9	20.3
5	November	239.7	268.4	52.4	46.6	63.0	42.0	46.8
6	December		369.2	117.3	60.2	78.3	43.5	44.7
7	January		123.4	70.0	62.4	53.1	20.0	23.3
8	February		276.9	82.6	45.3	37.2	29.4	28.7
9	March		721.1	195.0	247.5	27.5	32.9	33.2
10	April		795.5	98.9	128.1	37.7	20.2	26.7
11	May		191.8	138.2	142.4	48.8	22.1	28.1
12	June		309.0	494.3	46.6	53.3	155.0	35.3
	Total	**1,476.0**	**3,521.0**	**1524.0**	**949.4**	**798.0**	**484.7**	**322.4**

3.4 State Bank of Pakistan

The **State Bank of Pakistan** is the Central **Bank** of the Islamic Republic of **Pakistan.** The **Bank** started its operations on 1st of July 1948. Beside the following functions one of the core functions is to protect the interest of the foreign investor and to provide facilities by the implementation of government policies with respect to foreign exchange control and management of foreign exchange reserves.[6]

3.4.1 Core Functions of State Bank of Pakistan

[6] www.sbp.gov.pk (Last Visited 30-01-07)

State Bank of Pakistan is the Central Bank of the country. While its constitution, as originally laid down in the State Bank of Pakistan Order 1948, remained basically unchanged until 1st January 1974 when the Bank was nationalized, the scope of its functions was considerably enlarged. The State Bank of Pakistan Act 1956, with subsequent amendments, forms the basis of its operations today.

Under the State Bank of Pakistan Order 1948, the Bank was charged with the duty to "regulate the issue of Bank notes and keeping of reserves with a view to securing monetary stability in Pakistan and generally to operate the currency and credit system of the country to its advantage". The scope of the Bank's operations was considerably widened in the State Bank of Pakistan Act 1956, which required the Bank to "regulate the monetary and credit system of Pakistan and to foster its growth in the best national interest with a view to securing monetary stability and fuller utilisation of the country's productive resources". Under financial sector reforms, the State Bank of Pakistan was granted autonomy in February 1994. On 21st January, 1997, this autonomy was further strengthened by issuing three Amendment Ordinances (which were approved by the Parliament in May, 1997) namely, State Bank of Pakistan Act, 1956, Banking Companies Ordinance, 1962 and Banks Nationalisation Act, 1974. The changes in the State Bank Act gave full and exclusive authority to the State Bank to regulate the banking sector, to conduct an independent monetary policy and to set limit on government borrowings from the State Bank of Pakistan. The amendments in Banks Nationalisation Act abolished the Pakistan Banking Council (an institution established to look after the affairs of NCBs) and institutionalised the process of appointment of the Chief Executives and Boards of the nationalised commercial banks (NCBs) and development finance institutions (DFIs), with the Sate Bank having a role in their appointment and removal. The amendments also increased the autonomy and accountability of the Chief Executives and the Boards of Directors of banks and DFIs.

Like a Central Bank in any developing country, State Bank of Pakistan performs both the traditional and developmental functions to achieve macro-economic goals. The traditional functions, which are generally performed by central banks almost all over the world, may be classified into two groups: (a) the primary functions including issue of notes, regulation and supervision of the financial system, bankers' bank, lender of the last resort, banker to Government, and conduct of monetary policy, and (b) the secondary functions including the agency functions like management of public debt, management of foreign exchange, etc., and other functions like advising the government on policy matters and maintaining close relationships with international financial institutions. The non-traditional or promotional functions, performed by the State Bank include development of financial framework, institutionalization of savings and investment, provision of training facilities to bankers, and provision of credit to priority sectors. The State Bank also has been playing an active part in the process of islamization of the banking system.

3.4.2 ENSURING THE SOUNDNESS OF FINANCIAL SYSTEM:

3.4.2.1 REGULATION AND SUPERVISION

One of the fundamental responsibilities of the State Bank is regulation and supervision of the financial system to ensure its soundness and stability as well as to protect the interests of depositors. The rapid advancement in information technology, together with growing complexities of modern banking operations, has made the supervisory role more difficult and challenging. The institutional complexity is increasing, technical sophistication is improving and technical base of banking activities is expanding. All this requires the State Bank for endeavoring hard to keep pace with the fast-changing financial landscape of the country. Accordingly, the out dated inspection techniques have been replaced with the new ones to have better inspection and supervision of the financial institutions. The banking activities are now being monitored through a system of 'off-site' surveillance and 'on-site' inspection and supervision. Off-site surveillance is conducted by the State Bank through regular checking of various returns regularly received from the different banks. On other hand, on-site inspection is undertaken by the State Bank in the premises of the concerned banks when required.

To deepen and broaden financial markets as also to diversify the sources of credit, a number of non-bank financial institutions (NBFIs) were allowed to increase substantially. The State Bank has also been charged with the responsibilities of regulating and supervising of such institutions. To regulate and supervise the activities of these institutions, a new Department namely, NBFIs Regulation and Supervision Department was set up. Moreover, in order to safeguard the interest of ultimate users of the financial services, and to ensure the viability of institutions providing these services, the State Bank has issued a comprehensive set of Prudential Regulations (for commercial banks) and Rules of Business (for NBFIs).[7]

[7] http://www.sbp.gov.pk/about/banks_nbfis (Last visited 02-04-2007)

The "Prudential Regulations" for banks, besides providing for credit and risk exposure limits, prescribe guide lines relating to classification of short-term and long-term loan facilities, set criteria for management, prohibit criminal use of banking channels for the purpose of money laundering and other unlawful activities, lay down rules for the payment of dividends, direct banks to refrain from window dressing and prohibit them to extend fresh laon to defaulters of old loans. The existing format of balance sheet and profit-and-loss account has been changed to conform to international standards, ensuring adequate transparency of operations. Revised capital requirements, envisaging minimum paid up capital of Rs.500 million have been enforced. Effective December,1997, every bank was required to maintain capital and unencumbered general reserves equivalent to 8 per cent of its risk weighted assets.

The "Rules of Business" for NBFIs became effective since the day NBFIs came under State Bank's jurisdiction. As from January, 1997, modarbas and leasing companies, which are also specialized type of NBFIs, are being regulated/supervised by the Securities and Exchange Commission (SECP), rather than the State Bank of Pakistan.

3.4.2.2 EXCHANGE RATE MANAGEMENT AND BALANCE OF PAYMENTS

One of the major responsibilities of the State Bank is the maintenance of external value of the currency. In this regard, the Bank is required, among other measures taken by it, to regulate foreign exchange reserves of the country in line with the stipulations of the Foreign Exchange Act 1947. As an agent to the Government, the Bank has been authorized to purchase and sale gold, silver or approved foreign exchange and transactions of Special Drawing Rights with the International Monetary Fund under sub-sections 13(a) and 13(f) of Section 17 of the State Bank of Pakistan Act, 1956.

The Bank is responsible to keep the exchange rate of the rupee at an appropriate level and prevent it from wide fluctuations in order to maintain competitiveness of our exports and maintain stability in the foreign exchange market. To achieve the objective, various exchange policies have been adopted from time to time keeping in view the prevailing circumstances. Pak-rupee remained linked to Pound Sterling till September, 1971 and subsequently to U.S. Dollar. However, it was decided to adopt the managed floating exchange rate system w.e.f. January 8, 1982 under which the value of the rupee was determined on daily basis, with reference to a basket of currencies of Pakistan's major trading partners and competitors. Adjustments were made in its value as and when the circumstances so warranted. During the course of time, an important development took place when Pakistan accepted obligations of Article-VIII, Section 2, 3 and 4 of the IMF Articles of Agreement, thereby making the Pak-rupee convertible for current international transactions with effect from July 1, 1994.

After nuclear detonation by Pakistan in 1998, a two-tier exchange rate system was introduced w.e.f. 22nd July 1998, with a view to reduce the pressure on official reserves and prevent the economy to some extent from adverse implications of sanctions imposed on Pakistan. However, effective 19th May 1999, the exchange rate has been unified, with the introduction of market-based floating exchange rate system, under which the exchange rate is determined by the demand and supply positions in the foreign exchange market. The surrender requirement of foreign exchange receipts on account of exports and services, previously required to be made to State Bank through authorized dealers, has now been done away with and the commercial banks and other authorized dealers have been made free to hold and undertake transaction in foreign currencies.

As the custodian of country's external reserves, the State Bank is also responsible for the management of the foreign exchange reserves. The task is being performed by an Investment Committee which, after taking into consideration the overall level of reserves, maturities and payment obligations, takes decision to make investment of surplus funds in such a manner that ensures liquidity of funds as well as maximises the earnings. These reserves are also being used for intervention in the foreign exchange market. For this purpose, a Foreign Exchange Dealing Room has been set up at the Central Directorate of State Bank of Pakistan and services of a 'Forex Expert' have been acquired.[8]

3.4.3 INSTRUCTIONS ON CALCULATION OF MINIMUM CAPITAL

No banking company incorporated in Pakistan shall commence and carry on banking business unless it has a minimum paid up capital or Rs 500 million. Similarly, no banking company incorporated outside Pakistan shall commence and carry on banking business in Pakistan unless it has a minimum paid up capital of the value of Rs 500 million. [9]

[8] http://www.sbp.gov.pk/about/banks_nbfis/capitalbanks/creq1.htm (LV 01April 2007)

[9] http://www.sbp.gov.pk/about/banks_nbfis/capitalbanks/creq1.htm

Provided that where a banking company already in existence is found short of the minimum required paid up capital on 31st December, 1997, it shall meet shortfall by 31st December, 1998.

Effective from where the capital and unencumbered general reserves maintained by a banking company are found short of the minimum required capital and unencumbered general reserves (MCR) on December 31st, 1997, the State Bank shall, on request from the banking company concerned, consider grant of extension in time for meeting the required capital adequacy.

The capital and unencumbered general reserves for the purposes of the minimum requirement of 8% of risk weighted assets shall mean and include:-

Equity :

i. Fully paid up capital / capital deposited with SBP*
ii. Balance in share premium account
iii. Reserve for Bonus Shares
iv. General Reserves as disclosed on the balance-sheet
v. Unappropriate/unremitted* profits (net of accumulated losses, if any)

* in the case of foreign banks operating in Pakistan.

3.5 Stock Exchanges

The Pakistan's capital markets are not adequately structured to supply the large-scale mobilization of external investor capital. We describe some supply side constraints on capital market development that stem from inefficiencies in Pakistan's existing structure of market trading. However, following is an overview of Pakistan's stock markets:-

The Karachi Stock Exchange (KSE) established soon after independence in 1947, continues to be the main stock market in Pakistan. In 2001, KSE captured almost 74 percent of the overall trading volume in Pakistan. The Lahore Stock Exchange (LSE) was commissioned during the 1970s and is the second largest stock exchange. The Islamabad Stock Exchange (ISE) commissioned in 1992, is the third stock exchange in Pakistan, capturing 4 percent of the trading volume. In 2002, SECP gave a license for the first electronic stock exchange

3.6 Other Regulatory Bodies

The basic role of the Government is to run smoothly the affairs of the State, that's why the present Government is establishing new regulatory bodies to enable them to regulate different sectors properly. The Government has introduced the following regulators after the opening of all sectors for foreign investment.

i. Pakistan Telecommunication Authority (PTA)
ii. Oil & Gas Regulatory Authority (OGRA)
iii. Pakistan Electronic and Media Regulatory Authority (PEMRA)
iv. Trade and Development Authority of Pakistan (TDAP)
v. NEPRA

CHAPTER 4

INVESTORS' GRIEVANCES AND MEASURES TAKEN BY GOVERNMENT

It is basic requirement of every Government today to attract huge foreign investment. That's why every Government introduces different schemes and gives different policies to attract foreign and local investment from private sector. In early 90's policies were not attractive but in late 90's and after that the foreign investment conditions have been defined by reference to various sectors of the economy. The investment policy regime has been liberalized with most economic sectors open for foreign involvement. The Government has announced that the main objective of the present investment policy is to enhance the level of foreign investment in order to improve competitiveness and contribute to economic and social development. This indicates the high level of importance that is attached to foreign investment in Pakistan. The Government has therefore liberalized its investment policy, promoted a stronger and faster enabling framework and opened up almost all sectors for foreign investment while offering tax and other incentives for investment as well as enabling 100% ownership for foreign investment in many areas. The new Investment Policy provides equal investment opportunities for both domestic and foreign investors.

The Government has decided to give "priority industry" status for foreign investment into information technology, oil and gas exploration, mining, leather production, corporate farming, livestock and dairy, financial business and trade, infrastructure, tourism, housing and construction sectors. Complete freedom of choice has been provided on where to locate an activity.

Despite all these positive steps the investors have a lot of grievances and these grievances require to be removed on prompt basis otherwise these may result in failure of government policies and ultimately less investments in the economy and obviously this will cause slow economic and industrial development. I have highlighted these grievances in the ensuing paragraphs:

4.1 Inconsistent Government Policies

The irony of the fate is that we have been experiencing nationalization, deregulation, privatization, controlled economy and the mixed economic policies which have no consistency and always remain counter-productive. It is imperative that the policies adopted by the Government have constitutional backing so that resources being waste due to inconsistence policies may be avoided and to use them up to the optimal level. Continuance in government policies over reasonable time without break is essential to promote investment climate.

The FPIA 1976, which was amended subsequently in 1993 has been enacted to promote and protect foreign private investments in the country. FPIA provides protection to foreign investors with respect to their industrial establishments in Pakistan, precludes the Government from acquiring foreign capital or foreign investments in an industrial undertaking except under due process of law with adequate compensation. It upholds the principle of equal treatment to foreign owned industrial undertakings with regard to laws, rules and regulations. Furthermore, it confirms the availability of permission for repatriation of capital and profits in foreign exchange.[1]

Nawaz Sharif Government passed Foreign Exchange (temporary Restrictions) Act, 1998, which is a clear example of inconsistency of Government policies. This law has broken the trust of foreign and local investors in Pakistan on the Government. This was restored by the Musharaf Government in 2001 by introducing Foreign Currency Accounts (Protection) Ordinance, 2001.

Further, the Governments first announces tax exemptions in different industrial zones and subsequently withdraw the same from these industrial zones before expiry of the announced tenure. Gadoon Amazai and Hattar estates are its prominent examples.

4.2 Institutional Disharmony with Investor

It is a common day practice that the institution/department dealing with the local & foreign investors have no consistency in their policy rather there is disharmony, contradiction & incompatibility in their institutional framework, rules and regulations. It is not out of place to mention that the aptitude/behavior of different departments is not investment friendly, a mockery on the name of the rule of law. There are political reasons and different governments have different solutions of the business community and elites to favor when the government to the determent of others.

[1] www.pakboi.gov.pk

4.3 Cost of Doing Business is Too High

To attract and bring foreign investment is not an easy task. Why investors will choose our country to establish industry here? If cost of doing business is much high as compared to our neighboring countries like china, India etc. we would not be able to attract more investment in Pakistan because the basic requirements and needs for establishing industries are very high. If we take the example of energy sector, electricity becomes more costly if the industry uses more units. This policy and formula is the reversal of our neighbor country China, where Government is providing either at cheap or free facilities of such cost. In Pakistan energy was being purchased at higher rates from the private sectors because previous Government had entered in to such high rate contracts, resultantly the present Government is bound to buy electricity under those contracts at higher rates and now the Government is not ready to provide electricity at subsidized rates. This is the reason that initial cost of production is too high in Pakistan. The rank of Pakistan in the cost of doing business Indicators report 2006, issued by SBP for 2005-06 was 74 out of 175 as compare to 66 in 2005.[2]

The government has failed to reduce the cost of doing business. It is unable to provide inexpensive and timely infrastructure facilities such as land, electricity, gas etc to the local and foreign investors.

According to some informal official estimates, foreign direct investment (FDI) could double within one year if various hurdles facing business are removed.

[2] Dwan Economic & Business Review, High Cost of Doing business, December 11 – 27, 2006, By Sultan Ahmad

Officials quote the new report of World Bank/International Finance Commission (IFC) which says, "doing business become easier in India and Pakistan in 2005-06", adding that five reforms in India and two in Pakistan reduced the time, cost, and hassle for business to comply with legal and administrative requirements.[3]

According to a survey conducted by the World Bank on " Doing business in 2007". Pakistan now ranks 51 in time to import (which has reduced from 39 days to 19 days) as trade logistics and customs procedures were streamed and scores well on the indicators related to starting a business (54th out of 175) and protecting investors (19th out of 175) [4].

An investor faces lot of problems in getting electricity, gas and water connections for establishing a factory. Moreover, the cost of the land has become so expensive that it was becoming more and more difficult to set up new industries.

4.4 Non Removal of Investors' procedural Problems

It may be mentioned that still being at the take off stage, we could not develop the simple, easy and understandable procedural codes for smooth sailing and attaining the confidence of the investors. Rather BIO and other relevant investment related departments and their procedural codes remained a night mare for the local and foreign investors. Now we must remove all these bottlenecks for dynamic development and confidence building measures for foreign investors in particular and local investors in general.

[3] Dwan Economic & Business Review, September 18 – 24, 2006, By Ihtasham ul Haque
[4] An investment Friendly Destination, Dr. Shamshad Akhtar, Governor, SBP, Euromoney, Pakistan Investment Conference speech, Islamabad. 22 February 2007, page 5

4.5 Corruption and Transparency

Corruption and transparency issues are still of concern, as demonstrated by the Transparency International ranking of Pakistan, despite a number of measures being implemented under the guidance of the World Bank to improve the situation. It is recognized by most people met during the course of this study that the situation has improved dramatically with the present administration.

4.6 Contentions Legal and Judicial System

Enforcement of laws, rules and regulations could still be improved, with lower levels of the administration not presently fully efficient. One major drawback is the contentious legal framework which does not automatically recognize and implement international arbitration decisions. One of the major impediments in the enforcement of international arbitral awards is the lack of up-to date arbitration laws and its mechanism. Other relevant problems are the separability of the arbitration clauses, arbitrability and issue of public policy. There is also lack of expertise in arbitration because of certain gaps in legal education. Legal education is not made up-to date to this particular specialization; insufficient resources are accommodated to educate and train professionals in this field. The local project participants and government agencies prefer to take the disputed matter to the local courts whereas the foreign project participants and investors make resort to settle the dispute at international level by invoking the jurisdiction of international conventions on foreign arbitral awards. The problem is complicated where these laws conflict with each other. The local courts take plea that the foreign award is unenforceable because the contract was made through corruption, fraud and with mala fide intention. The examples of such court orders are the Hubco project in Pakistan and the Dabhol project in India. The alternate dispute resolution mechanism (ADR) has never been encouraged in Pakistan. This may be attributed to the lack of understanding of international arbitration rules and conventions by the local courts.[5] The judicial system also still lacks effectiveness. Intellectual property rights, while legally protected, are not always enforced – pirated and copied goods are prevalent in most sectors of the economy. Pakistan has ratified the New York Convention on 14 July 2005 and on the same date the President promulgated the Foreign Awards Ordinance VII of 2005. After the lapse of four (4) months, the said Ordinance lapsed under Article 89 of the Constitution of Pakistan 1973. On 3rd December 2005, the president again promulgated the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance, 2005 called Ordinance XX of 2005. This Ordinance was published through the Gazette of Pakistan.[6] The whole New York Convention has been made part of this Ordinance. After the lapse of this Ordinance, another was promulgated on 18th March, 2006.[7] This Ordinance got lapsed and the President has again promulgated the Ordinance on 14th July 2006 (Ordinance No. XIV)[8] giving effect to the previous one. Pakistan has also ratified the International Convention on the Settlement of Investment Dispute (ICSID) 1965, which is a major step in the recognition and enforcement of arbitral awards.

[5] http://www.thedailystar.net/law/2007/21/03/index.htm (last date visited 25.03.2007).
[6] [Gazette of Pakistan, Extraordinary, part 1,3rd December,2005] No.F.2(1)/2005-Pub., dated 3.12.2005.
[7] Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance, 2006, Ordinance III of 2006, reported at PLJ 2006 Federal Statutes 305.
[8] [Gazette of Pakistan, Extraordinary, Part 1, July 13, 2006] F. No.2 (1)/2006-Pub., dated 14.07.2006.

4.7 Child Laour

Cognizant of the fact that in a free market, economic order tends to use cheap labour with a view to reducing costs amd maximizing profits, the ILO Conventions-138 on the Maximum Age (1973) and C-182, on the Worst Forms of Child Labour (1999) prescribe universal standards for abolition of child labour and particularly elimination of its worst form such as debt-bondage, forced labour, drug-trafficking, prostitution etc.

Maximum age for admission to employment or work as a general principle, can not be less than 15 years. In the case of developing countries, however, it could be fixed at 14 years. National laws may also permit employment of persons between 13 to 15 years of age on light work which is neither harmful to their health nor is obstructive of their education or development. Particularly, for jobs which could be hazardous to health, safety or morals of young persons, the age may not be les than 18 years. This problem also hinders the import of foreign investment in Pakistan.

4.8 Chain of Approvals Require To Establish Particular Business

The concept of one window operations to establish some particular business organization in Pakistan is a sweet dream. A chain of prior approval of the respective Ministries is required for incorporation of companies. A list of such companies with concerned organizations noted against each is as under:-[9]

[9] Pakistan Investment Policies, Incentives & Facilities, Board of Investment 2006, page 19, Chapter four

Banking Company	Ministry of Finance/State Bank of Pakistan
Insurance Company	Ministry of Commerce
Investment Finance Company	Ministry of Finance/State Bank of Pakistan
Arms and Ammunitions	Ministry of Industries/board of Investment
Securities Printing, Currency and Mint	Ministry of Industries/board of Investment
High Explosives	Ministry of Industries/board of Investment
Radio Active Substances	Ministry of Industries/board of Investment

After obtaining approval from the respective ministry or department such companies can be registered with Securities and Exchange Commission of Pakistan through the concerned/related regional Company Registration Office in Pakistan.

4.9 Regulatory Authorities Are Not Functioning Properly

Although there are different regulatory authorities who are functioning and trying to meet the agenda of the Government but they are not compatible in their functioning with their objectives and goals for which these were established. Their basic objectives are to protect the interest of the stakeholders and they are either, general public, or local investor or the foreign investors, who are the backbone of the economy of any country, because without foreign investment no country can develop its industry and economy rapidly and smoothly.

We can view the situation of one of the biggest regulator of securities market and companies in Pakistan. Many have suffered in the March 2005 and June 2006 crises of stock market. Investors, brokers, analysts, stock exchangers, SECP, government all have either lost money or face. Perhaps, it is SECP that has suffered the most. Its loss of credibility has been dramatic. Few seem to remember that when it began its operations in 1999, SECP was perceived as the most promising regulatory body in the country.

Clearly, SECP, as an institution, is above its chairman. To borrow from Dr. Hassan's recent press statement, "it is imperative ..... that we do not focus merely on personalities, whether past or present, whether in power or out of it, but look backwards to assess the weaknesses of a system that allows the recurrence of situations such as March 2005."

Analysis of SECP's ineffectiveness in regulating stock market shows that there is but one weakness in the system i.e lack of good governance in federal government and at SECP.

Problems of governance in government are too obvious to be stated. The reasons this government, like some of its predecessors, became so involved in stock market is that it could not resist the temptation to use KSE-100 index as "evidence" of its economic success.[10]

Government's economic managers, some of whom are perceived to be quite close to big stock brokers, used to proudly claim that KSE was "best performing market of the world" and a rising KSE-100 was barometer of Pakistan's economy. They did not care that KSE's "best performance" was merely based on percentage increase in KSE-100 and

[10] Dawn Economic & Business Review, July, 24-30, 2006, SECP----a toothless regulator By Usman Hayat

this market have very limited economic relevance and hardly any link with life of a common man.

Such political propaganda about stock market convinced few Pakistanis, but it did tie the hands of SECP, which knew that any reform, no matter how justified, once linked to a fall in KSE-100 would invoke the wrath of government.

Despite SECP's "authority" under the SECP Act 1997, federal government exercises direct powers over this regulatory body, which include power to appoint its chairman, other commissioners and chairman of SECP's policy board.

Taking advantage of government's political stakes in stock market, some powerful stock brokers have turned KSE-100 into a negotiating tool. All they have to do to block and even malign SECP is to cause a downfall in the index.

They know that soon government machinery would be set into motion to bring KSE-100 back to a politically correct level. Following March crises, interference of the country's economic managers into affairs of SECP is said to be on the rise, at times verging on micro management. Thus, primary responsibility of SECP's ineffectiveness in doing its job lies with the government.

The next person responsible for SECP's ineffectiveness is SECP itself. There is much that SECP could have done, but did not do, to improve its governance and lay a sustainable foundation for regulation. Reality is that core elements of good governance have been largely missing in working of SECP.[11]

First of these elements is accountability. Its is the policy board of SECP that is supposed to oversee its performance and make policies regarding SECP. Conventionally,

[11] Dawn Economic & Business Review, July, 24-30, 2006, SECP----a toothless regulator By Usman Hayat

SECP's chairman has also been the chairman of policy board. Clearly, this sort of overseeing doest not help. Composition of policy board is specified in SECP Act. It has no representation from investing public, which provides SECP with its reason for existence. Majority of its members are ex-officio, coming from other bureaucracies, most of which have very little to show for themselves. Members of policy board from private sector are also chosen so that they would look good on paper and be toothless in practice.

Thus, its not a surprise that SECP's policy board has not made any perceptible effort to fulfill its purpose and its composition suggests that it is also unlikely to do so in future. Due to lack of accountability by the policy board, SECP chairman is considered all powerful in internal matters. This has result in highly controversial decisions, some of which led to court cases and caused great damage to SECP.

Second element of good governance that SECP is yet to espouse is transparency. It is an irony that SECP, which is chairman of transparency in corporate sector, has never published its financial accounts in its annual report. Nothing can justify such lack of elementary transparency.

SECP's annual reports tend to give a highly exaggerated account of SECP's performance. If one were to believe even some of the regulatory achievements of its Securities Market Division, nothing like March and June 2006 crises could ever have happened.

Third missing element of good governance at SECP is delegation coupled with meritocracy. Technically, executive directors should be running its different divisions but due to SECP Act and SECP's internal dynamics, chairmen and those commissioners, whom the chairman likes, run the show with minimal delegation across the organization.

Being a regulatory body, SECP is an extreme case of a knowledge based organization. It should and could have hired and retained the best of minds, which it did not. While SECP's chairman and for that matter governments would come and go, cost of having a weak regulator of capital market and corporate sector of the entire country would be borne by the investing public and foreign investors. If government is sincere in making SECP an independent and effective securities regulator, it should prove it through its actions. The least it can do is to liquidate its political stakes in stock market, amend SECP Act, 1997 reducing its direct powers over SECP and strengthening SECP's internal controls, and stop interfering in SECP's affairs though any indirect means such as giving statements about stock market issues.

Top management of SECP should also put the institution above itself by implementing good governance practices to regain its lost credibility. If and when there is improvement in governance at federal government and SECP, we shall see an improvement in SECP's performance and vice versa.[12]

Stock markets are considered as economic indicator of the country. If our stock markets will fluctuate like this way this will show that our economy is traveling in a boat and a boat can be sunk any time, therefore, no person having a common sense will invest.

4.10 Measures Taken By the Government

Despite some negative perceptions among the international, including European public, Pakistan has shown remarkable political and economic developments since the late 1990s when the country was on the verge of bankruptcy. With a rapidly growing population of

[12] Dawn Economic & Business Review, July, 24-30, 2006, SECP----a toothless regulator By Usman Hayat

about 150 million, Pakistan is a major country, recognized by the international community, and is one of the most important actors in the Islamic world.

Economically, the support from Pakistan's main creditors has initiated a virtuous economic circle, allowing fast export growth, a positive balance of payments, reduction of the cost of debt service, a dramatic increase in the country's currency reserves and an all time low for domestic interest rates, coupled with the appreciation of the Rupee against the US Dollar in 2002 and 2003. By the end of 2003, foreign reserves with the Central Bank reached more than US$ 11 billion, now are more than 12 billion, while the Balance of Trade deficit kept reducing to US$ 1 billion in fiscal year 2003. However, thanks to the reduced cost of debt servicing and a dramatic increase in remittances by overseas Pakistanis (up to US$ 4 billion), the balance of payments has been positive over the last few years.

The main consequence of these macro economic successes has been an increased liquidity in the country and the subsequent lowering of interest rates to a single digit for prime borrowers, from rates as high as 17% to 18% a few years ago. This has enabled higher profits for most businesses, followed by an exceptional boom on the stock market/capital market.

Also, banks have aggressively marketed consumer finance to the emerging middle class, allowing for a consumption boom (more than a 7-month waiting list for certain car models) as well as a construction bonanza.

The Central bank has carefully managed the incoming "hot money" so that inflation remains under control at less than 3% per annum.

4.10.1 Overview of the Economy

Pakistan's economy is still very dependent on agriculture. The sector contributes 25% to GNP but employs nearly 50% of the labour force. Industry contributes approximately 18% to GNP and services about 50%, of which wholesale and retail trade account for 15%, and transport and communication for 10%. As a result of the importance of the agricultural sector, climatic conditions and water resources have a significant impact on the yearly economic performance. Over the period 2000 to 2005, GNP growth has increased from an average of 3% per annum to nearly 6% in fiscal year 2005.

The industry is concentrated in the Karachi area, as well as in Punjab, around Lahore, Sialkot and Faisalabad. Other cities such as Quetta, Multan, Hyderabad or Peshawar also present some industrial activity but cannot compete with the former as for as the quality of the business environment is concerned.

The size of the domestic market has been increasing at a high rate based on a growing middle class, presently estimated at 7 million, with a Purchasing Power Parity of US$ 7000.

The volume of foreign trade has been increasing since 1999; in 2003, total import value was US$ 12 billion, approximately 1 billion higher than total exports.

4.10.2 Infrastructure

Infrastructure is regularly being improved, with a main focus on the road network which requires upgrading. The government is also making efforts to improve the reliability of the electricity supply. Despite a number of recent developments, including the opening of the sector to foreign investors, as well as attractive sites for the production of hydro-electric supply, most enterprises have to operate back-up generators, which increases the cost of their operations. Furthermore, the price of electricity is high compared to the rest of the region.

Telecommunications is an area where the situation is satisfactory with most cities in the country linked to internet, and equipped for mobile telephony. International airports are well served by international airlines, while the Karachi Port is complemented by Port Quasim, a recent development a few kilometres from Karachi, as well as the Gwadar port, in Balochistan, in the west of the country.

4.10.3 Regulatory framework

Business regulations have been profoundly overhauled along liberal lines, especially since 1999. Most barriers to the flow of capital and international direct investment have been removed. Foreign investors do not face any restrictions on the inflow of capital, and investment of up to 100% of equity participation is allowed in most sectors (local partners must be brought in within 5 years and contribute up to 40% of the equity in the services and agriculture sectors). Unlimited remittance of profits, dividends, service fees or capital is now the rule. Business regulations are now among the most liberal in the region. On these grounds, Pakistan appears much more investor friendly than its larger neighbour, India. However, implementation of business regulations especially by the lower level bureaucracy could still be improved.

Tariffs have been reduced to an average rate of 16%, with a maximum of 25% (except for the car industry). The privatisation process, which started in the early 1990s, has gained momentum, with most of the banking system privately owned, and the oil sector targeted to be the next big privatization operation. It is worth noting, however, that very few OECD investors have shown an interest in privatisation: Most investors come from the Middle East and China.

4.10.4 Transparency of the business environment

The World Bank is actively involved with the Government to improve the general economic environment with a view to reduce corruption prone regulations. Improved salary of civil servants and amendments to regulation bottlenecks are part of a comprehensive programme being presently undertaken. With a Corruption Perception Index of 2.5 (on a 0 to 10 scale), Transparency International ranked Pakistan Number 92 out of 133 countries worldwide in the year 2003. In 2002, the CPI was 2.6, ranking Pakistan 77 out of 102 countries.

Pakistan has laws to combat corruption such as the Prevention of Corruption Act, 1947, the Efficiency and Discipline Rules, 1973, and, most recently, the National Accountability Bureau Ordinance, 1999. Giving and accepting bribes is a criminal act and entails punishments such as confiscation of property, imprisonment, recovery of ill-gotten money, dismissal from service and reduction in rank. However, further progress need to be made. Consequently, the current Government has made accountability one of its major priorities, and has brought cases against former Prime Minister Nawaz Sharif and other members of the National and Provincial Assemblies as well as other organizations, officials or individuals involved in corrupt practices. In June 2000, 1,000 officials in the Central Board of Revenue were fired for corruption and inefficiency. The National Accountability Bureau (NAB), which is responsible for fighting corruption, has also targeted loan defaulters and recovered huge sums of money from them as in the past many Pakistani have used political connections and influence to borrow large sum of money without any intention of ever paying it back. There is a clear talk that this area is on the mend showing considerable improvement, and the World Bank is highly involved in supporting the reform of the country in this area, notable through reform of the CBR.

4.10.5 Rapid Inflow of Foreign Investment, an over view of Different Sectors

Foreign Direct Investment (FDI) inflows have increased in the last two financial years, peaking at $3.5 billion during 2005-06. The figure was 131 per cent higher than $1.52 billion for 2004-05.[13]

The government sees the volume of capital inflows as a major achievement. Yes, as far as the numbers go, the official claim is very much justified. But there are certain points to ponder over the FDI trends and the emerging scenario.

The economic turnaround achieved about 2-3 years back, started attracting foreign investment which had practically shield away in the last decade.

Now, the all- important question is, where does this enormous capital go and what impact it has on the economic landscape?. Did it really generate new economic activities and employment opportunities?.

If we look at the FDI inflows in 2004-05 and 2005-06, a major chunk went to communications sector. In 2004-05, communications (including telecom) attracted FDI worth $ 517 million (34 per cent) followed by financial business $ 269.4 million (17.7 per cent), oil. Gas and petrochemical $ 217 million (14.3 per cent), power $ 73.3 million (4.8 per cent), trade # 52.1 million (3.4 percent), chemicals $51 million (22.5 percent).

[13] Dawn Economic & Business Review, September, 18-24, 2006, Critical Questions in Foreign Investment By Irfan Shahzad

Almost the same pattern continued in first ten months of 2005-06. Telecom was the largest recipient with $1.0 billion, followed by energy sector ($304 million), financial services ($ 265.5 million), trade ($ 81.9 million), construction ($ 54.4 million) and others. As for as big amount in telecom sector are concerned, these have largely come from Telenor, Warid and Etiselat.

The figures speak for themselves. The two cellular operators paid $291 million each for lincences, adding to it considerable investment in infrastructure and related developments. The investment enhanced economic activities and created much needed new employment opportunities. The official claims of rise in employment against annual averages of past years were perhaps well aided by these investments.

Economic observers believe that certain sectors have the potential of not becoming new attraction for foreign investors, but can prove to be a cure for un-employment and poverty. For instance, construction is one of these sectors and it has already started attracting notable foreign investment.

Just one mega project in Islamabad, a joint venture of a Pakistani firm, is expected to net in some $ 350 million. The joint venture is building a multi-purpose complex containing a 19 storey residential tower, 22 storey offices tower, a five floor mega shopping mall and above all, Pakistan's tallest 37 storey hotel.[14]

The project is underway on a 6.59 acre plot at a cost of over Rs.5 billion. Initial total cost of the project was $ 300 million, but was revised upward to make the complex an earthquake –proof structure.

[14] Dawn Economic & Business Review, September, 18-24, 2006, Critical Questions in Foreign Investment By Irfan Shahzad

Thai and other Gulf-based investors have also shown interest in construction sector. As some 35-40 industries are involved in construction, the sector enhances across the broad economic activities. Foreign and local equity investment in this sector becomes even important considering the shortage of housing units, particularly in urban areas.

Further, there are sectors like livestock and dairy farming, processing of vegetables and fruits, tourism, engineering and other employment-intensive fields awaiting investments.

Although huge foreign and local investment can provide a sense of satisfaction to the policy makers, the actual requirements of the economy and its masses remains far from fulfilled. A comprehensive, well thought-out strategy, formulated in consultation with stakeholders in every sector is needed to benefit optimally from the surging foreign investment[15].

4.10.6 Proceedings on Investors' Grievances by SECP

According to the annual repot of SECP 2005, the object of Company Law Division (CLD) is to promote healthy growth of corporate enterprises, protection of investors and creditors, promotion of investment and development of economy. To promote the above objects CLD ensures expeditious and appropriate resolution of investors' grievances. If there has been a violation of any provision of the Companies Ordinance,1984 the CLD takes necessary action against the concern company. During the reported year 1,409 complaints were received by Enforcement Department from the shareholders and general public. Out of which, 1,351 were resolved. [16]

[15] Dawn Economic & Business Review, September, 18-24, 2006, Critical Questions in Foreign Investment By Irfan Shahzad
[16] SECP Annual Report, 2005, Chapter 5, page 62

In order to ensure investor protection and market integrity, the enforcement and monitoring capacity of the Commission was considerably strengthened and the Securities Market Division (SMD) imposed penalties on companies found guilty of market abuse. In the first proven case of insider trading in the history of capital markets in Pakistan, the Commission imposed a fine Rs.535,000/- on Pakistan Kuwait Investment Company Limited for involvement in insider trading in the shares of Fauji Fertilizer Company Limited. A fine of Rs. 500,000/- was imposed on Pakistan Industrial Credit and Investment Corporation Limited (PICIC) for price manipulation in certificate prices of PICIC Growth Fund and PICIC Investment Fund.[17] A fine of Rs.100,000/- was imposed on Al-Mal Securities and Services (Pvt.) Limited, Corporate Member, KSE for various violations of the Securities and Exchange Ordinance, 1969.[18]

4.10.7 Steps being taken to further strengthen anticorruption strategy

According to letter of intent to managing director of IMF the Government have launched an awareness campaign which would explain what corruption is and how it effects people. The campaign would also inform about the rights and obligations of civil servants as well as citizens. Given the importance of the justice system in our fight against corruption, the National Accountability Bureau (NAB) will cooperate more closely with the access to justice program. Relatedly, we will strengthen control systems in government departments which will make existing rules and regulations more effective. Looking ahead, greater reliance on automation, civil service reform and training of legislators and civil servants will form integral parts of our strategy. An interministerial

[17] SECP Annual Report, 2005, Chapter 6, page 88

[18] SECP Annual Report, 2005, Chapter 6, page 89

task force on reducing regulations and simplifying bureaucratic process has been set up to reduce opportunities for corruption.[19]

[19] http://www.sbp.gov.pk/m-policy/a-imf/2003/letter-intent(IMF).pdf (last visited 01-04-2007)

CHAPTER 5

RECOMMENDATIONS AND CONCLUSION

5.1 Judicial Reforms

Although lack of due process, the impartiality and lack of knowledge of international commercial law subjects by the judges and the slow judicial process all hamper the investor confidence.

Litigation in Pakistan can often take years to be resolved. Also the Judiciary is not independent of the Executive, and decisions cannot, in normal circumstances, be given against the government authority. The decisions of the High court and the Supreme court in the HUBCO case are glaring examples on how foreign investor's can be treated by the system when there is change of government. So the commercial decisions are highly influenced by political considerations. This is to be avoided. Pakistan is being assisted by the Asian Development Bank which has dedicated a considerable financial package to reform the Judiciary under the "Access to Justice Program". It is essential to strengthen the legal and commercial protection of all. The sanctity of the contract and the principle of party autonomy are to implement in letter and spirit. Legal framework is to be strengthened in order to provide quick and adequate justice to the local and foreign investors.

It is recommended that the judicial reforms are implemented in true letter and spirit at the earliest. Commercial courts and Arbitration Institutions be set-up so that the cases are decided in shortest possible time at minimum inconvenience. The government should also ensure that the judgments and arbitral awards are implemented and enforced without undue litigation and also delays in frivolous appeals are avoided.

5.2 Implementation of International treaty commitments.

Pakistan has made certain commitments in the WTO regarding the protection of investment and international trade. The domestic laws are to be introduced or to be brought in conformity with certain minimum standards of protection. There are new laws especially as regards to the protection of intellectual property rights, but their implementation is half hearted and also not well engraved in the legal system. The domestic laws and the international treaty commitments are to be enforced in real terms rather than whitewash and cosmetic compliances. Investors want real implementation and the defaulters to be punished, unless the enforcement is not seen in real terms, the words in the books have no meaning to them. The violations of the IP laws, the unjust acquisitions and undue and coercive taxation by ill-equipped departments brings home a message that the things are not in the control of the government or that it lacks the will to enforce what it preaches. The government needs to streamline its departmental processes and also ensure that if problems arise then the remedies should be provided in shortest possible time and minimum inconvenience.

5.3 Violations punished by SECP.

It has been that the plunderer and looters making best use of the fragile and not so well established system go unpunished. We have yet to see people who exploit the system should be punished. The system that can check and correct its irregularities no doubt enforces confidence. If this is done, the local as well as foreign equity investors will be more confident to invest in Pakistan. Let's have a clean and fair trail of the exploiters and have them punished. An Example is that in America sentences have already be passed and enforced against the Directors of Enron for Corporate mis-declarations in financial statements. This was an equity and financial irregularity which has been punished, and confidence of the investor's in the New York Stock Exchange exists. What have we done with the two stock exchanges manipulated crashes? Sadly nothing. The State needs to do much more to restore confidence in the equity investment, and the stock exchanges should not be short term casinos but places where people invest. Corporate laws are to be enforced strictly and the SECP has to be strengthened to do the regulatory functions with results that build investor confidence, and show that no manipulation or irregularity exists. This has to be done to encourage people to invest more in the equities.

In order to ensure investor protection and market integrity, the enforcement and monitoring capacity of the Commission was considerably strengthened and the Securities Market Division (SMD) imposed penalties on companies found guilty of market abuse. In the first proven case of insider trading in the history of capital markets in Pakistan, the Commission imposed a fine Rs.535,000/- on Pakistan Kuwait Investment Company Limited for involvement in insider trading in the shares of Fauji Fertilizer Company Limited. A fine of Rs. 500,000/- was imposed on Pakistan Industrial Credit and Investment Corporation Limited (PICIC) for price manipulation in certificate prices of PICIC Growth Fund and PICIC Investment Fund.[1] A fine of Rs.100,000/- was imposed

[1] SECP Annual Report, 2005, Chapter 6, page 88

on Al-Mal Securities and Services (Pvt.) Limited, Corporate Member, KSE for various violations of the Securities and Exchange Ordinance, 1969.[2]

5.4 Administrative Reforms

Weak administration sooner or later always leads to failure of the goal. If we desire rapid economic develop in all sectors of our country, we only have to do is proper administration. Yes, good administration in all relevant fields which can help the local and foreign investors more specifically the information and data administration. Currently statistical division is responsible to issue different reports and information for the stakeholders to take decision for investment.

Other administrative measures are related to the institutions which are responsible to attract, handle and promote the investment in the country. These should be properly controlled and there should be proper check and balance of their performance and duties, so they should facilitate the investors rather create hurdles and cause hindrances. Transparency in the functioning of the offices be ensured by checks in the discretion of the staff and officials against arbitrary and illegal use of powers.

5.5 Adoption of Emerging Dispute Resolution Mechanism

With the growth of international trade and foreign investment in Pakistan, the interaction of foreign commercial elements with local business has increased rapidly. Inevitably the resulting international commercial relations are looking for dispute resolution mechanism that is acceptable to both the foreign and local parties. The establishment and effective functioning of such mechanisms is dealt by private international law on the basis of

[2] SECP Annual Report, 2005, Chapter 6, page 89

certain agreed, shared and common principles set by different states having foreign municipal system of law. However, the rules of private international law of one state may differ from the other because all the states are not parties to the same conventions or treaties. In the last two decades, the courts in Pakistan have received a variety of international arbitration matters for determination. Specialist arbitrators through a quick and often informal procedure commonly choose arbitration as a method of dispute resolution over traditional court proceedings because of the possibility of achieving a relatively economical final solution. For a long time international commercial arbitration was treated with apprehension in Pakistan. Efforts were made to avoid the contracted mode of dispute resolution by approaching the courts for relief on the substantive dispute. Dr. Tariq Hassan has given many suggestions in terms of international arbitration in Pakistan in his articles and I absolutely support measures taken in the light of his article. According to Dr. Tariq Hassan these are " Equivalent Legal Standard".[3] I also suggest the same.

1) "An effective legislative framework should be established for the resolution of international disputes. Pakistan should adopt a holistic approach to international arbitration legislation. A single statute that includes international arbitration should be promulgated. The 1940 Arbitration Act should be modernized taking into account the UNCITRAL Model Law on International Commercial Arbitration.
2) Enactment of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance, 2006 (Ordinance No XIV of 2006).

[3] Dr. Tariq Hassan, "International Arbitration in Pakistan, A developing country Perspective," Journal of International Arbitration 19(6): 591-600, 2002, Kluwer Law International.

3) Pakistan must establish its own Council of Arbitration, based on the experience of the Indian Council of Arbitration, to provide facilities for arbitration of both domestic and international commercial disputes.
4) Pakistan should promote the SAARC arbitration Council as a matter of policy and subscribe to the UNCITRAL Arbitration Rules.
5) The government should conduct a comparative analysis of UNCITRAL, ICSID, ICC and other arbitration procedures with a view to promoting healthy competition between these mechanisms to ensure proper and reasonable costs, neutrality and speed.
6) The government should develop a viable policy framework consistent with its legal and institutional structures to bolster the bargaining position of Pakistani officials and businessmen for negotiating favourable arbitration clauses in international agreements."[4]

5.6 FDI Should be Encouraged Instead of Portfolio Investment

De-regulation and privatization policies of the Government are attracting portfolio investments in the country. Our country do not require portfolio investment rather it require FDI, because in portfolio investment the foreign investor only brings money and according to current policies of the Government such investment can be repatriated any time and they can sell their investment to the local investors. While in case of FDI foreign investor has to transfer technical know how, a new industry will be established which will cause new job opportunities, new trends and obviously a long term investment which will result in true economic and industrial development of the country. The Government

[4] Ibid.

should take such measures that result in FDI. Portfolio investment is a short term solution while FDI is beneficial in the long term.

5.7 Updating Economic Data

An accurate, prompt and better investment decision always require accurate, fast, up to date and timely received information and data. Because flow of accurate and timely data is necessary to help the market take informed decisions. The Government releases foreign, trade, inflation and tax revenue figures on a monthly basis and the overall performance of the economy quarterly basis. A lot of information is not updated on timely basis and more transparency is required to help the investors to take investment decisions which are not readily available.

This area should be given to the private sector and this sector should be responsible to provide up to date data and information at their web or through print form material, so that the interested people could access it and could take timely decision.

5.8 Setup Free Industrial Zones

The Government should establish free industrial zones in different areas of the country, particularly in Gwadar, gateway to Central Asian States, and such facilities should not be withdrawn. Such experiments have already been exercised by our neighbouring countries China and Dubai and if we do not take such measures we would not be able to attract good foreign investment in Pakistan. We have not only to remove the fears of the investors but also to restore their confidence by taking such bold measures with their proper implementation and continuity in the implemented policies.

5.9 One Window Facilitation

The Government should establish One Window facility for private and foreign investors in all sectors which are declared as industry in Pakistan. Particularly power, telecom, oil and gas, agriculture, construction and banking sectors. Recently The Government of NWFP has taken a bold step in this direction and has established One Window facility for private sector within Sarhad Hydel Development Organization (SHYDO) through which, application of investors are processed, relevant documents are provided and acquisition of land is facilitated.

SHYDO has provided some incentives for 1 MW or less than that Projects, which includes no lengthy procedures, just registration and bank guarantee, Nominal fee structure, fixed @ Rs.500/kw/Annum. NOC to be issued by SHYDO within one month after registration. Three years are allowed to construct the project. Fee payable to SHYDO at the commissioning of project and yearly thereafter. No water use charges, no tariff negotiations.[5]

Such policy and incentive are admired and it is recommended that such type of incentives should be extended to other areas and for different sectors of the Government policies to attract foreign and local investment in Pakistan.

5.10 Child Labour Problems be Resolved

The National Laws should provide for maintenance of complete record of workers below the prescribed minimum age by the employers. The companies, on their part must

[5] Dawn Islamabad, Monday, March 26, 2007

maintain document and communicate information on child workers to concerned public authorities. They must ensure that child workers are not exposed to hazardous jobs and are progressively rehabilitated.

Pakistan has ratified both, convention 138 and 182. Accordingly national laws consciously guard against exploitation of child labour in the country. Practically all occupations and works involving hazardous processes have been notified as prohibited for child workers of or below the age of 14 years.[6] The only exception allows these works to be done within the family as domestic undertaking, school education or as vocational training. This does not strictly tantamount to a case of child labour.

In keeping with the limits set by the ILO conventions, child workers may be employed on light and non-hazardous jobs under proper health and safety precautions.[7] Even in that case the total working time in a day may not exceed 7 hours, including time spent in waiting for work. The over all spread over is required to be arranged in such a way so as to provide one hours' rest after every three hours of continuous work. Child workers could neither be asked to do over-time nor to work between 7.00 p.m and 6.00 a.m.[8]

The law explicitly makes corporations liable for compliance at the risk of legal action in case of default.[9] Companies are required to obtain medical certification from a qualified surgeon with regard to age of young workers and maintain proper record of their employment.[10] They are also required to report such information to the labor inspectorate.[11]

[6] Employment of Children Act 1991, Sec.3 read with Schedule to part-1.
[7] See the Employment of Children Rules 1995 rule, 6-15.
[8] Also see the Factories Act 1934 Sec.54 (3) & (4).
[9] Ibid., Sec. 70.
[10] Ibid., Sec. 51.
[11] The Employment of Children Act 1991 Sec. 11; also see the Factories Act 1934, Sec. 56; and the Employment of Children Rules 1995, rule 5.

Companies engaged in manufacturing business, usually tend to resort to child and forced labour.[12] In an anticipatory move, the law, therefore, requires of each manufacturing business where ten or more workers are employed to provide detailed information on name and situation of the factory, nature of the manufacturing process to be carried out, name of the manager and particulars of workers to the concerned labour inspector before commencement of its operation.[13] The law obliges Provincial Governments to put in place efficient inspection machinery to prevent and control child labour within their jurisdiction. Apart from inspectors of provincial labour departments, every District Magistrate is an ex-post facto inspector for elimination of child labour.[14] These inspectors are empowered to carry out physical inspections and take such measures as may be necessary to prevent, check and control child labour within their jurisdiction.[15]

5.11 Conclusion

If we look from the historical prospective, no doubt, Pakistan was not a good destination for investment. But since the last couple of years it seem like heaven of investors and it can be further attractive if the Government take some positive steps to remove the investors grievances and pass such laws which never, even in future, could effect adversely the investment, economic and industrial policies of the Government. Such type of legislation is the need of time.

The business environment has been profoundly liberalized in recent years.

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[12] Yousaf Kamal, Child Labour-National Portfolio, M/o Labour.
[13] The Factories Act 1934, Sec.9; also see the Employment of Children Act, 1991, Sec.9.
[14] Ibid., Sec 10; also se the Employment of Children Act 1991, Sec.17.
[15] The Employment of Children Act 1991, Sec.17; also The Factoriwes Act 1934, Sec.11. After Promulgation of Local Govts. Act 2001, the Zila Nazims may also exercise these powers.

Most barriers to the flow of capital and international direct investment have been removed. Tariffs have been reduced at an average rate of 16%, with a maximum of 25% (except for the car industry). The privatization' process, which started in the early 1990s, has gained momentum, with most of the banking system already in private hands, and the oil sector targeted to be the next big privatization operation.

The foreign investment regime has been liberalized and most sectors have been opened to foreign investors without any restrictions. Unlimited remittance of profits, dividends, service fees or capital is now the rule. Business regulations have been streamlined and are now among the most liberal in the region.

Although there are lot of problems that need to be addressed promptly but besides all these, concentration should be focused/centralized to the development of infrastructure, security issues particularly threat of terrorism, deletion of monopoly, proper implementations of IPO's, Protection of Design, copy rights, patents, trade marks, and should introduce such dispute resolution mechanism which could restore the trust and confidence of the foreign investor to make FDI in Pakistan.

Foreign direct investment has been hindered in Pakistan due to above problems. This is an era of modernization and globalization in which the whole world has tended to move towards internationalization of arbitration. We have also been witnessing these changes in sub-continent for many years. India has accommodated international arbitration in its domestic litigation system. There still persist many difficulties in the enforcement of foreign arbitral awards in Pakistan that merit special consideration. These cultural and legal problems can be avoided if international commercial arbitration is tuned in with the business needs and expectations. This research work has highlighted all those issues and recent legal developments and trends in that regard.

There are many hindrances and obstacles in the way of foreign investment to Pakistan and my research work has addressed all those issues and problems, which are the main impediments because of which the foreign investors are reluctant to invest in Pakistan. The question is that why foreign investors are hesitant to come to Pakistan? The answer is not only one. There are as much answers as are the problems, to answer these problems we have to remove those obstacles. There are no proper legislation in our domestic law to deal with foreign arbitration, no proper infrastructure, no consistent laws and regulations, regulators are toothless and ultimately produce results as desired by the top management, need to remove monopoly and cartels, strict implementation of IP laws, reduction in the cost of doing business, removal of procedural problems and bad perceptions of foreign investors about the litigation system of Pakistan. There are many cultural, legal, institutional, educational hurdles particularly in Pakistan that obstruct foreign investment and trade. The foreign investors would definitely come to Pakistan for investment when a proper business environment will be provided in Pakistan, which will pave the way for foreign investors to invest particularly in every field which is open for investment. Investors need trust in the system to secure their equity investments, the profits and its repatriation. The Government of Pakistan has done a lot in this direction and with the suggestions and recommendations proposed if implemented, the investment climate can be made more attractive and investor friendly. Some useful commercial information, addresses, internet sources, web sites, consulting firms, foreign banks, addresses of public entities and data are provided in annexure I, II, III, IV, V and VI for the potential investors.

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2) Business Law, Law Society Of Ireland, second Edition, Oxford university Press, Sylvia McNeece, Dr. Anne-Marie Mooney Cotter
3) Foreign Exchange Manual
4) Company Law, Revised Edition, Dr. Avtar Singh, Irfan Law Book House
5) Practical Approach to the Comnpanies Ordinance, 1984, Nazir Ahmad Shaheen, Federal Law House, Rawalpindi, 2006
6) Mercantile Law in Pakistan, Barrister A. G. Chaudhary
7) Corporate Law And Secretarial Practices, Nazir A.Shaheen, November 2002
8) Black Law Dactionary, 7th Edition
9) Share holders and Board of Directors' Resolutions

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1. www.secp.gov.pk
2. www.pakboi.gov.pk
3. www.sbp.gov.pk
4. www.cbr.org.pk
5. www.mineweb.net
6. http://en.wikipedia.org/wiki/Crescent_Group
7. http://www.sbp.org.pk/Ecodata/Invest_pk.pdf

Act, Ordinance, Rule And Guideline

1) The Companies Ordinance, 1984
2) Securities and Exchange Ordinance, 1969.
3) Income Tax Ordinance, 2001
4) Securities and Exchange Commission of Pakistan Act, 1997.
5) Issue of Capital Rules, 1996
6) Listing Regulations Of Stock Exchange Karachi
7) General Forms and Provisions Rules, 1985
8) Guide Lines Issued by SECP

Annexure I

Sources of Information

USEFUL ADDRESSES AND INTERNET SOURCES IN PAKISTAN

Web site providing information on investment promotion/FDI in general

Internet sources in Pakistan

Pakistan Government entities web sites

Pakistan Development Gateway http://www.pdg.org.pk/index.asp

Website abstract: Pakistan's first and only development gateway - envisioned as a one-stop website for all significant development information about Pakistan on the Web. Information is indexed in 25 categories, including "industry", "trade and Development " and other business relevant categories.

The Official Web Gateway to the Government of Pakistan
http://www.pakistan.gov.pk/

UN Pakistan Page
http://www.un.org.pk/

The Government of Pakistan Home Page
http://www.pak.gov.pk/

The Constitution
http://www.pakistani.org/pakistan/constitution/

Pakistan Council of Research in Water Resources
http://www.pcrwr.gov.pk

Privatisation Commission
http://www.privatisation.gov.pk/

Private Power and Infrastructure Board
http://www.ppib.gov.pk/

Pakistan Trade Office
http://www.paktrade.org/

National Reconstruction Bureau
http://www.nrb.gov.pk/

Pakistan Software Export Board
http://www.pseb.org/

Overseas Employment Corporation
http://www.oec.gov.pk/

Sustainable Development Networking Programme
http://www.sdnp.org/

State Engineering Corporation
http://www.sec.gov.pk/

Space and Upper Atmosphere Research Commission (SUPARCO)
http://www.suparco.gov.pk/

Securities and Exchange Commission of Pakistan
http://www.secp.gov.pk/

Pakistan Sports Board, Ministry of Sports
http://www.sports.gov.pk/

Pakistan Tourism Development Corporation
http://www.pta.gov.pk/

Pakistan Telecommunication Authority
http://www.pta.gov.pk/

Pakistan Meteorological Department
http://www.met.gov.pk/

National Tariff Commission
http://www.ntc.gov.pk/

Pakistan Computer Bureau
http://www.pcb.gov.pk/

Pakistan Agricultural Research Council
http://parc.gov.pk/

National Savings Organisation
http://savings.gov.pk/

Ministry of Petroleum and Natural Resources
http://www.mpnr.gov.pk/

National Highway Authority
http://www.nha.gov.pk/

Pakistan Institute of Quality Control
http://www.piqc.com.pk

National Accountability Bureau
http://www.nab.gov.pk/

NADRA
http://www.nadrapk.com/

Ministry of Women Development, SocialWelfare & Special Education
http://www.most.gov.pk/

Ministry of Science and Technology
http://www.most.gov.pk/

Ministry of Information Technology
http://www.moitt.gov.pk

Ministry of Foreign Affairs
http://www.forisb.org/

Ministry of Finance
http://www.finance.gov.pk/

Export Promotion Bureau
http://www.epb.gov.pk/epb/index.jsp

Ministry of Environment, Local Government & Rural Development
http://www.environment.gov.pk/

Geological Survey of Pakistan (GSP)
http://www.gsp.gov.pk/

Central Board of Revenue
http://www.cbr.gov.pk/

Board of Investment
http://www.pakboi.gov.pk/

Ministry of Industries and Production, Experts Advisory Cell
http://www.eac.gov.pk

The Pakistan web directory
www.webs.com.pk/

Annexure II

Commercial Information Providers Web Sites

The Economist http://www.economist.com/countries/Pakistan/index.cfm
Website abstract: The website presents basic information about the political and economic structure and includes the latest country related article from the print edition.

The Institute of Chartered Accountant http://www.icap.org.pk
Website abstract: The website presents a list of quality controlled chartered accountants in Pakistan. The Institute of Chartered Accountant is the industry's association.

Designerz (Pakistan Law firms) http://pakistan.designerz.com/pakistan-lawyers-corporate
Website abstract: The website presents a list of Pakistan lawyers with their respective area of expertise. The provider is an international private organisation.

Associated Press of Pakistan (APP) http://www.app.com.pk/
Website abstract: The website presents national, international, business and sports news items. The Associated Press of Pakistan is the country's premier news agency. APP was taken over by the Government in 1961 for financial reasons.

Online International News Network http://www.onlinenews.com.pk/
Website abstract: The website provides news items on politics, business and sports. Online International News Network is an independent news agency.

World Trade Review http://worldtradereview.com
Website abstract: The website provides business news, especially related to trade and investment. Fortnightly The World Trade Review is the only newspaper, which exclusively provides coverage to WTO, Globalisation, Intellectual Property Rights, Investment, Regional trade, Development, Environment and other allied matters. It was launched on 1st March 2001 and since then it is regularly published on 1st and 15th of each month.

News Network International http://www.nni-news.com/current/main/index.html
Website abstract: The website presents national, world, business and sports news. The News Network International is Pakistan's largest independent news agency.

Pakistan News http://www.paknews.com/
Website abstract: The website offers news items on national and international issues, business and sports. The Pakistan News is an independent online news agency.

Business Recorder http://www.brecorder.com/

Website abstract: The website provides detailed business and finance related news on a wide range of sectors. It also contains an archive covering the last 90 days. The Business recorder is a daily business newspaper from Karachi.

The Dawn http://www.dawn.com
Website abstract: The website offers sections for national and international politics, business, capital markets and sports. The
Dawn is a daily newspaper printed in English

The News International http://www.jang.com.pk/thenews/index.html
Website abstract: The website presents the internet edition of the newspaper covering politics, business, capital market, sports and local themes. The International News is an English daily newspaper from Karachi, Lahore and Islamabad.

The Frontier Post http://www.frontierpost.com.pk
Website abstract: The website presents the internet edition of the newspaper covering politics, business, sports and local issues. The Frontier Post is a national daily newspaper from Peshawar.

The Nation http://www.nation.com.pk/
Website abstract: The website presents the internet edition of the newspaper covering national and international topics, business and sports. The Nation is an
English daily newspaper from Lahore and Islamabad.

Daily Times http://www.dailytimes.com.pk/
Website abstract: The website presents the internet edition of the newspaper covering national and international news, business and sports. The Daily Times is a daily newspaper printed in English.

The Daily Mail http://dailymailnews.com/
Website abstract: The website presents the internet edition of the newspaper covering local and international news and sports. No business section included. The Daily Mail is an English daily newspaper from Islamabad that started its publication in 2002.

Pak Tribune http://paktribune.com/
Website abstract: The website presents updated news on a wide range of topics including business. The Pak Tribune is an independent online newspaper.

The Times http://www.times.com.pk
Website abstract: The website provides the latest Pakistan news and updated news and views from Pakistan and Kashmir. The Times of Pakistan is an independent web newspaper.

Herald http://www.dawn.com/herald/

Website abstract: The website presents some articles about politics and business which originate from the printed version. The Herald is Pakistan's most widely read and respected monthly news magazine.

The Pakistan & Gulf Economist http://www.pakistaneconomist.com/
Website abstract: The website comprises articles and information on various economic and business topics. The Pakistan & Gulf Economist is Pakistan's leading business magazine.

Annexure III

Business Associations Web Sites

Chambers of commerce

The Federation of Pakistan Chambers of Commerce & Industry (FPCCI) http://www.fpcci.com.pk/
Website abstract: The website presents statistical data on trade. It also contains a virtual marketplace where offers to buy or sell goods can be posted.
Provider: The Federation of Pakistan Chambers of Commerce & Industry is licensed by the Government. Its primary aim is to promote, encourage and safeguard the interest of private sector in Pakistan and to serve as a bridge between the business community and the Government.

Lahore Chamber of Commerce & Industry (LCCI) http://www.lcci.org.pk/
Website abstract: The website gives an overview of the chamber's services, economic sectors and business opportunities and presents economic data
Provider: LCCI is committed to making an effective contribution to the nation's economic development through the promotion of trade and industry.

Karachi Chamber of Commerce & Industry (KCCI) http://www.karachichamber.com/
Website abstract: The website provides the key economic and social indicators and facilitates trade by presenting.
Provider: The Karachi Chamber of Commerce and Industry was founded in 1959 and aims to protect and promote trade, commerce and industry in Karachi.

Sarhad Chamber of Commerce & Industry (SCCI) http://www.scci.org.pk/
Website abstract: The website promotes business by displaying trade enquiries. No specific information.
Provider: The Sarhad Chamber of Commerce & Industry.

Gujranwala Chamber of Commerce & Industry (GCCI) http://www.gcci.org.pk/
Website abstract: The website informs about the chamber in general and offers trade opportunities.
Provider: The Gujranwala Chamber of Commerce & Industry was founded in 1978 in order to promote the interests of Pakistan in general and of those engaged in industry, agriculture, commerce, trade, banking and insurance.

Islamabad Chamber of Commerce & Industry (ICCI) http://www.icci.com.pk/
Website abstract: The website contains information about commerce and trade.
Provider: The Islamabad Chamber of Commerce & Industry

Gujrat Chamber of Commerce & Industry (GTCCI) http://www.gtcci.com.pk/
Website abstract: The website offers information about the chamber.
Provider: The Gujrat Chamber of Commerce & Industry.

Sector associations

All Pakistan Textile Mills Association (APTMA) http://www.aptma.org.pk/
Website abstract: The website presents detailed information on the textile industry including many statistical data.
Provider: The All Pakistan Textile Mills Association, established in 1959, is comprised of more than 400 members of the whole Pakistani textile industry. The association serves as a central platform that can assure a liaison between all the sectors of the textile industry.

Pakistan Readymade Garments Manufacturers & Exporters Association (PRGMEA) http://www.prgmea.org/
Website abstract: The website provides some information on the industry and a list of the association's members.
Provider: The Pakistan Readymade Garments Manufacturers & Exporters Association is recognised by the Government and aims to provide guidance and generate supporting services in order to encourage exports.

Pakistan Knitwear and Sweater Exporters Association (PAKSEA)
http://www.paksea.com.pk/
Website abstract: The website provides basic information on the sector and offers lists of successful exporters.
Provider: The PKSEA, founded in order to promote and protect the business interests of Pakistan's Knitwear and Sweater Exporters, has over 300 members.

Towel Manufacturers Association of Pakistan http://www.towelassociation.com/
Website abstract: The website contains press releases and information on the members of the association.
Provider: The Towel Manufacturers Association is recognized by the Government and affiliated with the Federation of Pakistan Chambers of Commerce and Industry.

Pakistan Hosiery Manufacturers Association (PHMA)
http://www.phmaonline.com/default.asp
Website abstract: The website offers member services and a list of the members.
Provider: The PHMA is a trade organization representing the hosiery and knitwear industry.

Karachi Cotton Association http://kcapak.org/
The Karachi Cotton Association (KCA) has launched this web site containing information regarding the KCA, cotton policy, cotton crop estimates and spot rates. The Web site provides information about raw cotton prices, domestic and international prices. Market reports, cotton statistics, brokers information are also present at the site.

Bilateral chambers

Pakistan German Business Forum (PGBF) http://www.pgbf.com.pk
Website abstract: The website provides information about PGBF and offers some trade opportunities and the member's list.
Provider: The Pakistan German Business Forum is comprised of about 140 members from both Pakistan and Germany and aims to encourage and promote German investment in Pakistan and vice versa as well as German-Pakistani business cooperation.

Pakistan France Business Alliance (PFBA), http://www.pfba.org
307 marine Point, Block 9, Schon Circle, Clifton, Karachi 75600.
Tel: + 92 21 58 66 363; Fax: + 92 21 58 31 713
Website abstract: The website provides information about PFBA and offers some trade opportunities and the member's list.
Provider: The PFBA comprises about

Annexure IV

Private Consulting Firms

Associated Consultancy Center (Pvt) Ltd., Pakistan ahmir@comsats.net.pk

Coopers & Lybrand Consulting (Pvt) Ltd., Pakistan alliya.haidar@pk.pwcglobal.com

Engineering Consultants Iinternational (Pivate) Lmited, Pakistan info@ecil.com

Financial Consultants, Pakistan smyusaf@finbyte.com

Rowbotham & Company Llp: International Accounting and Consulting
www.rowbotham.com/affiliatescontent.html

KPMG Pakistan (Services) www.kpmg.com.pk

MAC, Advocates & Corporate Consultants, *mab123pk@yahoo.co.uk*

Annexure V

Foreign Banks in Pakistan

ABN Amro Bank N.V. www.abnamro.com

Al-Baraka Islamic Bank B.S.C.(E.C.) www.albaraka.com.pk

American Express Bank Limited www.aexp.com

Credit Agricole Indosuez (to close by end 2003) www.ca.indosuez.com

Citibank N.A. www.citigroup.net

Deutsche Bank AG www.db.com

Habib Bank A.G. Zurich www.habibbank.com

Mashraq Bank psc www.mashreqbank.com

Oman International Bank S.O.A.G. www.obioman.com

Standard Chartered Bank www.scb.com

Standard Chartered Grindlays Bank Limited www.scb.com

The Bank of Tokyo-Mitsubishi Limited www.btm.co.jp

The Hongkong and Shanghai Banking Corporation Limited
www.hsbc.com.pk

Annexure VI

Useful Addresses of Public Entities in Pakistan

Ministry of Commerce
Pak Secretariat,
'A' Block, Islamabad
Tel: 92-51-9203999, 9202257
Fax: 92-51-9205241

Ministry of Foreign Affairs
Constitution Avenue,
Sector G-5, Islamabad
Tel: 92-51-9210971, 92004365
Fax: 92-51-9213795

Ministry of Labour & Manpower
Pak Secretariat,
5th & 6th Floors,
"B" Block, Islamabad
Tel: 92-51-9209223, 9203167
Fax: 92-51-9201823

Ministry of Industries & Production
'A' & 'D' Blocks,
Pak Secretariat,
Islamabad
Tel: 92-51-9201992, 9203427
Fax: 92-51-9205130, 9202165
Experts Advisory Cell (EAC)
House No. 25, Street 26,
Sector F-6/2,
Islamabad
Tel: 92-51-9206372, 9205595
Fax: 92-51-9202108

Board of Investment (BOI)
Ataturk Avenue,
Sector G-5/1,
Islamabad
Tel: 92-51-9221826
Fax: 92-51-9206160, 9203281

Small & Medium Enterprises Development Authority (SMEDA)
43-T, Gulbderg-II,
Lahore
Tel: 92-42-111-111-456
Fax: 92-42-5753545, 5753587

Export Promotion Bureau
Finance & Trade Centre,
Block-A, FTC Bldg.,Shahrah-e-Faisal,
Karachi
Tel: 92-21-111-444-111
Fax:92-21-9206497

State Bank of Pakistan
Main Building,
I.I. Chundrigarh Road, Karachi
Tel: 92-21-9212400-09
Fax: 92-21-9212436, 9212433

Security & Exchange Commission of Pakistan
New Business Opportunities in Pakistan
Page 210
NIC Building,
Jinnah Avenue,Islamabad
Tel: 92-51-9204841, 9205310
Fax: 92-51-9205692

Federation of Pakistan Chamber of Commerce & Industries
Federation House,
Shahrah-e-Firdousi,
Main Clifton, Karachi
Tele: 92-21-5873694,5873691
Fax: 92-21-5874332

National Insurance Corporation of Pakistan
NIC Building,
63, Jinnah Avenue,
Blue Area, Islamabad
Tel: 92-51-9216421, 9216429
Fax: 92-51-9216424

Water & Power Development Authority
WAPDA House, The Mall,
Lahore
Tel: 92-42-9202211-60
Fax: 92-42-920200

Sui Northern Gas Pipelines
Gas House No.21,
Kashmir Road,
P.O. Box. 56,
Lahore
Tel: 92-42-9201451-60, 9201490-99
Fax: 92-42-9201314

Pakistan Railways
Pakistan Railways Headquarters,
Empress Road,
Lahore
Tel: 92-42-9201700,
Fax: 92-42-9201669

Pakistan National Shipping Corporation (PNSC)
PNSC Building,
Moulvi Tamizuddin Khan Road,
P.O. Box. 5350, Karachi
Tel: 92-21-9203980-99
Fax: 92-21-9203974, 9204018

KarachiPort Trust (KPT)
P.O. Box. 4725,
Karachi
Tel: 92-21-9214530-40 (10 lines)
Fax: 92-21-9214329-30

Pakistan Telecommunication Corporation
PTC Headquarters,
G-8/4, Islamabad
Tel: 92-51-4844463, 2251939
Fax: 92-51-4843991
Internet Service Provider (Paknet)
85-West Rizwan Centre,
Islamabad
Tel: 111-222-117
Fax: 92-51-2873057

Internet Service Provider (COMSATS)
H. No. 30, Attaturk Avenue,
G-6/4, Islamabad
Tel: 92-51-9206604-7
Fax: 92-51-9214124
UAN: 111-700-800

Pakistan Software Export Board
House No. 25, Street 13,
Sector F-7/2, Islamabad
Tel: 92-51-9204074
Fax: 92-51-9204075

Pakistan International Airlines
PIA Head Office Building,
Karachi Airport,
Karachi-75200
Tel: 92-21-4572011
Fax: 92-21-4570419, 4572225

British Airways
Marriott Hotel,
Abdullah Haroon Road
Karachi
Tel: 92-21-5686076-7
Fax: 92-21-5684302

Air France
Marriott Hotel,
Abdullah Haroon Road, Karachi
Tel: 92-21-5681071-5
Fax: 92-21-5684815

Pakistan Post Office Department
G-8/4,
Islamabad
Tel: 92-51-9261571
Fax: 92-51-9261577

DHL Pakistan (Pvt) Ltd
8-BangloreTown,
Shahrah-e-Faisal,
Karachi
Tel: 92-21-4542470-89
Fax: 92-21-4547871, 4543261

TCS
I-E/37, Block-6, PECHS,
Shahrah-e-Faisal,
Karachi
Tel: 92-21-4541000
Fax: 92-21-4546639

OCS
World-wide House, C-17,
Korangi Road,
Karachi
Tel: 92-21-5803201-11
Fax: 92-21-5880606

Pakistan Standards and Quality Control Authority (PSQCA)
Block # 77
Pakistan Secretariat
Karachi 74400
Pakistan
Tel : +92 21 920 62 61
Fax : +92 21 920 62 63
Email : psqcadg@super.net.pk

Pakistan Institute of Quality Control
304, Eden Centre
43 Jail Road
LAHORE
Pakistan
Tel : +92 42/ 756 3645/+92 42/ 756 2260
Fax : +92 42/ 755 2656
E.mail : piqc@brain.net.pk / piqc@fibre.net.pk
URL : http://www.piqc.com.pk

Annexure VII

Date: 01 September 2005

The Board Of Directors
Al-Basit Enterprises
(Private) Limited.
Islamabad.

Dear Sir

LETTER OF ACCEPTANCE

I, Asghar Ali S/o Muhammad Bashir Ahmad, hereby accept and ready to subscribe for 50 Ordinary shares of face value of Rs.10/- each of Al-Basit Enterprises (Private) Limited, which have been offered to me pursuant to the resolution of the Board of Directors of the Company passed on and circular under section 86(3) of the Companies Ordinance, 1984 dated 30 August 2005.

Yours faithfully

____

ASGHAR ALI
Acceptor

Date: 01 September 2005

The Board Of Directors
Al-Basit Enterprises
(Private) Limited.
Islamabad.

Dear Sir

LETTER OF RENUNCIATION

I, Muhammad Javaid, hereby renounce my right to subscribe for 25 Ordinary shares of face value of Rs.10/- each of Al-Basit Enterprises (Private) Limited, which have been offered to me pursuant to the resolution of the Board of Directors of the Company passed on and circular under section 86(3) of the Companies Ordinance, 1984 dated 30 August 2005 in favor of the following:

IN FAVOUR OF	NO. OF SHARES
1. Mr. Asghar Ali	25
	25

Yours faithfully

MUHAMMAD JAVAID
Renouncer

Date: 01 September 2005

The Board Of Directors
Al-Basit Enterprises
(Private) Limited.
Islamabad.

Dear Sir

LETTER OF RENUNCIATION

I, Hasan Raza Mehdi, hereby renounce my right to subscribe for 25 Ordinary shares of face value of Rs.10/- each of Al-Basit Enterprises (Private) Limited, which have been offered to me pursuant to the resolution of the Board of Directors of the Company passed on and circular under section 86(3) of the Companies Ordinance, 1984 dated 31 August 2005 in favor of the following:

IN FAVOUR OF	NO. OF SHARES
1. Mr. Asghar Ali	25
	25

Yours faithfully

HASSAN RAZA MEHDI
Renouncer

SECTION 86(3)
CIRCULAR TO BE SENT TO MEMBERS ALONGWITH THE NOTICE OFFERING NEW SHARES.

PART – I

MATERIAL INFORMATION ABOUT THE AFFAIRS OF THE COMPANY

1. Name of the Company **AL-BASIT ENTERPRISES (PVT) LIMITED**

2. Status (i.e. whether Public or Private. If Public, listed or Non-listed). **Private**

3. Full Address of the Registered:- **OFFICE # 1, 1ST FLOOR, HAMZA PLAZA, MARKAZ F-11, ISB**

4. Date of Incorporation **14 SEPTEMBER 2004.**

5. Date of Commencement of Business **N.A**

6. Names, addresses of the Chief Executive/Directors (where such person is already a director or Chief Executive or other officer or any other company, the name of such other company and office held therein).
   1. MUHAMMAD JAVAID
   2. HASSAN RAZA MEHDI

7. Existing Capital indicating classes of shares, if any

   (i) Authorised Capital:- **Rs. 1,000,000/- divided into 100,000 Shares of Rs.10/- each.**

   (ii) Subscribed **Rs.1,000/- divided into 100 Ordinary Shares of Rs. 10/- each.**

   (iii) Paid up **Rs.1,000/- divided into 100 Ordinary Shares of Rs.10/- each.**

   (iv) Redeemable Capital indicating nature thereof or any commitment for issuing it. **None**

8. Particular regarding holding

Company, if any | **None**

9. Particulars of the Company' s existing business operations/projects. **Outdoor Advertising**

10. Particulars regarding subsidiaries, if any. **None**

11. Any change expected or planned in item 8 to 10 above. **None**

12. Profits/losses of subsidiaries/Bonus declared during the proceeding three years (or such shorter period for which the Company may have issued accounts.

Years	Profits/loss	Cash dividends	Stock Bonus
None	None	None	None

13. Profits/losses of subsidiaries If any, not accounted for, or Reflected in the holding company, s own accounts in the last three years. **None**

14. Where the figures of last year, s profit/loss are for a period more than six months prior to the issue of the circular, information in regard to profit/loss for the six months following the date of the last accounts should also be provided; and
None

PART – II

NECESSARY FOR THE ISSUE OF THE CAPITAL

15. Amount of the proposed issue. **Rs. 500/- dividend into 50 Ordinary Shares of Rs. 10/- each.**

16. Whether consent of Controller Of capital issued obtained. If not necessary, statement to This effect. **Consent not required as capital Issues (continuance of control) Act, 1947 has been repealed**

17. Proportion of new issue to existing shares with any condition applicable thereto. **In equal proportion**

18. purpose of the present issue

	specifying the main projects/ objects for which additional funds required.	**To increase the paid up capital**
19.	Expected benefits in profitability or otherwise likely to accrue from the proposed issue.	**None**
20.	Date by which offer to be accepted and mode of acceptance.	**31 August 2005** **By Cash/Cheque**
21.	Any other material information having hearing on the issue.	**None**

Signature

Name **MUHAMMAD JAVAID**
(In block letters)

Designation **(DIRECTOR)**

Date: **31 August 2005**
Place: **Islamabad**

Annexure VIII

FORM 3

THE COMPANIES ORDINANCE, 1984
[Section 73 (1)]

RETURN OF ALLOTMENTS

Please complete in typescript or in bold block capitals.

1.Incorporation number

2.Name of the Company

3. Fee Paid (Rs.)   Name & Branch of The Bank

Day   Month   Year

4. Receipt No.   Date

(Bank Challan to be attached in original)

5. Authorized Capital

6. Paid up Capital

(Inclusive of present allotment) (Strike out which is not applicable)

7. Kind of Shares   Ordinary / Preference

(Strike out which is not applicable)

8. Class of Shares   Ordinary Class A

Ordinary Class B

Preferred: Participatory: Redeemable at company's option
Preferred: Non Participatory: Non Redeemable
Preferred: Non Participatory: Redeemable at company's option
Preferred: Non Participatory: Redeemable at Shareholder's option
Preferred: Participatory: Redeemable at Shareholder's option

Day Month Year

9. Date of Allotment

10. PART A.— *SHARES ALLOTTED PAYABLE IN CASH*

10.1 No of shares (indicating class, if any)

Per share (Rs) Total Amount (Rs)

10.2. Nominal amount
10.3. Premium
10.4. Discount
10.5. Total (10.2 to 10.4)
10.6 Allotment in foreign currency
10.7 Allotment in local currency

11. PART B - *SHARES ALLOTTED FOR A CONSIDERATION OTHERWISE THAN IN CASH*

11.1 No of shares (indicating class, if any)

Per share (Rs) Total Amount (Rs)

11.2. Nominal amount
11.3. Premium
11.4. Discount
11.5. Total (11.2 to 11.4)

11.6. The consideration for which shares have been allotted is as follow: -

Amount (Rs.)

(a) Property and assets acquired (give description)
(b) Good will
(c) Services (give nature of services)
(d) Other items (to be specified)
(e) Total (a to d)

11.7. Amount, if any, received in cash against shares allotted partly for consideration other than cash — Rs.

12. PART C— *ALLOTTMENT OF BONUS SHARES*

12.1 No of shares (indicating class, if any)

Per share (Rs) Total Amount (Rs)

12.2. Nominal amount

12.3. Amount treated as paid up

Day Month Year

12.4. Particulars of resolution of Board of directors/shareholders

Resolution No		Date			

(An attested copy of the resolution authorizing the issue of the bonus shares should be attached)

13. PART D—NAMES, ADDRESSES, OCCUPATIONS, ETC. OF THE ALLOTTEES.

Date of allotment	Name of allotee in full	Father's/ husband's name	Occupation of the allottee	Address of the allottee	Number of shares allotted	NIC No./Passpo rt No.
(1)	(2)	(3)	(4)	(5)	(6)	(7)

14. Signatures of Chief Executive/Secretary

15. Name of signatory

16. Designation of signatory

17. NIC Number of signatory

Date Month Year

18. Date

__Annexure IX__

MINUTES OF THE MEETING OF BOARD OF DIRECTORS OF THE COMPANY HELD ON 31 AUGUST 2005 __AT REGISTERED OFFICE OF THE COMAPNY__

P R E S E N T:

1.	Mr. Hassan Raza Mehdi	DIRECTOR/CHIEF EXECUTIVE (IN CHAIR)
2.	Mr. Muhammad Javaid	DIRECTOR

1. CHAIRMAN

The necessary quorum being present, Mr. Hassan Raza Mehdi took the chair of the Meeting.

2. CONFIRMATION OF MINUTES

Minutes of the last Board meeting were read, confirmed and signed by the Chairman.

3. INCREASE IN ISSUED AND PAID-UP CAPITAL

The Chairman informed the Board regarding raising the issued and paid up capital of the Company by Rs.500 by making Right issue of 50 Ordinary shares of the face value of Rs.10/- each, at par, payable in cash. After some discussion it was resolved:

"that a Right issue of 50 Ordinary shares of the face value of Rs.10/- each, at par, payable in cash be and is hereby approved and that the same be offered to the existing members of the Company to the extent stated herein, in proportion as nearly as circumstances permit, to the number of existing shares held by each member with the right to accept or renounce full or partially the same latest by 01 September 2005 in favour of any other person as may be permissible under the Articles of Association of the Company and the provisions of the Companies Ordinance, 1984".

NAME OF THE MEMBERS	NO. OF ORDINARY SHARES OF RS.10/- EACH OFFERED AS RIGHT ISSUE	NOMINAL VALUE RUPEES
1.Mr. Muhammad Javaid	25	250
2.Mr. Hassan Raza Mehdi	25	250
	50	500

4. APPOINTMENT OF COMPANY SECRETARY

It was unanimously **RESOLVED THAT** , Mr. Muhammad Javaid be and is hereby appointed as Secretary of the Company.

5. It was further resolved to convene the next Board meeting on 05 September 2005 to consider the allotment of 50 Ordinary shares of the face value of Rs.10/- each.

6. There being no other business to transact the meeting concluded with a vote of thanks to the Chair.

CHAIRMAN

MINUTES OF THE MEETING OF BOARD OF DIRECTORS OF THE COMPANY HELD ON 01 SEPTEMBER 2005 AT REGISTERED OFFICE OF THE COMAPNY

P R E S E N T:

1.	Mr. Hassan Raza Mehdi	DIRECTOR/CHIEF EXECUTIVE (IN CHAIR)
2.	Mr. Muhammad Javaid	DIRECTOR

1. CHAIRMAN

The necessary quorum being present, Mr. Hassan Raza Mehdi took the chair of the Meeting.

2. CONFIRMATION OF MINUTES

Minutes of the last Board meeting were read, confirmed and signed by the Chairman.

3. ALLOTMENT OF 50 ORDINARY SHARES

The Chairman informed the Board that letter of acceptance along with the share money due has been received from **Mr. Asghar Ali** and it was **Resolved:**

"That the shares shall be deemed to have been alloted to the above person and that the formalities for issue and allotment of shares shall be completed forthwith."

"Further resolved that the issued and paid-up capital of the Company be and is hereby approved to be increased from One Thousand Rupees (Rs.1,000) to One Thousand Five Hundred Rupees (Rs.1,500) by the allotment and issue of 50 Ordinary shares, of the Company of face value of Rs.100/- each, at par, to the above allottee in consideration of cash received.

The Board was also informed that letters of renunciation from the following have been received:

RENOUNCED BY	IN FAVOUR OF	NO. OF SHARES
1. Mr. Muhammad Javaid	Mr.Asghar Ali	25
2. Mr. Hassan Raza Mehdi	Mr. Asghar Ali	25
		50

The Board authorised Mr.Muhammad Javaid/Director of the Company to complete necessary formalities, sign documents and file return of allotment of shares with the Registrar of Companies within 30 days from the date of allotment."

4.There being no other business to transact the meeting concluded with a vote of thanks to the Chair.

CHAIRMAN