

# Fintech 2022

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# Fintech

## 2022

**Contributing editors****Angus McLean and Penny Miller****Simmons & Simmons LLP**

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Lexology Getting The Deal Through is delighted to publish the sixth edition of *Fintech*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Mexico and the United States.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Angus McLean and Penny Miller of Simmons & Simmons LLP, for their continued assistance with this volume.



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Asma Hamid Associates

## FINTECH LANDSCAPE AND INITIATIVES

### General innovation climate

1 | What is the general state of fintech innovation in your jurisdiction?

The fintech sector in Pakistan has grown exponentially over the last two years in terms of users, service providers, and the volume of foreign and local investment coming into Pakistan's fintech space currently and for the foreseeable future. Seventy-one per cent of Pakistan's 210-million-strong population (the third largest in the world) is unbanked and an estimated 6 trillion rupees is in circulation. The explosion of access to cheap and fast internet services due to the proliferation of 4G contributed to the fintech sector's growth. These demographics and dynamics unique to Pakistan provide enormous opportunities for start-ups and incubators in both the public and private sectors. Investment from local and foreign venture capital funds has increased in the first half of 2021. Almost all major banks in Pakistan have launched or are in the process of launching a digital arm of their financial services. Covid-19 lockdowns added to the exponential increase in digital payments.

Governmental and regulatory bodies, such as the State Bank of Pakistan (SBP) and the Securities and Exchange Commission of Pakistan (SECP), have proposed and amended legislation to ease barriers to entry for start-ups and businesses in services such as e-commerce, mobile wallets, debit card payments, securities trading apps and digital payments. The SECP's sandbox provides fintech start-ups with initial support. The Ministry of Information Technology and Telecommunication National Technology Fund – IGNITE – launched its National Incubation Center Programme that has spawned several fintech start-ups. In the past few months, the fintech sector has experienced multi-million-dollar investments from foreign sources into local back-to-back marketplace apps. Mega digital lending platforms are also beginning to enter Pakistan's marketplace as aggregators. Several fintech start-ups such as TAG, Sadapay, Finja, Nayapay, etc, have either obtained approval or are approved in principle.

### Government and regulatory support

2 | Do government bodies or regulators provide any support specific to financial innovation? If so, what are the key benefits of such support?

The SECP is currently operating a regulatory sandbox that allows start-ups and businesses to conduct limited scale live tests of innovative products, services, processes, and business models in a controlled, regulation-light environment. The SBP is also actively engaging with stakeholders to facilitate the process of offshoring start-ups' holding companies for ease of access to funding, and to remit dividends or capital gains to offshore owners in a faster and more convenient way. The SBP has introduced its Raast and Central Bank Digital Currency

services to commercial banks and e-money institutions to facilitate digital payments.

There are also various public and private incubation centres that have been set up in Pakistan for start-ups (including for start-ups pertaining to the fintech sector) that offer free office space and monthly stipends to selected start-ups for one to two years.

## FINANCIAL REGULATION

### Regulatory bodies

3 | Which bodies regulate the provision of fintech products and services?

The provision of fintech products and services is regulated by the Securities and Exchange Commission of Pakistan (SECP) or the State Bank of Pakistan (SBP), depending on the nature and scope of the relevant fintech products and services.

### Regulated activities

4 | Which activities trigger a licensing requirement in your jurisdiction?

The following activities require a licence before they can be undertaken:

- lending;
- taking deposits;
- dealing in foreign exchanges (which requires an authorisation from the SBP);
- offering investment advisory services (which includes advising others of the value of securities or of the advisability of investing in, purchasing, or selling of securities for remuneration, or both);
- managing investment funds;
- offering discounting services;
- offering payment services; and
- secondary market loan trading, which can only be directly undertaken by, or through, a licensed intermediary.

### Consumer lending

5 | Is consumer lending regulated in your jurisdiction?

Yes, consumer lending can only be undertaken pursuant to a banking licence issued by the SBP, or a relevant non-banking finance companies (NBFC) licence (for example, a housing finance services licence, an investment finance services licence or a leasing licence) issued by the SECP. Only companies incorporated in Pakistan are eligible to apply for any NBFC licence and any potential licensee must satisfy, among other things, the paid-up capital requirements that have been prescribed for the specific licence, and its directors and top management must satisfy the relevant 'fit and proper' criteria that have been notified.

### Secondary market loan trading

- 6 | Are there restrictions on trading loans in the secondary market in your jurisdiction?

The only secondary market operational in Pakistan is the Pakistan Stock Exchange Limited (PSX). For non-government debt securities to be traded on the PSX, the securities must satisfy the criteria prescribed under and be listed according to the procedure outlined in the Rule Book of the PSX.

### Collective investment schemes

- 7 | Describe the regulatory regime for collective investment schemes and whether fintech companies providing alternative finance products or services would fall within its scope.

Collective investment schemes (CIS) are regulated by the SECP under the NBFC (Establishment and Regulation) Rules, 2003 and the NBFC and Notified Entities Regulations, 2008. CIS have been defined as any arrangement with the sole purpose of the collective investment of funds in a portfolio of securities or other financial assets for profit, income or other returns, where the participants who have pooled the funds do not have any day-to-day control over the management of the scheme. CIS do not include investment funds that are governed by a more specific legal regime (eg, private funds and employees' provident funds, etc).

CIS operate as a trust, with the investors in the scheme being the beneficiaries of the trust and the manager of the scheme being the trustee. Prior approval of the SECP is required to act as CIS trustees and only banks, registered central depository companies and NBFCs with the relevant licences are eligible to act as CIS trustees. SECP approval must be procured before any investment can be solicited for the scheme in question.

Peer-to-peer, marketplace lenders or crowdfunding platforms are not typically considered CIS.

### Alternative investment funds

- 8 | Are managers of alternative investment funds regulated?

Yes, SECP approval is required to act as a manager of an alternative investment fund. Only banks, registered central depository companies and NBFCs with the relevant licences (including lending NBFCs, asset management companies and investment finance advisory NBFCs) are eligible to act as managers of alternative investment funds.

### Peer-to-peer and marketplace lending

- 9 | Describe any specific regulation of peer-to-peer or marketplace lending in your jurisdiction.

There is no specific regulation for peer-to-peer or marketplace lending, therefore the two activities are prohibited, as the provision of finance is a regulated activity that requires a relevant licence either from the SECP or the SBP.

However, to spur innovation in its regulated sectors, the SECP is currently operating a regulatory sandbox that allows entities and firms to conduct limited scale live tests of innovative products, services, processes, and business models in a controlled environment. The SECP has granted approval under the first cohort of regulatory sandbox users to Finja, a peer-to-peer lending platform, for a period of up to six months. The results, expected in August 2021, will determine the future course of action regarding the introduction of any regulation of peer-to-peer lending.

The regulatory sandbox initiative is still operating and entities can apply to be a part of it.

### Crowdfunding

- 10 | Describe any specific regulation of crowdfunding in your jurisdiction.

Crowdfunding is currently prohibited. The SECP has granted approval under the first cohort of regulatory sandbox users to the Pakistan National Investor Portal, an equity crowdfunding platform, to undertake crowdfunding according to its prescribed terms and conditions for a period of up to six months. The results, expected in August 2021, will determine the future course of action regarding the introduction of any regulation of crowdfunding.

The regulatory sandbox initiative is still operating and entities can apply to be a part of it.

### Invoice trading

- 11 | Describe any specific regulation of invoice trading in your jurisdiction.

There is no specific regulation for invoice trading. However, the provision of discounting services is a regulated activity that requires discounting services or investment finance services NBFC licence. Discounting services, under the relevant regulations, cover the business of discounting financial instruments, whether on a conventional or an Islamic basis. As invoices are typically considered financial instruments, undertaking invoice trading requires one of the two aforesaid NBFC licences. Scheduled banks are also permitted to provide invoice discounting facilities.

The alternate regime available for undertaking discounting is through the creation of a special purpose vehicle (SPV) under the Companies (Asset Backed Securitization) Rules, which requires the prior approval of the SECP. Under this regime, the originator (ie, the party wishing to raise finance) sells or assigns its present or future receivables, or both, to an SPV against money that is payable on the consummation of the sale or assignment. The SPV, in turn, raises funds through issuing term finance certificates or another debt instrument. Any advertisement or other invitations to the public, including public announcements to invest in such instruments, require the prior approval of the SECP.

### Payment services

- 12 | Are payment services regulated in your jurisdiction?

Yes. The provision of payment services is regulated by the SBP under the Payment Systems and Electronic Fund Transfers Act that regulates payment gateways, payment aggregators, credit and debit cards, and automated teller machines. The SBP has also notified the Electronic Money Institutions Regulations, under which an e-money institute (EMI) licence can be acquired. An EMI may issue e-money payment instruments, distribute e-money payment instruments, redeem e-money payment instruments, acquire payment instruments of other EMIs and banks, and undertake any other activity permitted by the SBP. The provisions of the act and the regulations apply even to transactions occurring outside Pakistan insofar as they are directly or indirectly connected to Pakistan, or have an effect on or bearing in relation to persons, payment systems or events within Pakistan.

The law mandates that any service provider that imposes a fee on any consumer for providing these services must notify the consumer of the fee.

## Open banking

- 13 | Are there any laws or regulations introduced to promote competition that require financial institutions to make customer or product data available to third parties?

While there are no such specific laws or regulations, the antitrust laws of Pakistan generally prohibit:

- the abuse of a dominant position through any practice that prevents, restricts, reduces or distorts competition in the relevant market; and
- entering into any agreement or making any decision in respect of the production, supply, distribution, acquisition or control of goods, or the provision of services that have the object or effect of preventing, restricting, reducing, or distorting competition within the relevant market.

The antitrust laws are administered by the Competition Commission of Pakistan.

## Robo-advice

- 14 | Describe any specific regulation of robo-advisers or other companies that provide retail customers with automated access to investment products in your jurisdiction.

There is no specific regulation on the use of robo-advisors to provide retail customers with access to investment products. Investment products can only generally be offered to retail customers pursuant to an offering document, which needs the approval of the SECP before it can be shared with prospective customers. This offering document must conform with SECP's criteria, in content and form, to be approved.

The SECP has also issued the Guidelines for Mutual Fund Digital Distribution Platform (the Guidelines) that cover the use of robo-advisors for advisory services for CIS and voluntary pension funds.

As per the Guidelines, entities offering robo-advisory services must ensure the provision of:

- an accurate description of its services and its update schedule on a regular basis;
- sufficient information on the platform enabling investors to make an informed decision regarding employing its services, which may include information on the limitations, risks, how key components of its services are generated and inform regarding the degree of human involvement; and
- a compliance programme that includes a robust testing programme of the algorithmic code and the post-implementation monitoring of its performance by, among other things, arranging for a third-party independent review to validate such algorithms on an annual basis.

## Insurance products

- 15 | Do fintech companies that sell or market insurance products in your jurisdiction need to be regulated?

Yes, fintech companies that sell insurance products are regulated under the Insurance Ordinance, 2000 and the Insurance Rules, 2017. Insurance products can only be sold for reward either by agents of the insurance company or insurance brokers that require a licence from the SECP to operate. Only companies are entitled to apply for an insurance broker licence. Any promotional material for life insurance products must conform with any relevant directions given by the SECP. There are no special regulations covering any third party that markets insurance products for fintech companies.

## Credit references

- 16 | Are there any restrictions on providing credit references or credit information services in your jurisdiction?

Credit information services can only be undertaken by credit bureaus licensed by the SBP under the Credit Bureaus Act. Only locally incorporated public limited companies are eligible to apply for the licence required to operate as a credit bureau, but there are no restrictions on foreign ownership of such companies. Every institution that is authorised to extend credit or finance (credit institutions) is required to be a member of a credit bureau and to furnish credit information to the credit bureau regarding its debtors. The credit bureau in turn may provide the collected credit information regarding debtors to credit institutions without procuring the consent of the debtors.

## CROSS-BORDER REGULATION

### Passporting

- 17 | Can regulated activities be passported into your jurisdiction?

No, the licence to undertake any regulated activity in any other jurisdiction cannot be passported into Pakistan.

### Requirement for a local presence

- 18 | Can fintech companies obtain a licence to provide financial services in your jurisdiction without establishing a local presence?

While the exact licensing requirements depend on the specific nature of the financial services being provided, the relevant licences can generally only be obtained by companies incorporated under the laws of Pakistan.

## SALES AND MARKETING

### Restrictions

- 19 | What restrictions apply to the sales and marketing of financial services and products in your jurisdiction?

The State Bank of Pakistan issued its Guidelines on Prohibited Banking Conduct to, inter alia, ensure that consumers are not provided with misleading or deceptive information in connection with a service or product. These guidelines are applicable to banks, microfinance banks and developmental financial institutions. The Competition Commission of Pakistan also has the power to commence proceedings against entities engaging in any form of deceptive marketing, which is prohibited under the Competition Act, 2010. Similarly, the consumer protection laws in the provinces of Punjab and Sindh restrict entities from engaging in deceptive marketing.

## CHANGE OF CONTROL

### Notification and consent

- 20 | Describe any rules relating to notification or consent requirements if a regulated business changes control.

A change of control of any licensed entity or a business undertaking a regulated activity requires the prior approval of the relevant regulator. In general, an entity in the financial services or payment system services sectors will require the consent of the State Bank of Pakistan or the Securities and Exchange Commission of Pakistan, or both.

## FINANCIAL CRIME

### Anti-bribery and anti-money laundering procedures

#### 21 | Are fintech companies required by law or regulation to have procedures to combat bribery or money laundering?

Yes, fintech companies are required to have procedures to combat bribery and money laundering. Non-banking finance companies, under the Anti-Money Laundering and Countering Financing of Terrorism Regulations notified by the Securities and Exchange Commission of Pakistan (SECP), are obligated to take appropriate steps to identify, assess, and understand their money laundering and terrorism financing risks. They are also required to implement counter-money laundering and counter-terrorism financing measures, in accordance with related risks and the size of the business.

Banks are required to comply with the Anti-Money Laundering, Combating the Financing of Terrorism & Countering Proliferation Financing Regulations.

The general law that prohibits the offence of money laundering is the Anti-Money Laundering Act, 2010, which prescribes that the offence of money laundering shall be punishable with rigorous imprisonment for a term that shall not be less than one year but may extend up to ten years. In addition, the offender shall be fined an amount of up to 25 million rupees (100 million rupees in the case of legal persons) and shall also be obliged to forfeit the property involved in money laundering or property of corresponding value.

The anti-money laundering regime also mandates customer due diligence through:

- identifying the customer and verifying the customer's identity based on documents, data or information obtained from reliable and independent sources;
- identifying the beneficial owner and taking reasonable measures to verify the beneficial owner's identity based on documents, data or information obtained from reliable and independent sources;
- understanding and, when appropriate, obtaining information on the purpose and intended nature of the business relationship; and
- monitoring the business relationship on an ongoing basis.

The Companies Act, 2017 requires every officer of a company to endeavour to prevent the commission of any fraud and offences of money laundering, including predicated offences involving the affairs of the company, and take adequate measures for this purpose, such as the provision of adequate training for relevant staff.

### Guidance

#### 22 | Is there regulatory or industry anti-financial crime guidance for fintech companies?

Currently, there are no specific guidelines purely with respect to anti-financial crime. The available guidelines notified by SECP and the State Bank of Pakistan specifically pertain to anti-money laundering and countering the financing of terrorism, and apply to fintech companies also.

## PEER-TO-PEER AND MARKETPLACE LENDING

### Execution and enforceability of loan agreements

#### 23 | What are the requirements for executing loan agreements or security agreements? Is there a risk that loan agreements or security agreements entered into on a peer-to-peer or marketplace lending platform will not be enforceable?

The general requirements for executing loan agreements and security agreements are that they must be in writing, signed and witnessed

according to the evidentiary law regime of Pakistan, and the stamp duty and registration fee (if applicable) must be paid. The agreements must be registered with the relevant authority. Security agreements involving the creation of interest in immovable property must also be registered. Perfection of the security instrument also involves registering the charge with the company registrar if the security is being created on the asset or assets of the company.

As peer-to-peer or marketplace lending is currently prohibited (except pursuant to a special authorisation that may be obtained from the Securities and Exchange Commission of Pakistan (SECP) by applying under the regulatory sandbox initiative run by the SECP), any loan or security agreement entered into on a peer-to-peer or marketplace lending platform is likely to face substantial enforceability issues because, under the contract law applicable in Pakistan, any provision of contracts that are against public policy are void. While there is a reasonable chance that the principal sum may be recovered from the debtor under the doctrine of unjust enrichment, the other terms of the agreement pertaining to interest and security are likely to be very difficult to enforce and recover while the prohibition against peer-to-peer or marketplace lending is in effect.

### Assignment of loans

#### 24 | What steps are required to perfect an assignment of loans originated on a peer-to-peer or marketplace lending platform? What are the implications for the purchaser if the assignment is not perfected? Is it possible to assign these loans without informing the borrower?

Since peer-to-peer or marketplace lending is currently prohibited (except pursuant to a special authorisation that may be obtained from the SECP by applying under the regulatory sandbox initiative run by the SECP), any loan or security agreement entered into on a peer-to-peer or marketplace lending platform is likely to face substantial enforceability issues because, under the contract law applicable in Pakistan, any provision of contracts that are against public policy is void.

There is no legal requirement that the assignment of loans can only take place after obtaining the prior approval of the borrower. This will be governed in accordance with the provisions of the loan agreement.

### Securitisation risk retention requirements

#### 25 | Are securitisation transactions subject to risk retention requirements?

There are no risk retention requirements for securitisation transactions carried out pursuant to the Companies (Asset Backed Securitization) Rules.

### Securitisation confidentiality and data protection requirements

#### 26 | Is a special purpose company used to purchase and securitise peer-to-peer or marketplace loans subject to a duty of confidentiality or data protection laws regarding information relating to the borrowers?

Peer-to-peer or marketplace lending is currently prohibited (except pursuant to a special authorisation that may be obtained from the SECP by applying under the regulatory sandbox initiative run by the SECP).



## ARTIFICIAL INTELLIGENCE, DISTRIBUTED LEDGER TECHNOLOGY AND CRYPTO-ASSETS

### Artificial intelligence

27 | Are there rules or regulations governing the use of artificial intelligence, including in relation to robo-advice?

There are no specific regulations that regulate the use of artificial intelligence, including in relation to robo-advice. The Securities and Exchange Commission of Pakistan (SECP) issued the Guidelines for Mutual Fund Digital Distribution Platform that also cover the use of robo-advisors for advisory services for collective investment schemes and voluntary pension funds.

### Distributed ledger technology

28 | Are there rules or regulations governing the use of distributed ledger technology or blockchains?

There are no specific rules and regulations currently in place regarding the use of distributed ledger technology or blockchains in Pakistan.

### Crypto-assets

29 | Are there rules or regulations governing the use of crypto-assets, including digital currencies, digital wallets and e-money?

The State Bank of Pakistan (SBP) notified the Electronic Money Institutions Regulations, under which an e-money institution (EMI) licence can be acquired. An EMI may issue e-money payment instruments, distribute e-money payment instruments, redeem e-money payment instruments, acquire payment instruments of other EMIs and banks, and undertake any other activity permitted by the SBP.

There are no specific regulations regarding the use of crypto-assets and digital currencies. Digital currencies are currently not recognised by the SBP, which is the relevant regulator.

### Digital currency exchanges

30 | Are there rules or regulations governing the operation of digital currency exchanges or brokerages?

There are no specific rules and regulations currently in place regarding the operation of digital currency exchanges or brokerages in Pakistan.

### Initial coin offerings

31 | Are there rules or regulations governing initial coin offerings (ICOs) or token generation events?

There are currently no specific rules and regulations regarding initial coin offerings or token generation events in Pakistan.

## DATA PROTECTION AND CYBERSECURITY

### Data protection

32 | What rules and regulations govern the processing and transfer (domestic and cross-border) of data relating to fintech products and services?

The State Bank of Pakistan (SBP) issued its BPRD Circular No. 05 on 30 2017, titled 'Enterprise Technology Governance & Risk Management Framework for Financial Institutions'. It also covers precautions for the security of digital data.

The Ministry of Information Technology and Telecommunication introduced a new draft of Pakistan's Personal Data Protection Bill

2020. This draft bill has not yet been promulgated into law. However, once enacted, the law will apply to 'any person who processes' or 'has control over or authorises the processing of' any personal data if the data subject, the controller or the processor are located in Pakistan. This draft bill would establish certain requirements and restrictions related to the processing of personal data, as well as penalties for violating the law.

Under this draft bill, the federal government would, within six months of the act coming into force, establish a Personal Data Protection Authority of Pakistan with rule-making authority to enforce the act. Relevant provisions governing the processing and transfer of data relating to fintech products and personal data include the disclosure and transfer of personal data, disallowing the release of information without the consent of the data subject:

- for any purpose other than the purpose for which the personal data was disclosed at the time of collection, or a purpose directly related to that purpose; or
- to any third party not within the class of third parties provided within its notice.

In addition, personal data may not be transferred to any unauthorised person or system. For cross border transfers, the draft bill provides that, where necessary, data may be transferred to a country that offers at least the same amount of protection of personal data as offered in Pakistan, provided that the data subject provides consent where required and the data continues to be processed in accordance with the draft bill's requirements. Under section 8 of the draft bill, the Personal Data Protection Authority of Pakistan will prescribe standards to protect personal data from any loss, misuse, modification, unauthorised or accidental access or disclosure, alteration, or destruction. Data controllers and data processors must adhere to the standards prescribed by the authority.

### Cybersecurity

33 | What cybersecurity regulations or standards apply to fintech businesses?

The SBP issued its BPRD Circular No. 05 on 30 2017, titled 'Enterprise Technology Governance & Risk Management Framework for Financial Institutions'. It also covers the precautions for cyber security that financial institutions are obligated to take.

The Securities and Exchange Commission of Pakistan (SECP) has also issued its Guidelines on Cybersecurity Framework for the Insurance Sector 2020 (ICSG), which aim to improve the privacy and confidentiality of information stored and handled by insurers. The ICSG came into effect on 1 July 2020 and amends the Insurance Rules of 2017. The ICSG defines digital-only insurers and stipulates requirements such as technical capacity, governance, consumer protection, cybersecurity and product development, among others.

Notably, the ICSG recommends the appointment of a chief information security officer for all insurers that is responsible for implementing the overall cyber-security framework within his or her organisation, and conducting annual cyber risk assessments and submitting them to the SECP. The ICSG also outlines the need to have an adequate network and system security in place to safeguard operating systems, software and databases against cyber risks.

The Prevention of Electronic Crimes Act, 2016 is generic legislation relating to the regulation of cybersecurity in Pakistan.

## OUTSOURCING AND CLOUD COMPUTING

### Outsourcing

- 34 | Are there legal requirements or regulatory guidance with respect to the outsourcing by a financial services company of a material aspect of its business?

Yes, the State Bank of Pakistan (SBP) issued its BPRD Circular No. 06 in 2019, titled 'Framework for Risk Management in Outsourcing Arrangements by Financial Institutions'.

Outsourcing of a material aspect of a company's business is only permissible if allowed under the terms of the licence, which should contain all the restrictions to which the financial services company is subject under the licence and relevant regulations.

### Cloud computing

- 35 | Are there legal requirements or regulatory guidance with respect to the use of cloud computing in the financial services industry?

Yes, the SBP issued its BPRD Circular No. 04 in 2020, which outlines the regime that must be met for outsourcing any business to cloud service providers. The SBP has prescribed that financial institutions can use cloud services for non-core operations and business support processes, such as human resources modules, procurement functions, non-production environments, sandboxing, inventory management, supply chain management, office productivity, customer relationship management tools (for example, WhatsApp or Facebook), communication tools, security tools, computation and processing services, data analytics and risk modelling, and middleware and payments processing services or platforms, etc.

However, all other banking applications and allied infrastructure, which are used to store and process customers' information relating to deposits, loans, credits, and details of balances and transactions in ledger accounts of customers and borrowers shall not be operated by cloud-based outsourcing arrangements.

## INTELLECTUAL PROPERTY RIGHTS

### IP protection for software

- 36 | Which intellectual property rights are available to protect software, and how do you obtain those rights?

The code or algorithm of a computer programme or software is protected under the copyright legal regime as the intellectual property of the author. Pakistan is a signatory to the Berne Convention for the Protection of Literary and Artistic Works and therefore any copyrighted work of an author in Pakistan or any other signatory state will be internationally protected under this convention.

Copyright can be registered under the Copyright Ordinance 1962. The registration of copyright is not necessary for the author of the work to get copyright protection, which exists regardless of whether the work's copyright has been registered or not under the Copyright Ordinance 1962. However, a certificate of registration under the Copyright Ordinance 1962 constitutes prima facie evidence of the claim that the person shown on the copyright certificate is the owner of the copyright. In the absence of such a certificate of registration, a claim of ownership will need to be proved by the plaintiff at the onset of any action for copyright infringement, which is a time-consuming process that requires evidence from the plaintiff demonstrating that the plaintiff was the author of the work. A certificate of registration enables the plaintiff to circumvent this stage of proceedings.

A piece of software may be patentable if it comes as part and parcel of a piece of hardware. Both may collectively be patented as an invention under the Patents Ordinance, 2000.

### IP developed by employees and contractors

- 37 | Who owns new intellectual property developed by an employee during the course of employment? Do the same rules apply to new intellectual property developed by contractors or consultants?

For any work created during the author's employment under a contract of service or contract of employment, the service recipient or employer, in the absence of any agreement to the contrary, shall be the first owner of the copyright to the work. However, it is highly advisable to expressly specify this in the contract of employment or service.

The right to the patent for an invention made by an employee during his or her employment in the area of activity of the employer, in the absence of a contractual obligation to the contrary, belongs to the inventor unless the employer proves that the invention could not have been made without the use of employer's facilities and equipment necessary for the invention. An invention of exceptional economic value entitles the inventor to equitable remuneration, taking into account the nature of his or her duties, his or her salary and the benefits derived by the employer.

### Joint ownership

- 38 | Are there any restrictions on a joint owner of intellectual property's right to use, license, charge or assign its right in intellectual property?

There are no restrictions on copyrights and patents. For trademarks, one co-proprietor may not, without the consent of the other or others, grant a licence to the use of the registered trademark, or assign or charge his or her share in the registered trademark.

### Trade secrets

- 39 | How are trade secrets protected? Are trade secrets kept confidential during court proceedings?

There is no specific legislation that protects trade secrets. However, the act of appropriation of trade secrets, depending on the specific modality, may incur provisions of Pakistan's penal code regarding theft or misappropriation of movable property, which carry criminal sanctions.

There is no specific procedure to keep trade secrets confidential during court proceedings. However, civil courts, constitutional courts and other judicial forums are vested with the inherent jurisdiction to do complete justice or protect a compelling interest of a litigant, or both, and may direct confidentiality to be maintained.

### Branding

- 40 | What intellectual property rights are available to protect branding and how do you obtain those rights? How can fintech businesses ensure they do not infringe existing brands?

Brands and marks are protected under, and can be trademarked or registered, under the Trademarks Ordinance 2001. Pakistan is also a signatory to the Madrid Agreement, which is a convenient and cost-effective solution for registering and managing trademarks worldwide. A single application can be filed and one set of fees paid to apply for protection of the trademark in up to 124 countries that are signatories to the Madrid Agreement.

## Remedies for infringement of IP

41 | What remedies are available to individuals or companies whose intellectual property rights have been infringed?

The key remedy typically available to individuals and companies whose intellectual property rights are being infringed is the initiation of proceedings against the infringer before the intellectual property (IP) tribunal, which has the jurisdiction to grant the following primary reliefs:

- an injunction temporarily barring the infringer from using the subject matter IP;
- an injunction permanently barring the infringer from using the subject matter IP; and
- monetary damages.

## COMPETITION

### Sector-specific issues

42 | Are there any specific competition issues that exist with respect to fintech companies in your jurisdiction?

There are no specific competition issues for fintech companies. The anti-trust laws of Pakistan are administered by the Competition Commission of Pakistan. The antitrust laws generally prohibit:

- the abuse of a dominant position through any practice that prevents, restricts, reduces or distorts competition in the relevant market; and
- entering into any agreement or making any decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services that have the object or effect of preventing, restricting, reducing, or distorting competition within the relevant market.

## TAX

### Incentives

43 | Are there any tax incentives available for fintech companies and investors to encourage innovation and investment in the fintech sector in your jurisdiction?

There is a tax holiday on profit and gains for venture capital companies and venture capital funds until 30 June 2024. Information technology start-ups registered with the Pakistan Software Export Board have also been provided with an income tax exemption for three years from the date of their registration.

### Increased tax burden

44 | Are there any new or proposed tax laws or guidance that could significantly increase tax or administrative costs for fintech companies in your jurisdiction?

No.

## IMMIGRATION

### Sector-specific schemes

45 | What immigration schemes are available for fintech businesses to recruit skilled staff from abroad? Are there any special regimes specific to the technology or financial sectors?

There are no specific immigration schemes available for fintech businesses or technology facilitating financial sectors to recruit skilled staff. The procurement of the necessary work permits or visas must

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be sought from the Ministry of Interior to bring employees from outside Pakistan who are not Pakistani nationals. Citizens of foreign countries who wish to work and live in Pakistan can apply for a work visa and it may be granted for up to three months, single entry. An extension work visa can be granted for up to two years with multiple entries.

## UPDATE AND TRENDS

### Current developments

46 | Are there any other current developments or emerging trends to note?

The government has undertaken several measures to improve Pakistan's ability to do business by relaxing the regulatory processes in setting up businesses, and facilitating the establishment and running thereof. These measures include various pieces of legislation, amendments, circulars, instructions and guidelines, as well as the establishment of dedicated commercial courts in Punjab through the Commercial Courts Ordinance, 2021.

### Coronavirus

47 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The State Bank of Pakistan has, through the financial institutions it regulates, introduced financing at concessionary rates to provide eligible businesses easy access to working capital to ensure minimal layoffs.

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