

PAKISTAN LEGAL COUNTRY PROFILE

LEGAL SYSTEM OVERVIEW

Pakistan follows a common law legal system with significant Islamic law influences. Whilst the Constitution is Pakistan's supreme law, the role of Islam is also enshrined in the Constitution. Islam is declared the state religion, whilst Part IX of the Constitution defines the Islamic Provisions which are fundamental to the State of Pakistan. This states that existing laws must conform to the Injunctions of Islam, with regards to personal law based upon how an individual's sect interprets the Quran and Sunnah, and that no law may be enacted which is contrary to these Injunctions. The Constitution also establishes the Federal Shariat Court, which is empowered to examine laws and their conformity to Islam. Laws which are found contrary may be repealed and the Court may also examine cases and decisions by the criminal courts relating to the enforcement of *Hudūd*.¹ Only the Supreme Court may overrule such decisions. Law in the tribal areas is largely based upon tribal custom. The secretive military courts also remain active, with no right to appeal; in reality, the armed forces are beyond the authority of the government and parliament.²

The judiciary is widely seen as corrupt. Bribes and facilitation payments in return for favourable judgements are common, whilst nepotism and judicial interference by third parties are rife, particularly in the lower courts. Owing to the lack of trust in Pakistan's judiciary, many foreign investors include clauses for international arbitration in their contracts as Pakistan is a member of the 1958 New York Convention and International Centre for the Settlement of Investment Disputes. There is also a very high risk of corruption within Pakistan's police, who are ineffective and unreliable: businesses attribute significant costs to the issue of crime and violence.³ As such, impunity is widespread. Corruption also pervades through public services, procurement, economy and politics, highlighted by the 2017 resignation of Prime Minister Nawaz and the subsequent indictment of him and three of his children on corruption claims.

The antiquated Contract Act 1872 is the primary source of Pakistan's contract law and defines consent, obligations and the voidability of contract.⁴ Labour laws are governed by provincial legislation, although where a provincial law has not been passed, the federal equivalent is applicable. Meanwhile, the Companies Act 2017 is the key commercial law in regulating corporate entities, shareholders, creditors and resolving of corporate disputes, amongst other topics.⁵ The Penal Code of 1860 is still in effect, although it has been heavily amended to include aspects of Sharia, including *Hudūd* offences and blasphemy offences which may carry capital punishment. The Penal Code also contains anti-corruption measures relating to bribery, whilst the Prevention of Corruption Act serves as the principal anti-corruption law.⁶

Pakistan is a signatory to a number of international treaties including the Geneva Conventions, Biological and Chemical Weapons Conventions, the Framework Convention on Climate Change and Kyoto Protocol as well as International Convention for the Suppression of the Financing of Terrorism. Pakistan is also a member of the Organisation of Islamic Cooperation, International Monetary Fund, World Health Organisation and the Commonwealth. Pakistan's compliance with international law, especially concerning human rights and intellectual property, is often debated.

¹ https://www.constituteproject.org/constitution/Pakistan_2015.pdf?lang=en.

² https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Pakistan.pdf.

³ <http://www.business-anti-corruption.com/country-profiles/pakistan>.

⁴ <http://www.punjabcode.punjab.gov.pk/public/dr/Contract%20Act,%201872.doc.pdf>;

⁵ [https://uk.practicallaw.thomsonreuters.com/1-504-4890?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/1-504-4890?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1);

⁶ http://www.na.gov.pk/uploads/documents/1487136261_767.pdf.

⁶ <http://www.business-anti-corruption.com/country-profiles/pakistan>.

BUSINESS SECTOR

Pakistan's real GDP has continued to grow in recent years by steadily increasing amounts, and is forecast to level at around 5.5-6% growth annually over the next four years. Inflation is also forecast to remain steady, albeit, moderately high at 5% over the same time period. However, the economy is lacking diversity, as almost 80% of Pakistan's export economy is based upon the textiles and agricultural industries. As exports have decreased annually, imports have increased with machinery, chemicals and mineral products, predominantly petroleum, forming over 50% of imports.

There are major obstacles to doing business in and with Pakistan, most notably the poor security situation owing to domestic sectarian and ethnic unrest as well as terrorism. A lack of bureaucratic transparency, deeply rooted corruption and lack of intellectual property right enforcement all provide further challenges, whilst the weak infrastructure and energy crisis are significant obstacles.⁷ As such Pakistan is ranked 142 of 190 in the World Bank's Starting a Business index and 147 in the Ease of Doing Business Index.⁸

Nevertheless, Pakistan encourages foreign investment and permits wholly-foreign owned subsidiaries in all sectors of the economy, with full rights of repatriation for capital and dividends.⁹ Pakistan also has a large, growing middle class, whilst maintaining an educated workforce combined with low labour and production costs. Anglophone nations also share a common business language, similar legal practices and Pakistanis have a strong familiarity with western companies and brands.¹⁰ Notable opportunities exist in the construction sector where demand for housing is upward of 6.5million per annum and there are a number of infrastructure contracts under the enormous China-Pakistan Economic Corridor scheme. Oil, gas and mineral equipment and extraction is also a best prospect sector as Pakistan is actively seeking investment in onshore and offshore exploration activities, and the construction and development of explored resource locations.¹¹ There are also vast untapped coal reserves in the Thar Desert which Pakistan seeks to exploit as it looks to solve its energy crisis.

SECURITY OVERVIEW

Pakistan faces a number of security issues. A number of terrorist groups operate in and out of Pakistan, particularly in the Federally Administered Tribal Areas and Khyber Pakhtunkhwa, such as the Tehrik-i-Taliban. Attacks can occur anywhere, targeting tourists, the government, state security forces and civilians through a variety of methods such as shootings, suicide bombings and vehicle-borne improvised explosive devices. Terrorist groups are also active in Balochistan and Azad Kashmir, where they regular cross the Line of Control (LoC) into Jammu and Kashmir. Balochistan also has an active separatist movement, whilst Indian and Pakistani military forces may exchange fire across the LoC at any time, and a threat of armed conflict still remains.¹²

There is also a high threat of both petty and violent crime, especially in urban areas, and western nationals are often targeted for their perceived wealth. There is also a high risk of kidnapping across the country, both in urban areas such as Karachi and rural areas, such as in Sindh and Balochistan. The

⁷ <https://www.gov.uk/government/publications/exporting-to-pakistan/doing-business-in-pakistan-pakistan-trade-and-export-guide>.

⁸ <http://www.doingbusiness.org/data/exploreeconomies/pakistan>.

⁹ <https://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm#wrapper>.

¹⁰ <https://www.gov.uk/government/publications/exporting-to-pakistan/doing-business-in-pakistan-pakistan-trade-and-export-guide>.

¹¹ <https://www.export.gov/article?id=Pakistan-Construction-Equipment-and-Services>; <https://www.export.gov/article?id=Pakistan-Oil-and-Gas-Equipment>.

¹² <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Pakistan.html>.

threat of piracy within Pakistan's territorial waters is low, but in the wider Indian Ocean and Arabian Sea piracy continues to pose a threat.¹³

COUNTRY OVERVIEW

The Islamic Republic of Pakistan is located in Southern Asia and bordered by Afghanistan, China, India and Iran. Pakistan has a population of 204.92 million, the sixth most populous country globally, with the majority of the population centres being located around the Indus River and its tributaries. Pakistan's first capital, Karachi, is the nation's largest urban area with 16.61 million inhabitants, whilst 1.37 million people live in the current capital, Islamabad. The metropolises of Lahore, Faisalabad, Rawalpindi and Multan all also contain greater than one million inhabitants. The official language is Urdu, although English is also used, and the vast majority of the population are Muslim: Sunni Islam forms the majority.¹⁴

In terms of the business, domestic and geopolitical climate, Pakistan is a high-risk country. There is poor economic diversification and Pakistan remains embroiled in the Kashmir dispute with India and against Baluch nationalists, whilst facing a severe threat of domestic terrorism from groups such as the TTP.¹⁵

Pakistan faces severe corruption problems. Pakistan was ranked 116 of 176 in Transparency International's 2016 Corruption Index.¹⁶ Despite anti-corruption legislation, corrupt practices, such as bribery, are widespread throughout government institutions and economic sectors. The scale of corruption was highlighted when the ousted former Prime Minister Nawaz Sharif was indicted in October 2017 over corruption claims.

Pakistan's GDP was measured at US\$278.91 billion in 2016 and has growth forecasts of 5.5-6% annually until 2022. Pakistan has a severe trade deficit whilst textiles form over 60% of export earnings.¹⁷ The official currency is the Pakistani Rupee.

Pakistan is defined as a federal parliamentary republic. President Mamnoon Hussain acts as the current head of state, whilst Prime Minister Shahid Abbasi is the current head of government, following Nawaz Sharif's resignation on 28/7/2017. The president is elected by members of the Senate, National Assembly and provincial assemblies, with the next election to be held in 2018. The prime minister is elected by the National Assembly. The National Assembly forms the lower house of the bicameral parliament and the Senate forms the upper house. Members of the senate are elected by proportional representation vote, as are 70 members of the Assembly, whilst the remaining 272 members are elected by simple majority vote in their respective constituencies.¹⁸ The next elections are to be held in 2018.

¹³ <https://www.gov.uk/foreign-travel-advice/pakistan/safety-and-security>.

¹⁴ <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>.

¹⁵ <https://globaleedge.msu.edu/countries/pakistan/risk>.

¹⁶ https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table.

¹⁷ <http://www.imf.org/external/datamapper/NGDPD@WEO/PAK>; http://www.imf.org/external/datamapper/NGDP_RPCH@WEO/PAK; <https://atlas.media.mit.edu/en/profile/country/pak/>.

¹⁸ <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>.