

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Pakistan

IMPORTANT NOTE: This template is intended to provide introductory material. Reading the template is not a substitute for consulting the referenced statutes and regulations. If you are analyzing a particular transaction, this template should be a starting point only.

1. Merger notification and review materials (please provide title(s), popular name(s) and citation(s))

A. Notification provisions	There is no merger notification requirement in Pakistan. However, undertakings and individuals that meet certain criteria or engaging in specified activities must register with the Monopoly Control Authority. This template provides information regarding this registration process.
B. Notification forms or information requirements	See Schedule attached to the Monopoly Control Authority Rules, 1971 [Gazette of Pakistan, Extraordinary, 31st December, 1971) for the necessary forms.
C. Substantive merger control provisions	Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970 (Vof 1970) (hereinafter "MRTPO")
D. Implementing regulations	Monopoly Control Authority Rules, 1971 [Gazette of Pakistan, Extraordinary, 31 st December, 1971) (hereinafter "Rules"
E. Interpretive guidelines and notices	None
F. Annual report	The Annual Report of the Monopoly Control Authority gives a brief description of merger cases and post-merger monitoring. This report is available from the Monopoly Control Authority.

2. Authority or authorities responsible for merger enforcement.

<p>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</p>	<p>Monopoly Control Authority ("MCA")</p>
<p>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</p>	<p>65-E, Pak Pavilions Plaza Fazalul haq Road P.O. Box # 1227 Islamabad, Pakistan</p> <p>Telephone: 92-51-9205925-7 Fax: 92-51-9219218 E-mail: section@isb.comsats.net.pk Website is under construction</p>
<p>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</p>	<p>Yes. Companies and individuals may seek advice from the MCA on matters covered by the MRTPO. Contact:</p>

3. Notification requirements

<p>A. Is notification mandatory pre-merger?</p>	<p>No.</p>
<p>B. Is notification mandatory post-merger?</p>	<p>Under Section 16(1)(i) of the MRTPO, registration must be made if there has been an agreement for an acquisition by one person or undertaking of the stock or assets of any other person or undertaking, or any merger of undertakings, where the effect of the acquisition or merger is likely to create monopoly power or to substantially lessen competition in any market, including any acquisition which creates a relationship between competitors in the same market that together produce, supply, distribute or provide at least one third of the total goods or services in such market. Registration must be submitted within 10 days under Rule 10, MCA Rules, 1971</p>

C. Can parties make a voluntary pre- or post-merger filing even if filing is not mandatory?	Yes.
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4. Covered transactions

A. Definitions of potentially covered transactions	A list of those individuals or undertakings that must register are set forth in Chapter V of the MRPTO. Registration is generally required if an undertaking has a one-third market share, if the total value of an undertaking's assets is not less than 50 million rupees, is a sole distributor or supplier of any good or service. Individuals must also register if they hold or control 50 percent of the voting power of an undertaking valued at not less than 50 million rupees. Undertakings must also register if agreements are entered into that create a monopoly, restrict distribution or sales of goods, or license use of a patent or technology in a restrictive manner.
B. If change of control is a determining factor, how is control defined?	Control is defined in Section 2(d) of the MRTPO as in relation to an undertaking, the power to exercise a controlling influence over the management or policies of an undertaking and, in relation to shares, as the power to exercise a controlling influence over the voting power attached to such shares.
C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?	Under Chapter II, Section 5 (1)(b), acquisitions of stock or assets where the effect of the acquisition is likely to create monopoly power or to substantially lesson competition in any market is prohibited. Registration would be required if the shares acquired were of an undertaking with production, supply, distribution or provision of one third of the total goods or services in a market.
D. Do the notification requirements cover production joint ventures or any other type of joint venture?	See response to A and C above.
E. Are any sectors excluded from notification requirements? If so, which sectors?	Public sector undertakings or statutory organizations are not covered by the MRPTO
F. Are transactions that do not meet merger notification thresholds subject to substantive	All mergers are examined regardless of whether the registration requirements are met.

merger control?	
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5. Thresholds for notification

A. What are the general thresholds? Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.	As stated in 4.A. above, registration is generally required if an undertaking has a one-third market share, if the total value of an undertaking's assets is not less than 50 million rupees, or if an undertaking is a sole distributor or supplier of any good or service. Individuals must also register if they hold or control 50 percent of the voting power of an undertaking valued at not less than 50 million rupees. Undertakings must also register if agreements are entered into that create a monopoly, restrict distribution or sales of goods, or license use of a patent or technology in a restrictive manner. These registration thresholds are not adjusted annually, however the government can amend the law.
B. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?	For purposes of determining the one third of any goods produced, distributed or sold or of any services provided, the percentage is computed on the basis of the monthly statistical bulletin of the Federal Statistical Office of the Federal Government of Pakistan or on such other basis as the MCA may by prescribe by Rule. See explanation to Chapter V, Section 16(1)
C. Describe methodology for identifying and calculating any values necessary to determine if notification is required, including:	Generally, financial statements that have undergone a formal audit by a certified public accountant are used to determine relevant values.
i. The methodology for identifying and calculating the value of the transaction, if	

applicable.	
ii. The methodology for identifying and calculating relevant sales or turnover, if applicable.	The MCA may request information regarding sales (value and volume) pursuant to its Supply of Information Rules. Typically, annual sales (using invoices, data from the Board of Revenue or other source) and an industry sales multiplier are used to value a business. Sales of comparable businesses are also used.
iii. The methodology for identifying and calculating the value of relevant assets, if applicable.	The "value of assets" is calculated as cost less depreciation at the normal rates at which depreciation is calculated for purpose of assessment of income tax. MRTPO, Section 2(1)(o).
iv. Methodology for calculating exchange rates.	For U.S. dollars, Pak Rs. parity is used. For calculation of real exchange rates, the consumer price index of the countries is considered from either data available in the International Financial Statistics of the IMF or from comparable purchasing power parity economic data of the OECD.
D. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?	To operations in Pakistan only.
E. How is the nexus to the jurisdiction determined? If based on an "effects doctrine," please describe how this is applied.	Parties must meet the registration thresholds set forth in Section 16 of the MRTPO. For particular transactions, effects are considered on the market shares and are evaluated against a checklist to determine public interest.
F. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?	"Market" is defined as the geographic region in which competition in the production or sale of such goods or the provision of such service takes place. MRTPO, Section (1)(f). For most purposes, the entire country of Pakistan is considered the market, with the exception of some consumer goods which are considered regional, so such allocation is not necessary.
G. If there are market share tests, are there guidelines for calculating market shares?	No.
H. If there are market share tests, do they apply even if there is no horizontal overlap in the parties' activities, either in the jurisdiction or	Yes. The MRTPO provisions apply to any activity that meets the criteria set forth in the statute.

worldwide?	
I. Describe the methodology for determining relevant undertakings/firms for threshold purposes (e.g., group-wide? only the acquired entity? If based on control, how is control determined?).	The thresholds apply to associated undertakings, defined as any two or more undertakings interconnected with each other either by (1) a person who is the owner or a partner of an undertaking or who directly or indirectly holds or controls shares carrying not less than 30% of the voting power in such an undertaking, is also the owner or partner of another undertaking or, directly or indirectly, holds or controls shares carrying not less than 30% of the voting power in that undertaking or (2) if the undertakings are under common management or common control or one is the subsidiary of the other. MRTPO Sectopm (1)(b).
J. Are there special threshold calculations for joint ventures?	No.
K. Are there special threshold calculations for particular sectors (e.g., banking, airlines) or particular types of transactions (e.g. partnerships, financial investments)?	No.

**6. Transactions in which the acquiring and acquired parties are foreign
Are there special rules or exemptions**

A. With respect to application of jurisdictional thresholds?	No.
B. With respect to information required (e.g. information submitted or document legalization)?	No.

C. With respect to waiting periods?	Not applicable.
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7. Simplified procedures

Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, waivers, etc.).	There are no special procedures.
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8. Timing of notification

A. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?	Section 16(1)(i) of the MRTPO provides that registration must be made upon an agreement.
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<p>B. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event.</p>	<p>See response to 8.A. above. Registration must be made within 10 days under Rule 10, MCA Rules, 1971.</p>
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9. Documents to be submitted

<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</p>	<p>The registration forms do not require documents to be attached. However, pursuant to Section 21 of the MRTPO, the MCA may call for any person to furnish information concerning the activities of an undertaking which may include a copy of the agreement, annual reports, market surveys, reports by independent consultants, and any other relevant documents.</p>
<p>B. Are there any document legalization requirements (e.g., notarization or apostille)?</p>	<p>Affidavits and statements must be attested/verified by a Notary Public/oath commissioner. Similarly, a power of attorney submitted by counsel to a party must be stamped with judicial stamps as prescribed by law.</p>

10. Translation

<p>Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which</p>	<p>All documents and forms submitted to the MCA must be in English.</p>
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<p>translation is required, requirements for certification, language(s) accepted, and whether selected excerpts are accepted in lieu of complete documents.</p>	
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11. Review and waiting periods/Suspensive effects

<p>A. Describe any applicable review and/or waiting periods following notification, including whether closing is suspended during any initial review or waiting period and/or further review periods (i.e., second-phase proceedings).</p>	<p>There are no waiting or review periods following registration. Note that under Section 13 of the MRTPO, in the course of any proceeding under Section 11 of the MRTPO, the MCA , after giving the persons or undertakings a chance to be heard, may issue an interim order directing persons or undertakings to do or refrain from doing any act or thing specified in the order.</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>No.</p>
<p>C. Are the applicable waiting periods limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available</p>	<p>Not applicable.</p>

<p>to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance. (e.g. request for a derogation from the bar on closing, commitment to hold separate the local business operations.)</p>	
<p>D. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period. Is there a statutory maximum for extensions of the review period by the authority.</p>	<p>Not applicable.</p>
<p>E. Describe any procedures for obtaining early termination of the applicable waiting period, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>Not applicable.</p>
<p>F. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p>There are no waiting periods following registration. If a person or undertaking is subject to an order (see response to Item 11 A. above) the person or undertaking can approach the MCA for a grace period or extension. The MCA reviews such requests on a case by case basis with reference to what is in the public interest.</p>

12. Responsibility for notification / representation

A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both?	The person responsible for the affairs of an undertaking is responsible for the registration. MRTPO, Section 16.
B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?	There is no provision in the MRTPO for public tenders.
C. Are the parties required to appoint a joint representative?	Not applicable. Parties are required to register separately
D. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	Rule 8 of the MCA Rules, 1971, provides that any person entitled or required to attend before the MCA in connection with any proceeding under the MRPTO, except when required to attend personally for examination under oath or affirmation, may be represented by a person authorized by him in writing on his behalf, or by an Advocate or and Accountant.
E. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?	A power of attorney must be apostilled and signed by the party and counsel as required by the prevailing law of the person's country.

13. Filing fees

A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined?	Every registration must be accompanied by a fee of Pak. Rs 100/- MCA Rules 1971, Rule 10(3).
B. Who is responsible for payment?	The person responsible for the affairs of an undertaking.

C. When is payment required?	At the time of registration.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	MCA Rules 1971, Rule 17(2) provides for payment of fees by bank draft in favor of the Monopoly Control Authority Fees Account National Bank of Pakistan, Main Branch, Islamabad.

14. Confidentiality

A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?	<p>The MCA does not have a press or media policy and currently does not publicize any proceedings.</p> <p>Registrations are maintained in files at the MCA. All particulars stated in a registration are recorded in a register. If a party or undertaking has applied to treat portions of the registration as a trade secret, the MCA maintains that information in a confidential portion of the register designated as a Special Part.</p>
B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?	<p>Yes. Any party or person may apply to inspect the registers and files, excluding the Special Part, maintained by the MCA upon payment of fee of Pak. Rs 10.</p> <p>The MCA register may be inspected during working hours under the supervision of the Registrar or his staff. The party or person may not make copies of anything in the register, but may be allowed to take notes.</p>
C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?	Yes, see response to 14.b. above.
D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.	Yes, see response to 14.B. above.

<p>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	<p>No.</p>
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15. Sanctions/penalties

<p>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods?</p>	<p>Under Section 19 of the MRTPO, the MCA may direct a person or undertaking to pay a penalty not to exceed one lakh of rupees for a willful failure to register as required.</p>
<p>B. Which party/ies are potentially liable?</p>	<p>Any person or undertaking designated to do so in an MCA order.</p>

16. Judicial review

<p>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</p>	<p>MCA orders passed under Sections 11 (referring to Section 3 - undue concentration of economic power is prohibited) or 19 (payment of penalty) of the MRTPO may be appealed in the High Courts of Pakistan within 60 days from the date of the MCA order. MRTPO, Section 20</p>
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17. Additional filings

Are any additional filings/clearances required for some types of transactions, e.g., foreign investment or regulated sectors?

No.

18. Closing deadlines

When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?

If the transaction is subject to an MCA order, a time period may be specified in the order.