



B A R R I S T E R S - A T - L A W

Advocates of the High Courts & Supreme Court of Pakistan
and Legal & Policy Consultants

“Investment & Financing in Pakistani IT Corporations: Regulatory Challenges”

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**Investor or VC
Prefers A Corporation
Preferential Equity
wants to sign an SPA –
shares:**



Board of Investment

Government of Pakistan

US\$ 150,000/- for each Investment

=

US\$ 150,000/- for each 1 share/sub-division

Encourages Large 100% Foreign

Encourages 100% Pakistani origin

Discourages Joint Ventures

Discourages SME, Start-ups, VCs & Angels



Foreign Exchange Regulation Act 1947

Foreign Exchange Manual

Barrier to Bilateral Investment Treaties

Barrier to Pakistani Investment Abroad

Barrier to Foreign Investment In Pakistan



RESERVE BANK OF INDIA

For Fast Track category, an application for Direct Investment in a JV/WOS abroad from a private/public limited company will be eligible for

automatic approval for RBI

Up to US\$ 15 Million



SBP

Director Level

Vs.

Lower Level



Royalty and Technical Fee in the Services Sector

SBP:
may be allowed

RBI:
automatic route

SBP:
initial lump sum fee not more than US\$ 100,000/-

RBI:
Lump sum payments not exceeding US\$2 million

SBP:
5% of net sales (excluding sales tax)

RBI:
5 per cent for domestic sales and 8 per cent for exports

SBP:
not exceed 5 years

RBI:
No restriction on the duration of the royalty payments



- Engagement of foreign nationals subject to the Government Regulation & permission of the Board of Investment will be obtained.
- **PIA will be utilized for the experts' journey from abroad to Pakistan and back**
- Payment on account of training expenses of Pakistan personnel **not exceed the training quota** Chapter XVII of the Foreign Exchange Manual (1992 Seventh Edition).
- The agreement governed under **Pakistan Laws**
- **No Penal interest** on delayed payment will be remitted.
- We further state that our Firm / Company is registered in Pakistan as **manufacturing** concern.

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APP. V 49

APPLICATION FOR REMITTANCE OF ROYALTY/FRANCHISE AND TECHNICAL FEES FOR THE PERIOD.....

Name of the applicant Co.	Name and address of the beneficiary to whom Royalty/Technical Fees is payable	Permission/Acknowledgement letter No. & date of Board of Investment/SBP.	Ex-factory/net sales value on which Royalty/Technical fees is calculated	Rate of Royalty/ Technical fee	AMOUNT REMITTABLE(Pak.Rupees)			Remarks
					Gross Amount	*Taxes payable if any	Net amount	
1	2	3	4	5	6	7	8	9

CERTIFICATE

Certified that the amount of royalty/technical fee payable for the period.....to the beneficiary mentioned in column 2 is the net amount payable to them after deduction of tax liability, if any payable thereon as certified by the auditors and has been calculated strictly in accordance with terms of the agreement approved by the Government/acknowledged by the State Bank mentioned in column 3 above.

We undertake that if any discrepancy is subsequently found in the amount of remittance made by us we shall answer for



E-Form

Internet Merchant Accounts

Citibank only Payment Gateway – Monopoly

No policy for another IT Co.



E-Payment Systems Act

No Stakeholders

Only Banks

**No Other Stakeholders eg. Cellcos, Hello, PSO, SSGC,
IT Companies etc.**



Definitions

Arbitrary & Discretionary

Command Control Policy?

No Commerce without Payments

No e-Commerce without e-Payments



“As I have said many times in the past, to continue to be effective, governments' regulatory role must increasingly ensure that effective risk management systems are in place in the private sector.

As financial systems become more complex, detailed rules and standards have become both burdensome and ineffective, if not counterproductive.

If we wish to foster financial innovation, we must be careful not to impose rules that inhibit it. I am especially concerned that we not attempt to impede unduly our newest innovation, electronic money, or more generally, our increasingly broad electronic payments system”

Alan Greenspan



TO FINANCE YOU NEED:

OWNERSHIP

OR

COLLATERALIZATION

NEED PROPERTY!



Patents Ordinance



"process" ; means any art, process or method or manner **of new manufacture of a product**

"product" means any substance, article, apparatus or machine;

In Pakistan, computer programmes are excluded from patent protection under the patent laws. Protection under the copyright laws is the only safeguard available for the computer software industry.

- SMEDA Business Guide Series
Copyrights Registration Procedure



Copyright Ordinance 1962:



"literary work" includes works on humanity, religion, social and physical sciences, tables "compilations and **computer programmes,**

that is to say **programmes** recorded on any disc, tape, perforated media or other information storage device, which,

if fed into or located in a computer or computer-based equipment is capable of reproducing any information"

Guidelines to users – SMEDA

Need guidelines for Copyright Registrar



IT FINANCING POLICY

**SOFTWARE / SOURCE CODE
COLLATERALIZATION:**

PLEDGE, CHARGE, LIEN



SBP Prudential Regulations :

Facilitating / Recognizing
IT Financing

Recognize
Software as Collateral, Lien, Charge

Banker/Financier's comfort level:

- Escrow – Depository
- Key – auto-suspension- NIFT



Investments

VC

Debt

AIM – Alternative Investment Market (LSE)

-Dual listings



Data Protection – Privacy Laws

**Compliant with International Best
Practice – California Law.**



Pakistani Data Protection Act 2004

There are significant ramifications because it could create ownership rights and therefore greatly impact the ability of companies to use data in general. Apart from the ownership issue, it simply does not make sense to extend any data privacy obligations (such as the requirement to process foreign or local data fairly and lawfully and store it for specified, explicit and lawful purposes) to nonpersonal data. Such requirements serve no purpose and will only discourage companies from engaging in any processing activities in Pakistan.

Complaints may be lodged with the Sessions Judge and the Session Judge, may, in turn, direct someone to investigate on his behalf and report back to the court. Requiring access to data systems by unauthorized personnel poses significant security risks.

Heather I. Shaw
Director, E-Business, Marketing and Advertising
U.S. Council for International Business



India

E-Bay

IT Act Amendment

Delete Corporate Liability Clause

‘Does India want FDI clause’

Pakistani Draft retains the clause !



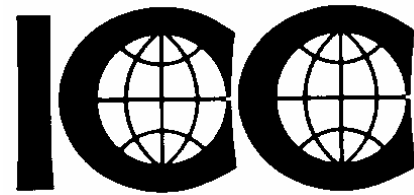
“processing”

means **any operation or set of operations**, whether or not performed by an information system, which involves **collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, alignment or combination, blocking, disclosure by transmission, dissemination, erasure or destruction of the data;**



Comments on Draft E-Crimes Act

E-Business IT & Telecom Commission





**Council of Europe
Convention on Cyber
Crimes
Budapest Convention
23.11.2001**



THANK YOU

QUESTIONS

www.jamilandjamil.com