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E-COMMERCE POLICY FRAMEWORK OF PAKISTAN

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**Government of Pakistan
Ministry of Commerce & Textile
(Commerce Division)**

FOREWARD

The emergence of E-Commerce platform has paved the way for inclusive trade and economic development. Global E-commerce has been growing exponentially since the last two decades and recorded sales growth of 13% in 2017 with estimated sales of \$29 trillion. In addition, the number of online shoppers grew by 12% and reached 1.3 billion.

E-Commerce can help developing-country entrepreneurs to overcome the usual trade channels and reach a global market since Internet-based enterprises can be operated at very small scale. Studies show that Micro Small and Medium Enterprises (MSMEs) that use E-commerce platforms are around five times more likely to export than those in the traditional economy.

Moreover, It has been estimated that the costs associated with geographic distance drop by as much as two-thirds for exporters who use digital trading platforms. This implies potentially substantial gains for small and medium-sized enterprises, as well as female-headed enterprises, which are now able to 'go global' much more easily than was possible in the past.

E-Commerce in Pakistan is at a nascent stage with modest Internet retail sales despite 38 million Internet mobile users. However, it is an emerging sector with a noticeable surge in recent past in online vendors, local E-Commerce platforms and online payment facilities introduced by banks and large cellular companies. The number of registered e-commerce merchants has risen by 2.6 times and e-commerce payments have surged 2.3 times in a span of just twelve months. E-Commerce businesses such as daraz.pk, pakwheels.com and others are already achieving significant business in Pakistan indicating a positive trend for a growing e-commerce sector of Pakistan. Pakistan is also a leader in mobile banking transaction in South Asia.

The formulation of the E-Commerce policy is a step in fulfilling the Government vision and commitment to effectively promote and encourage business, especially MSMEs to go online and foster holistic growth of E-Commerce in Pakistan. The policy covers and provides guidelines on key components for promotion of E-Commerce including regulatory environment, financial inclusion and digitization through payment infrastructure, empowering youth and SMEs, consumer protection, taxation, ICT infrastructure, logistics, data sovereignty and engagement in multilateral negotiations.

Around 64% of Pakistan's population is under the age of 29 and are more open to embrace technology. The Government, cognizant of Pakistan's youth potential, has already launched Kamyab Jawan and Ehsas programs which will be complemented by this policy. Pakistan and its youth have an exciting journey ahead and the promotion and regulation of E-Commerce becomes more significant in providing employment to around 130 million Pakistan's youth in the next 30 years. Let us work together to reap the benefits of E-Commerce and create a better future.

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ABBREVIATIONS AND ACRONYMS

\$	United States Dollar
ADB	Asian Development Bank
ATM	Automated Teller Machine
AWB	Air-Way Bills
B2B	Business-to-Business
B2C	Business-to-Consumer
B2G	Business-to-Government
CNP	Card-Not-Present
CP	Card-Present
ETO	Electronic Transactions Ordinance, 2002
FBR	Federal Board of Revenue
IP	Intellectual Property
IT	Information Technology
ITO	Income Tax Ordinance, 2001
G2B	Government-to-Business
GST	General Sales Tax
MCB	Muslim Commercial Bank Limited
MoC	Ministry of Commerce, Federal Government of Pakistan
MoITT	Ministry of Information Technology and Telecommunication
M2M	Machine-to-Machine
NSW	National Single Window
OECD	Organization for Economic Co-operation and Development
PSEFT	Payment Systems and Electronic Fund Transfers Act, 2007
PECA	Prevention of Electronic Crimes Act, 2016
PSO	Payment System Operators
PSP	Payment System Providers
PTA	Pakistan Telecommunication Authority
3PL	Third Party Logistics
SBP	State Bank of Pakistan
UNCTAD	United Nations Conference on Trade and Development
WeBOC	Web Based One Customs
WTO	World Trade Organization

1. EXECUTIVE SUMMARY

Pakistan's e-commerce industry is emerging rapidly and has the potential to strengthen country's economy by creating more job opportunities, linking remote areas to mainstream, development of small and medium enterprises and finally enhancing exports through online platforms. Capitalizing on the efforts made by the public and private sectors so far, Pakistan now needs to step up and take measures to increase the competitiveness of local e-commerce players, thereby enhancing their share in local and global trade. For this, it is crucial to develop a policy framework that primarily aims to lower the access threshold for enterprises to become part of the e-commerce environment by ensuring consumer protection, enhancing role of financial sector in optimizing growth and realization of the revenue generating potential in the medium and long run. All these measures would lead to reduction in the cost of doing business for current and prospective e-commerce enterprises. This policy framework provides a glimpse of the current status of Pakistan's e-commerce with primary focus on **(i) regulatory and facilitation framework, (ii) Financial inclusion and digitization through payment infrastructure, (iii) empowerment of youth and SMEs through e commerce, (iv) taxation issues, (v) consumer protection in the digital environment, (vi) ICT Infrastructure and Telecom Services in Pakistan, (vii) issues relating to logistics and e commerce (viii) data ownership/sovereignty and data localization.**

Key stakeholders identified in this policy framework are e-commerce business enterprises including the innovative digital industries, free lancer service providers financial institutions, revenue authorities, regulatory bodies, entities concerned with local/cross-border logistics and the consumers. For operational matters which are cross cutting in nature and deals with issues pertaining many different domains, a National E Commerce Council will be constituted. The Council would work as a single window for policy implementation and review to facilitate E-Commerce players. While reflecting on the current issues being faced in each of the above-mentioned eight areas, this policy framework discusses the views and concerns of all stakeholders and makes recommendations based on them. The recommendations in the policy framework have been proposed with the objective of providing an enabling environment to the private sector, enhanced employment opportunities to youth, women entrepreneurs including SMEs, while allowing the government to regulate e-commerce sector for the benefit of the public at large. The proposed policy framework tend to facilitate freelance service providers, existing e-commerce businesses and also encourage entities involved in traditional commerce to venture into e-commerce, thereby improving prospects of productivity, generation of new employment opportunities and enhanced levels of consumer protection.

Legal and Regulatory Environment: Pakistan's basic laws concerning Information Technology (IT) extend legal recognition to transactions carried out in the digital environment and electronic payments. However, generally e-commerce is regulated under the statutes concerning traditional commerce. This gives rise to various concerns for the industry and

the concerned authorities. For addressing these issues it is necessary to take measures for allowing re-export/re-shipment of goods, launch National Single Window (NSW) for speedy processing, especially for export of large volume of low cost goods/items. To cater for the possible impact of import of digital goods in Pakistan, infrastructure and technical capacity should be developed to enable the government to impose customs duties on such products on their import. At present, there is no mechanism/registry for e-commerce businesses. This policy framework proposes a simplified online registration of e-commerce businesses with the Securities & Exchange Commission of Pakistan (SECP) and making it mandatory for them to maintain a physical address in Pakistan. In addition, for enhancing consumers' trust, measures for protection against counterfeit goods and a code of conduct are proposed under this Policy Framework.

Financial inclusion and digitization through payment infrastructure: With e-commerce enterprises making their presence felt, laws and regulations have been introduced to enable the existing financial institutions to cater for electronic transactions and encourage new private sector intermediaries to enter the field. To discourage CoD (cash on delivery) and digitization of economy slabs will be introduced after three years. Several e-payment solutions are available however, a lot more is required to be done to address the needs of a large segment of population which the e-commerce industry shall target as its consumer base in future. In relation to this, it is essential to enable Card-Not-Present (CNP) transactions and explore possibility of co-badging with international card payment schemes. Moreover, it is proposed that banking services should be improved for promoting use of local online-Merchant accounts by online businesses and exploring the possibility of establishing an international payment gateway in Pakistan.

Empowering Youth and Small and medium enterprises (SMEs) through E Commerce: SMEs can play a vital role in the growth of e-commerce. In order to improve their competitiveness and domestic and international e-commerce arena special initiatives have been proposed for creation of e-commerce business facilitation hubs, establishing a national B2C marketplace, empowering youth and SMEs, access to finance for SMEs to promote digitization and skill development. For this purpose PECA would provide a unified and standardized E-Commerce information management system aiming to provide the credit information and facilitation to all stakeholders to develop a well oiled credit system. PECA to work with the on-going BISP program "Ehsaas" as well as private sector contributors e.g. Akhuwat and Aga Khan Development Network.

Consumer Protection: Existing consumer protection laws in Pakistan do not contain specific provisions for addressing concerns of consumers transacting in digital environment. In relation to this, recommendations have been made for introducing specific amendments in these laws. An important aspect of consumer protection is 'dispute resolution mechanism'. This Policy Framework proposes that it should be mandatory for all online businesses to provide for an efficient customer support and dispute resolution mechanisms and federal and provincial governments should make arrangements for

establishing independent alternate dispute resolution centres for expeditious settlement of disputes.

Taxation Structure: Taxation is one the major issues for stakeholders of online marketplaces. The primary concerns relating to taxation are imposition of minimum income tax, withholding tax and provincial sales tax. This policy framework proposes that for the purposes of provincial sales tax online businesses should be treated at par with other businesses and parallel to that, provincial sales tax regimes should be harmonized to address the concerns of online marketplaces.

ICT Infrastructure and Telecom Services in Pakistan: For holistic growth of e-commerce it is essential to further develop ICT infrastructure in Pakistan and improve telecom services. For this purpose recommendations have been made for shifting focus from commercial hubs and investing in developing infrastructure across the country with uniformity, enhancement of public-private partnership model and establishing a fund for research and development.

Logistics and e-commerce: In Pakistan, business-to-consumer (B2C) e-commerce model has grown significantly in the last few years and this trend is likely to continue. Logistics play a pivotal role in the B2C model. The main area of concern to be addressed is system automation of B2C players and third-party-logistics (3PL) businesses. In addition, within the framework of Pakistan's National Transport Policy a policy on logistics shall be formulated to address concerns relating to e-commerce industry including expeditious processing for export of low-priced small consumer goods. In addition to domestic policy a cross border logistics and e-commerce policy with detailed rules, regulations, tax incentive structure and guidelines shall be formulated to allow Pakistani enterprises to do business with foreign enterprises.

Data protection, Data sovereignty and Localization: Data is termed as 'oil' of the digital industry and is the most valuable resource in the digital economy. To unleash the true potential of e-commerce, it is essential to localize the data generated in Pakistan and prevent its transfer to any other country or any entity not incorporated in Pakistan for the utilization of local digital industry. At present, Ministry of Information Technology and Telecommunication (MoITT) is in the process of formulating Pakistan Cloud Policy. The said policy should also address issues concerning e-commerce.

Overall, this policy framework attempts to pave the way for holistic growth of e-commerce in Pakistan by creating an enabling environment in which enterprises have equal opportunity to grow steadily. It is hoped that Pakistan's e-commerce sector grows exponentially, transforms the conventional business practices and claims a substantial share in global trade, which in turn will create decent work opportunities, sustainable livelihoods and prosperous nation.

2. VISION STATEMENT

This policy framework is based on the vision to create an enabling environment for holistic growth of e-commerce across all sectors of the country, while protecting the interests of consumers and sellers with special focus on development and promotion of SMEs, for making Pakistan a significant player of the regional and global digital economy.

3. POLICY GOALS

The goal of this policy framework is to recommend and implement policy measures for fostering holistic growth of e-commerce in Pakistan by reducing cost of doing business and thereby stimulating local digital economy. Although the digital industry is still in its infancy in Pakistan, statistical data shows a steady rise in e-commerce transactions and the number of registered e-commerce merchants. In the first quarter of financial year 2017-18, the number of registered e-commerce merchants was 496 which reached 1,094 by year-end and was around 1,242 by the first quarter of 2018-19. E-commerce transactions processed by these merchants are also increasing proportionately.

This policy framework seeks to augment this positive trend and pave the way for developing e-commerce in Pakistan by creating an enabling environment for growth of existing e-commerce enterprises, allowing and encouraging new entrants, facilitating local and cross-border trade (especially exports) by reducing cost of doing business, enhancing competitiveness and contribution to overall digital economy. It will also facilitate Pakistan's implementation of SDG-8 (Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all), SDG-9 (build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation) and SDG-12 (Ensure sustainable consumption and production patterns).

Following from the above, goals of this policy framework are as follows:

- i. To augment e-commerce industry's growth to make it one of the key drivers of Pakistan's economy.
- ii. To provide a single interface to E-Commerce enterprises through a single window hub and a National E commerce Council for review and implementation of Policy
- iii. To streamline laws and regulatory framework for e-commerce businesses in Pakistan both inland and cross border keeping in view the ever changing e-business dynamics
- iv. To contribute achieving higher export growth through enhanced activities from e-commerce platforms.

- v. To promote small e-businesses and create employment opportunities through digital connectivity for empowering youth, especially in remote areas by raising awareness, training and financing
- vi. To provide an efficient e-payment infrastructure that allows for smooth and quick local and cross border transactions by issuing rules, regulations and guidelines.
- vii. To ensure data sovereignty/ownership and data localization as a valuable resource for development planning and national security. PECA to monitor and enforce guidelines.
- viii. To create enabling environment for e-businesses to operate and flourish by addressing challenges and gaps more specifically related to legal systems, taxation structures, digital infrastructure.
- ix. To create such an e-commerce ecosystem, which is responsive to consumers' interests including dispute resolution
- x. To ensure transparency and accountability in digital industry.

For the purpose of E-Commerce Policy Framework, **E-Commerce** is defined as *buying and selling of goods or services including digital products through electronic transactions conducted via the internet or other computer-mediated (online communication) networks.*

Micro enterprise

Small enterprise

Medium enterprise

4. CURRENT STATUS OF E-COMMERCE

For the purpose of e-Commerce Policy Framework, **e-Commerce** is defined as *buying and selling of goods or services including digital products through electronic transactions conducted via the internet or other computer-mediated (online communication) networks.*

E-commerce offers huge opportunities to the developed and less developed world alike. These primarily include access to distant markets, rapid exchange of goods and services, secured payments, promoting innovation and creating employment opportunities. It has the potential to provide the less developed world with the opportunity to cover a considerable distance on the road to socio-economic and technological development which it missed at the time of the industrial revolution. In developing countries like Pakistan, e-commerce can play a vital role in improving livelihoods, augmenting enterprise competitiveness and increasing their share in global trade. With respect to increasing the share in global trade and to narrow the digital divide between developed and less developed world, it is essential to take measures which enhance local capacity qualitatively and quantitatively.

Global e-commerce has been growing exponentially since last 2 decades. According to the Information Economy Report (2017), global e-commerce sales amounted to \$25.3 trillion in 2015 in which B2B claimed larger share of \$22.4 trillion and B2C smaller share \$2.9 trillion in 2015.¹ Global growth rate of B2C in 2015 was 20% whereas in Asia-Pacific it was 28%. Overall share of e-commerce in global GDP was 3.1% in 2015, whereas in Asia-Pacific it was 4.5% of GDP, followed by North America at 3.1% and Europe 2.6%. In 2017 Asia-Pacific was the fastest growing region in the global e-commerce marketplace and accounts for the largest share of the world's B2C market, i.e. over \$1 trillion out of the global market of \$2.3 trillion, followed by North America with \$644 billion.²

UNCTAD's latest figures reveal that global e-commerce sales grew 13% in 2017 and reached an estimated \$29 trillion. The number of online shoppers grew by 12% and reached 1.3 billion. While most of the online buyers preferred their local markets, but cross-border buying increased from 15% in 2015 to 21% in 2017. According to UNCTAD this growth was mainly driven by online buyers in the United States. B2B sales accounted for 88% of all online sales, but B2C had a better growth rate of 22% to reach 3.9 trillion in 2017.³

¹Information Economy Report 2017: Digitization, Trade and Development, United Nations Conference on Trade and Development, p. 27

²Embracing the E-commerce Revolution in Asia and the Pacific, Asian Development Bank, June 2018, p. 4

³Global e-commerce sales surged to \$29 trillion, UNCTAD, published on March 29, 2019, available at <https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2034>, last accessed on April 28, 2019

E-Commerce in Pakistan

E-commerce has strong potential to expand in Pakistan and to help accelerate national economic growth. Following intensive investment in ICT infrastructure since the late-1990s, Pakistan in the past two decades has developed a strong ICT sector by liberalizing the telecommunications sector, creating an environment conducive to an expansion of its information technology (IT)-enabled services industry, and cultivating an information society with wider diffusion of ICTs and the Internet. Pakistan, which has about 60% of its 200 million population in the 15 to 29 age group, represents an enormous human and knowledge capital. Pakistan has more than 2000 IT companies & call centers and the number is growing every year. Pakistan has more than 300,000 English-speaking IT professionals with expertise in current and emerging IT products and technologies, 13 Software technology parks, More than 20,000 IT graduates and engineers are being produced each year coupled with a rising startup culture.

In Pakistan, the overall share of services sector in real GDP is around 60% at end FY 2018, and around 56% in nominal GDP; the latter is higher than South Asia average. Service sector has been witnessing a shift towards the digitization. Growing internet penetration is revolutionizing the way consumers and businesses gain and share information, executes transactions, and manages their day- to- day operations. Improving digital connectivity is reshaping consumer behavior, which is increasingly tilted in favor of convenience, cost savings, and customized retail experiences. Businesses are also capitalizing on opportunities enraging from the digitization, such as supply chain efficiency, lower transaction cost, and enhanced flexibility in addressing consumer needs. Pakistan is among the economies where digitization is triggering changes in some components of the service sector. The shift is most prominent in areas like e-commerce, fintech, and e-government, where new ventures and approaches to deliver services are picking. Specifically, the market size of e-commerce has grown significantly in Pakistan over the last few years, transforming the way consumers interact with – and especially pay businesses.

As per UNCTAD's B2C E-Commerce Index, in 2017 Pakistan ranked 120 (out of 144 countries) on e-commerce readiness index with a score of 24.0.⁴ However, a noticeable surge has been witnessed in recent past in the number of online vendors, local e-commerce platforms, online payment facilities introduced by banks and large cellular service providers. Improved internet accessibility and significant efforts of the government for financial inclusion in most parts of the country can be rightly credited for this. PTA's data reveals that as of March 2019, there were 159 million cellular subscribers, 66 million 3G/4G subscribers and 68 million broadband subscribers.⁵ From 2017-2018 the number of local e-commerce merchants increased 2.6 times and e-commerce payments increased by 2.3 times in just 12 months.⁶ SBP's Annual Report on the State of Economy 2017-18 shows that sales of local and international e-commerce merchants were Rs. 20.7 billion in

⁴UNCTAD B2C E-commerce Index 2017, UNCTAD Technical Notes on ICT for Development No. 9

⁵<https://www.pta.gov.pk/en/telecom-indicators>

⁶<https://www.dawn.com/news/1397446>

2017 growing by 93.7% in 2018 to reach Rs. 40.1 billion. These figures do not include all the post-paid cash-on-delivery transactions which account for 60% of the total value of e-commerce in Pakistan.⁷

Around 64% of Pakistan's Population is under the age of 29 and the country will continue to enjoy the youth bulge for another 30 years or so, according to a report from United Nations Human Development, 2017. As young population is more open to embrace technology as compared to old generation, the promotion and regulation of e-commerce becomes more significant in providing employment to around 130 million Pakistan's youth in the next 30 years.

Although the pace of increase in e-commerce adoption in Pakistan has been encouraging over the past few years, the country still lags behind the regional and comparable economies in terms of e-commerce. Therefore, there is a need to formulate a comprehensive policy to not only provide impetus to e-commerce but also to regulate the businesses.

From commercial and technical perspective there are 5 generally recognized classifications of e-commerce. These are business-to-business (**B2B**), business-to-consumer (**B2C**), business-to-government and government-to-business (**B2G/G2B**).

- i. **B2B** is e-commerce between businesses such as between a manufacturer and a wholesaler, or between a wholesaler and a retailer. This is the exchange of products, services, or information between businesses rather than between businesses and consumers.⁸
- ii. **B2C** is e-commerce entails businesses selling to the general public, typically through catalogues that make use of shopping cart software.⁹
- iii. **B2G/G2B** commerce is generally defined as e-commerce between companies and the public sector. It refers to the use of internet for public procurement, licensing procedures, and other government related operations.¹⁰
- iv. **C2C** is a type of trade relations where both sellers and buyers are consumer and it mostly happens through online auction or trade website, e-commerce between the consumers has started picking up with the popularity of shared economy concept.

⁷State of Economy, Annual Report 2017-18, Chapter 7 Digitization of Services in Pakistan, State Bank of Pakistan

⁸e-commerce in developing countries – Opportunities and challenges for small and medium-sized enterprises, World Trade Organization, Geneva 2013

⁹ Ibid

¹⁰ Ibid

5. NEED FOR AN E-COMMERCE POLICY

As the role of e-commerce is increasing in all sectors, many developing and less developed countries have taken measures to regulate it to steer the growth of digital economy for making it beneficial for their people. In 2018 MoITT formulated its Digital Pakistan Policy which, *inter alia*, provided for continued cooperation with MoC to formulate e-commerce framework/policy guidelines in consultation with relevant stakeholders.¹¹ In line with this policy commitment and present government's resolve to champion Pakistan's journey towards a knowledge economy, digitization and boost IT exports with a cross-cutting strategy,¹² it is necessary to formulate an e-commerce policy framework which can pave the way for achieving these objectives and steer this burgeoning sector to develop exponentially.

The expected surge in e-commerce raises serious concerns in relation to data ownership, data localization and access to emerging technologies which necessitate the existence of a policy framework that enables and ensures sustained economic growth by allowing deriving economic benefit from the data generated in Pakistan, while protecting the personal data of the citizens.

As the international mega-corporations (like Alibaba) are entering the Pakistani market, the policy framework can facilitate entry of other such entities, especially local businesses, for creating a competitive environment which will raise the standard of local industry and also benefit the consumers. At the same time it is important to address consumers' concerns which are bound to increase proportionate to e-commerce activities. To steer the growth of e-commerce a broad set of measures is needed for addressing issues in various domains, including removing regulatory inconsistencies, ensuring a level playing field for all stakeholders of the e-commerce market, transparency in the economic activities of e-commerce industries and harmonizing tax systems.

All of the above aspects of e-commerce or digital economy require formulation of an overarching policy framework which can pave the way for specific and objective policy making by the departments and agencies in their relevant spheres.

Here it is essential to add that this policy framework needs to undergo a periodical review on a yearly basis to cater for new developments in the digital economy and address any concerns which may arise from time to time.

Key aspects concerning e-commerce

This policy framework covers the following key areas for creating an environment which is conducive for growth of e-commerce by addressing the main challenges faced in each area:

¹¹Digital Pakistan Policy(2018), Ministry of IT & Telecom, page 8

¹²The Road to Naya Pakistan, PTI Manifesto, 2018

- i. E-commerce regulatory environment
- ii. Financial inclusion and digitization
- iii. SME and Youth Empowerment through E-Commerce
- iv. Consumer protection in digital environment
- v. Taxation on e-commerce activity
- vi. ICT infrastructure
- vii. Logistics for e-commerce retailers and marketplaces
- viii. Data sovereignty and localization
- ix. Global connectivity and Multilateral Negotiations

Initially, five Working Groups were formed by the Ministry of Commerce (**MoC**) for working on each of the above-mentioned areas. Composition of Working Groups is given in Schedule A. In the light of working groups recommendations, 8 policy areas have been identified in this document with recommendations for facilitating E-Commerce in Pakistan.

I – E-COMMERCE REGULATION AND FACILITATION

Existing Legal and Regulatory Environment

Pakistan's existing e-commerce regulatory framework primarily deals with electronic transactions in general, including payment cards, internet banking, branchless banking, internet and branchless banking and Payment System Operators (PSOs)/Payment System Providers (PSPs).

The first legislation to give legal recognition to electronic documents, records, information, e-signatures, communications and transactions was the Electronic Transactions Ordinance, 2002 (**ETO 2002**). E-commerce is powered by online payment systems. For this purpose, Payment Systems and Electronic Fund Transfers Act, 2007 (**PSEFT 2007**) was enacted which provides for establishment and operations of 'Payment System Operators' (PSOs) and 'Payment System Providers' (PSPs) in Pakistan. Later, Pakistan Electronic Crimes Act, 2016 (**PECA 2016**) defined offences and prescribed punishments. Together ETO 2002, PSEFT 2007 and PECA 2016 provide the basis of legal framework for e-commerce in Pakistan. In addition to these main statutes, there are various regulations of SBP concerning payment cards,¹³ internet banking security frameworks,¹⁴ cyber-security controls¹⁵, non-banking electronic money institutions¹⁶ and branchless banking framework.¹⁷ Cross-border trade is controlled by the Federal Government through import and export policy orders issued under the Imports and Exports (Control) Act, 1950 and custom duties are collected under the Customs Act, 1969 (**Customs Act**). Remission and receipt of payments is controlled by SBP through various regulations relating to local and cross-border payment mechanisms.

Key Issues

- i. **The Existing laws** give legal recognition to online transactions, documents and e-signatures and cater for basic essentials of e-commerce. However, the said laws will have to be amended from time to time to keep pace with new developments as new and innovative e-businesses evolve. Apart from laws and regulations specific to online/electronic transactions and businesses, other general laws of Pakistan, including IP laws, are applicable to e-commerce businesses just like any other form of business. Moreover, there are laws specific to particular sectors and industries which are also applicable to online businesses.
- ii. **Consumers' trust and confidence** is an essential feature of cross-border e-commerce. Global practices especially in advanced economies include return of

¹³ Regulations for Payment Card Security, 2016

¹⁴ Regulations for Security of Internet Banking, 2015

¹⁵ Regulations for Prevention against cyber-attacks, 2016

¹⁶ Regulations for Electronic Money Institutions, 2019

¹⁷ Branchless Banking Regulations, 2016

faulty products and re-export by the producers. The system in Pakistan does not allow suppliers to re-export such products.

- iii. **Cross-border trade** is an important feature of e-commerce. Online platforms offer consumer goods to large consumer markets. For an export oriented e-commerce industry export processes should be efficient enough to process a large number of low value transactions. The existing system of WeBOC does not have this efficiency. FBR (Customs) is already working on National Single Window which is expected to allow speedy processing which will help export of consumer goods through e-commerce platforms.
- iv. **Digital goods (e-goods)** include e-books, movies, software, manuals and any item which can be electronically transferred and stored. Its most advanced form is additive manufacturing products ('3-D Printing') using computer designs for manufacturing complex machinery and electronics etc. At present e-goods are not subjected to import taxes, but this issue is being discussed among the developing countries being net importers of these goods. In 2018 Indonesia added electronically transmitted 'software and other digital products' to its Harmonized Tariff Schedule.¹⁸
- v. **Free lance service providers** have a huge potential to bring foreign exchange to the country, Pakistan is 4th in the world indicating more than 40% growth.
- vi. **By keeping the current government's objective of building knowledge economy, digitisation and boosting IT exports as focal points** across all sectors and industries, Pakistan's e-commerce industry can develop at a rapid pace.

Recommendations

- i. MoC will establish a dedicated E-Commerce council with the merger of policy unit in it with a lead role for the private sector.
 - a. The Council will continuously review the E-Commerce evolution in Pakistan with the aim to make policy recommendations.
 - b. E-Commerce Council will also deliberate on realignment of economic incentives for promoting digitization of economy.
 - c. (The Council may also deliberate on the possibility of enacting an Act for constituting Pakistan E-Commerce Authority (PECA) to act as a single window)
- ii. **Re-export of faulty or damaged goods or goods under a contract of warranty should be allowed** under the law:(i) on the basis of presentation of contract documents as evidence; (ii) within a period of 30 days for such re-export; and (iii) levy of duties in case the goods in question are not re-exported within the

¹⁸ Regulation No.17/PMK.010/2018 (Regulation 17) (Indonesia) (2018)

prescribed time limit. The Customs Act (1969), Sales Tax Act (1990), Income Tax Ordinance (2001) and other related regulations should be amended to allow re-export.

- iii. **Implementation of Trade Facilitation Agreement and operationalization of National Single Window shall ensure facilitation of E-Commerce through simplified I&E forms, de minimis and expedited shipment provisions**
- iv. **International best practices shall be continuously reviewed and followed regarding imposition of levies, customs duties and other taxes on e-goods** and FBR (Customs) shall develop the necessary infrastructure and technical capabilities.
- v. **Online/e-commerce businesses should be registered with SECP** compulsorily, irrespective of legal nature of the business entity, i.e. to allow partnership firms and even sole proprietorships doing online businesses to get registered. SECP shall add a separate category of ecommerce and simplify the registration process by making necessary amendments in the Companies Act, 2017 and relevant rules and regulation.
- vi. **For foreign e-commerce businesses**, instead of SECP registration, requirement of registration of business shall be deemed to the extent of only liaison/ branch office registered with Board of Investment.
- vii. **It shall be mandatory for all online businesses to maintain a physical address** in Pakistan.
- viii. **Marketplaces shall follow a code of conduct**, a proposed draft whereof is attached as Schedule B of this policy framework.
- ix. **The Schedule II (Distribution of Business among the Divisions) of the Rules of Business 1973 shall be suitably amended** to allocate the subject of E-Commerce to the Commerce Division. Wherever the word commerce is used, it shall be accompanied by E-Commerce too.
- x. Public and private sector shall be encouraged to use e-Procurement model. To encourage quick conversion of all Government procurement to e procurement, all government procurement shall be shifted to e procurement within three years (Sep, 2022) of the launch of this policy
- xi. To promote exports, all ecommerce companies that use Pakistan Post to export items shall be entitled to an upfront subsidy on the cost of the logistics cost.

- xii. Laws and regulations specific to online/electronic transactions and businesses, other general laws of Pakistan, including IP laws, are applicable to e-commerce businesses just like any other form of business. Moreover, there are laws specific to particular sectors and industries which are also applicable to online businesses.

II – FINANCIAL INCLUSION AND DIGITIZATION THROUGH PAYMENT INFRASTRUCTURE DEVELOPMENT

Existing Payment Infrastructure

An efficient e-payment infrastructure allows for smooth and quick local and cross-border transactions. The payment infrastructure in the country has been evolving over the years and has registered tremendous growth. With 38 banks issuing payment cards and 34 ATM acquiring banks the value of ATM withdrawals in the country have crossed 5 Trillion in the year 2018-19. Apart from this, 5 Point of Sale (POS) acquiring banks have installed over 50 thousand POS machines. In Pakistan, International Payment Gateway Services are being provided by 4 banks i.e MCB, UBL, HBL and Bank Alfalah. Apart from these, 2 microfinance banks also work as merchant aggregators and are providing e-commerce gateway to their clients while leveraging on 4 IPGs in Pakistan.

As of September 2018, the total active credit and debit cards were 1.5 million and 22.4 million respectively.¹⁹ A large number of banks are also issuing proprietary cards to their customers. For domestic payments, PayPak was introduced in April 2016 and provides for ATMs and direct Over the Counter (OTC) purchases using POS. 27 Banks in Pakistan are offering mobile applications to their customers to access their accounts with over 5 million active users to date.

Furthermore, International Remittance Gateways like Payoneer, Transferwise, Xoom etc. are also operating in Pakistan.

Key Issues

- i. **Card-Not-Present (CNP) transactions** Link has enabled its system to allow e-commerce transactions and is inviting banks to integrate the same at their end. This would allow customers in Pakistan to execute e-commerce transactions through PayPak Cards. However, the same would not be viable for cross border transactions.
- ii. **Digital Merchant On-boarding** is not being offered by any bank in Pakistan. Availability of merchant digital on-boarding by banks with simplified Know Your

¹⁹Payment Systems Review, July – September 2018 (Q-1 – FY 19), State Bank of Pakistan

Customer (KYC) requirements would provide an enabling environment for providing cost effective services to the merchants.

- iii. **International Payment Gateways** like VISA and MasterCard exist in Pakistan that facilitates the merchants for e-Commerce transactions, both national as well as international. Moreover, technically, International Payment Gateways for routing payments may be set up in Pakistan. However, it would require bilateral agreements with countries individually to route remittances to Pakistan.

Recommendations

- i. To promote financial inclusion and digitization, COD mode of ecommerce will be gradually discouraged through special incentives for consumers and merchants with an objective to use digital devices for payments. (Within three years of the launch of this policy maximum COD transaction amount will be PKR 5000. Within 10 years all COD will be transferred to e payment.
- ii. For due diligence and certification of freelancers, Ministry of Commerce and Textile (MoC&T) and Ministry of IT and Technology (MoIT&T), in collaboration with the private sector, shall establish a certification mechanism.
- iii. SBP will shortly issue guidelines for improving banking services for merchant accounts to make it attractive for retailers and service providers etc, both online and offline. Special measures shall be taken by SBP for improving capacity of banks and once a minimum qualitative level prescribed by SBP is achieved, the use of local online-merchant accounts shall be made mandatory for all local online businesses in due course.
- iv. Besides Visa, Master, One Link and Payoneer payment gateway facilities, the SBP to further facilitate accessibility to international payment gateway, shall work on allowing an existing international service provider to offer services in Pakistan.

III – EMPOWERING YOUTH AND SMEs THROUGH BUSINESS SUPPORT PROGRAMS AND TRADE DEVELOPMENT

There are more than 3.2 million SME units in Pakistan accounting for 98% of all the enterprises. The sector employs nearly 78 percent of the non-agriculture labor force in Pakistan and contributes more than 30% to Pakistan's Gross Domestic Product. Additionally, the sector represents 25% of exports of manufactured goods and 35% in manufacturing value added.

E-Commerce is an opportunity to bring SMEs in the mainstream and connect them with international markets through global E-Commerce platforms as well as Pakistani online market places. Thereby, E-Commerce can also facilitate enterprises and SME start-ups run by young people, women and rural workers especially the ones involved in manufacturing/supplying local handicrafts. According to Global Payment Platform Payoneers Global Gig Economy Index, Pakistan is the fourth largest growing supplier of freelance services (47%) only behind US, UK and Brazil

Key Issues

- i. **Need for capacity building and Training**
- ii. **Access to good Internet Services**
- iii. **Lack of Public and Private Awareness of changing Global Business and manufacturing practices**
- iv. **Lack of awareness about the benefits and opportunities**

Recommendations

- i. Align SME policy in line with the growing opportunities in E-Commerce. Initiate Pak e-SME program to identify train, enable and connect 50,000 e-SMEs of remote areas of Pakistan to online market places for promoting E-Commerce
- ii. Creation of an e-commerce business facilitation hub. TDAP will develop an E-Platform to bring together all players under one umbrella.
- iii. Augment scale and effectiveness of export enhancing E-Commerce training and talent development among SMEs in collaboration with relevant organizations and associations.
- iv. SMEs shall be connected with global online platforms through digital marketing

- v. Collaboration with relevant organizations for access to finance commerce SMEs through venture capital and seed funding to promote digitization and skill development in Pakistan.
- vi. It will complement Kamyab Jawan program by launching various initiatives for encouraging digital marketing, capacity building and e-commerce enterprises(Annex II)

IV – CONSUMER PROTECTION

Existing state of consumer protection

The ubiquitous nature of e-commerce allows easy interaction, reduced costs for merchants and reduced prices for consumers. However, it also poses a great risk for consumers due to absence of physical contact. As the success of an e-commerce model depends on consumers' confidence, it makes consumer protection one of the core issues confronting its growth. In terms of efficiency and effectiveness, legal framework for consumer protection has to be improved proportionate to the increase in size of the e-commerce market.

Institutional infrastructure for consumer protection is in place at provincial and federal levels in Pakistan under their respective laws which were promulgated many years ago.²⁰ These laws provide for establishment of Consumer Courts and Consumer Protection Councils, formulation of policies for protection of consumers' rights, standardization of products, redress of grievances, liabilities of goods and services' suppliers/providers, better disclosures by service providers and goods suppliers etc. At present, in the largest province of Punjab consumer courts are functioning in 17 of its total 36 districts i.e. less than 50%. In addition to the statutes, SBP also issued Financial Consumer Protection Guidelines in 2014 which are mandatory for financial institutions to implement.²¹

Key Issues

- i. **Existing federal and provincial laws** do not specifically deal with transactions carried out in the digital environment. Although electronic transactions are not specifically excluded from the scope of these statutes, the provisions of these laws do not take into account ubiquitous nature of transaction carried out by consumers

²⁰ Islamabad Consumer Protection Act, 1995, The Punjab Consumer Protection Act, 2005, Sindh Consumer Protection Act 2015, Khyber Pakhtunkhwa Consumer Protection Act, 1997 and Baluchistan Consumer Protection Act, 2003

²¹ SBP's CPD Circular No. 04 of 2014 (August 29, 2014)

with the goods suppliers and service providers. Due to this, at times the consumers are discouraged from approaching consumer courts and the also the courts find it difficult to determine issues such as court's territorial jurisdiction, location of services/goods providers etc.

- ii. **Awareness level of the general public** about consumer protection laws is also very low. Even in the urban areas a large number of people do not approach consumer protection courts for redress of their grievances against goods suppliers and service providers.
- iii. **Efficient alternate dispute resolution systems** are necessary for addressing consumers' concerns expeditiously. In Pakistan there are no noticeable alternate dispute resolution systems. There are a few centres established by the Lahore High Court in a few districts of Punjab in which 'serving judges' play the role of mediators. Various countries, like China, have introduced elaborate multi-tiered systems for dispute resolution in e-commerce industry. For instance, disputes relating to domain names and disputes involving huge B2B transactions are entertained by the Online Dispute Resolution Center of China International Economic and Trade Arbitration Commission (CIETAC), information exchange platform general disputes relating to e-commerce can be resolved by the Online Dispute Resolution Center established by E-commerce Laws Net and Beijing Deofar Consulting Ltd.²² Large marketplaces, such as AliExpress, have developed their own internal complaint mechanisms. Arbitration in China is conducted under a general law which was passed in 1994.²³ A large number of developed, less developed and developing countries have enacted new arbitration laws in the last two decades to ease the burden on courts and to provide for a less time consuming and less costly process for settlement of disputes.

Recommendations

- i. **The existing Federal and Provincial consumer protection laws shall be amended** with consumer centric approach to specifically address, *inter alia*, the following issues:
 - (a) definition of 'online transactions' between consumers and online goods suppliers/sellers and service providers;
 - (b) receiving complaints relating to online transactions between consumers and online retailer shops, marketplaces, and auction places, financial institutions and any other online service provider in any sector;
 - (c) determination of jurisdiction for entertaining complaints involving online transactions;

²² Online Dispute Resolution Center established by E-commerce Laws Nets and Beijing Deofar Consulting Ltd.

²³ Promulgated by the Decree No. 31 on August 31, 1994

- (d) in case of acceptance of a claim, determination of loss caused to the consumer and its payment by the online merchant along with costs of proceedings incurred by consumer, in addition to refund of actual price paid.

The relevant federal and provincial consumer protection laws in which the above proposed amendments shall be made are: (i) Islamabad Consumer Protection Act, 1995;(ii) The Punjab Consumer Protection Act, 2005;(iii) Sindh Consumer Protection Act 2015;(iv) Khyber Pakhtunkhwa Consumer Protection Act, 1997; and (v) Baluchistan Consumer Protection Act, 2003.

For raising awareness about consumer rights it shall be mandatory for online marketplaces to display flash messages related to consumer protection provisions on their websites. Consumer Protection Councils shall hold seminars for public awareness and also provide trainings to the adjudicating officers of consumer courts.

- ii. **Consumer courts shall be established in all districts** of each province.
- iii. **It shall be mandatory for all online businesses to set up efficient customer support system and dispute resolution mechanism.** For this purpose, the guidelines mentioned in Code of Conduct (Schedule B) shall be binding on all e-commerce platforms.
- iv. **The federal and provincial governments shall make arrangements for establishing independent alternate dispute resolution centers** in which independent arbitrators and mediators, and not the serving judicial officer, shall be employed for expeditious settlement of disputes.
- v. **E-Courts shall be established** for quick processing of consumer cases and their disposal in an efficient and effective manner.

V – TAXATION STRUCTURE

Existing state of taxation structure

Businesses of all types are subjected to taxation, whether operating online or not. Taxation of online marketplaces has always been a contentious issue between e-commerce players and the revenue authorities all over the world. On one hand, demand of online marketplaces for tax exemptions seems plausible for their growth and strengthening the economy, on the other hand, tax authorities are rightly concerned about country's revenue base. Likewise, if new technology enabled industry is not allowed due space to grow, it will not be able to bring its promised benefits to Pakistan's economy. This makes taxation of e-commerce entities quite a controversial issue to deal with.

In Pakistan, taxation structure related to e-commerce businesses requires certain reforms in the form of harmonization in sales tax rates, avoidance of double taxation and simplified procedures in filing of tax returns. Currently, provinces are responsible for collection of general sales on services. They are applying different general sales tax rates on services and are using different criteria for collection of sales tax; for instance in case of Punjab Province, the preference is to collect at destination or point of sale, while Sindh Province prefers collecting at the point of origin of services. Current applicable rates of sales tax in Punjab, Sindh, KPK and Baluchistan are 16%, 13%, 15% and 15% respectively. In general, the procedures for filing of sales tax returns are also cumbersome and complicated; however, this may not be the case with online business having transactions' data recorded in digitally format.

Key Issues

- i. **Online marketplaces consider exemption from sales tax, as a major policy intervention for their growth.** On the other hand, Revenue Authorities believe that the concessions in sales tax for online marketplaces would create distortions in general market, where others dealing with same goods are not exempted. Moreover, it will cause undesirable tax aberration in VAT system, revenue loss to the provinces, adverse effects over tax to GDP ratio and increase in undocumented part of economy.
- ii. **Currently, sales tax on services is being applied at provincial and Federal level with different tax rates and application principle** (origin/destination base), due to which online business face difficulty in meeting requirements under their respective statutes and at times face double taxation. Hence, it is essential to harmonize the system and simplify filing procedures.

Recommendations

- i. **Harmonized provincial sales tax regimes through** application of uniform sales tax rates on services and in avoiding double taxation.

- II. **Simplified filing procedure through introduction of one paged sales tax return form.**
- III. **ALL ECOMMERCE COMPANIES SHOULD BE GRANTED A MINIMUM SALES TAX IF APPLICABLE OF 1% FOR 10 YEARS.**

VI – ICT INFRASTRUCTURE AND TELECOM SERVICES IN PAKISTAN

Existing State of ICT Infrastructure and Telecom Services in Pakistan

As per UNCTAD's B2C E-Commerce Index, in 2017 Pakistan ranked 120 (out of 144 countries) on e-commerce readiness index with a score of 24.0.²⁴ However, a noticeable surge has been witnessed in recent past in the number of online vendors, local e-commerce platforms, online payment facilities introduced by banks and large cellular service providers. Improved internet accessibility and significant efforts of the government for financial inclusion in most parts of the country can be rightly credited for this. PTA's data reveals that as of March 2019, there were 159 million cellular subscribers, 66 million 3G/4G subscribers and 68 million broadband subscribers.²⁵ From 2017-2018 the number of local e-commerce merchants increased 2.6 times and e-commerce payments increased by 2.3 times in just 12 months.²⁶ SBP's Annual Report on the State of Economy 2017-18 shows that sales of local and international e-commerce merchants were Rs. 20.7 billion in 2017 growing by 93.7% in 2018 to reach Rs. 40.1 billion. These figures do not include all the post-paid cash-on-delivery transactions which account for 60% of the total value of e-commerce in Pakistan.²⁷

Around 64% of Pakistan's Population is under the age of 29 and the country will continue to enjoy the youth bulge for another 30 years or so, according to a report from United Nations Human Development, 2017. As young population is more open to embrace technology as compared to old generation, the promotion and regulation of e-commerce becomes more significant in providing employment to around 130 million Pakistan's youth in the next 30 years.

Although the pace of increase in e-commerce adoption in Pakistan has been encouraging over the past few years, the country still lags behind the regional and comparable economies in terms of e-commerce. Therefore, there is a need to further strengthen and develop the ICT infrastructure in Pakistan.

Key Issues

- i. Broadband penetration in Pakistan has increased in recent years but still, a large number of population is deprived of internet services, especially in remote and rural areas of Pakistan. Also, the quality of services and internet connection needs to be improved.

²⁴UNCTAD B2C E-commerce Index 2017, UNCTAD Technical Notes on ICT for Development No. 9

²⁵<https://www.pta.gov.pk/en/telecom-indicators>

²⁶<https://www.dawn.com/news/1397446>

²⁷State of Economy, Annual Report 2017-18, Chapter 7 Digitization of Services in Pakistan, State Bank of Pakistan

- ii. There is an inadequate educational capacity to apply ICT solutions in educational ecosystem. A gap exists between IT graduate skills and IT industry needs. Information Technology subjects need to be introduced in the curriculum. People should be made aware of IT importance in businesses.
- iii. Pakistan has only 13 technology parks and a few incubators. Even those that are available lack funding and infrastructure. Furthermore, there is a dire need to develop forward and reverse linkages of the incubators with industry. Lastly, the technological parks and incubators lack global trends.
- iv. Research and Development have been low priority areas in Pakistan, in both public and private sectors. There is a lack of innovation in these areas and measures need to be taken to strengthen R&D in ICT sector.

Recommendations

i. Availability of Internet access across Pakistan through effective implementation of 2015 Telecom Policy

ii.

(TO BE IDENTIFIED BY MOITT)

VII – LOGISTICS

Existing logistics infrastructure

In the context of e-commerce, logistics are the processes of shipping order to customers or transporting an inventory to a merchant. The logistics process keeps a track of goods in transit and up unto the point of delivery. Worldwide, e-commerce companies outsource their logistics to third-party logistics companies (**3PLs**) that specializes in transport and storage, to make it cost effective, e.g., postal services, private courier service providers and cargo services. The use of technology by these 3PLs has significantly improved the tracking of shipments/goods due to which there is a sharp decline in goods that go missing during transit. Moreover, road infrastructure is also an important factor for efficient and timely shipment/delivery of goods/services. In the last 3 decades, Pakistan has developed a reasonably good road infrastructure and 3PLs, both at public and private sector, which in turn have improved reach and reliability of logistics services.

Apart from the private sector courier services (3PLs), which are quite efficient and innovative, Pakistan Post has also developed the ability to play an active role in e-commerce. In January 2019, it launched its first mobile application and export parcel service “**EMS Plus**” which will facilitate especially small businesses to send their consignments/parcels abroad to any destination within 72 hours. At present exporters can avail this service for sending their consignments (of 30 kg or below) to Saudi Arabia, U.A.E., Japan, U.K., Thailand and Australia. The most attractive feature of this service is its cost competitiveness with private courier services

The Federal Ministry of Communication has formulated Pakistan’s National Transport Policy which provides for making sub-sector policies.

Key Issues

- i. Notwithstanding improvement in physical infrastructure, digital infrastructure is relatively weak and at early stage of development, at presents even the major e-commerce marketplaces and retailers manually generate air-way bills (**AWB**) and perform reconciliation.
- ii. There are no automated systems for transportation/delivery at 3PLs’end which may give online stores accurate visibility. Some marketplaces and retailers face inventory challenges, which result in non-availability of stock ordered on the website. This and other related problems arise due to manual synchronization between manufacturers/suppliers and online marketplaces and retailers. A likely result of this is long delays in delivery or even cancellation of orders. This erodes consumer’s trust and confidence which are the two fundamental factors necessary for growth of retail B2C model of e-commerce.

Recommendations

- i. **Automation in logistics should be adopted by e-commerce marketplaces and retailers.** This will entail 3PL businesses to installing systems to offer plugins to online retailers and markets places.
- ii. Identification of logistics infrastructure needed to complement E-businesses
- iii. Ministry of Communications is working on National Logistic Policy, it will include a chapter on facilitating e commerce
- iv.

VIII – DATA PROTECTION, DATA SOVEREIGNTY AND DATA LOCALIZATION

Existing state of data protection in Pakistan

In Pakistan the law relating to data protection can only be found in fragments under different laws. For instance, in section 41 (Confidentiality of Information) of PECA 2016, section 155D of the Customs Act, 1969, ETO 2002 and PTA's Anti-spam Regulations etc. Only recently a Personal Data Protection Bill, 2018 (**PDP Bill**) was tabled, but it is yet to be promulgated. Apart from the fact that it is essential for Pakistani citizens and business concerns to have data protection, it is also necessary to enable local entrepreneurs to offer goods and services to other countries. Regions such as EU do not allow their enterprises to transact with companies of such countries which do not offer same level of data protection which is available under the EU Regulations.²⁸

SBP's Rules and Regulations which contain provisions relating to data protection are given below:

SBP CIRCULARS			
Sr . #	Circular No.	Date	Subject
1	PSD Circular No. 05 of 2016	10-Jun-16	Regulations for Payment Card Security
2	PSD Circular No. 03 of 2015	21-Oct-15	Regulations for Security of Internet Banking
3	BPRD Circular No. 07 of 2016	22-Jun-16	Prevention against Cyber Attacks
4	BPRD Circular No. 09 of 2016	12-Jul-16	Branchless Banking Regulations for Financial Institutions
5	BPRD Circular No. 09 of 2007	13-Jul-07	Guidelines on Outsourcing Arrangement
6	CPD Circular No. 04 of 2014	29-Aug-14	Financial Consumer Protection
REFERNCES IN RULES			
PS &PSEFT Act 2007		Section 13(3), 15, 30-2(i), 30-2(v), 35, 36, 70	
Rules for PSOs/PSPs		Section 6-10(i), Section 6-10(1), Section 7(2), Section 8(2), Section 9 (all clauses) and Section 14(3)	

Existing state of data sovereignty and data localization

²⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, clauses (103) and (104)

At present in Pakistan there is no broad legal framework covering the issue of data localization. Only in the banking sector, due to strict privacy provisions under SBP's various regulations consumers' data cannot be transferred.

Key Issues

Internet activities have a digital footprint which can be used commercially. Data analytics companies use artificial intelligence processing huge amounts of personal, social and commercial data (called 'Big Data'). Internet users' data reveals social and economic habits etc. which allows businesses to improve business models. Data is used for optimizing business processes, healthcare, research, law enforcement and security and town planning etc. which makes it a valuable resource. However, in order to fully benefit from this it is essential for a country to have the digital infrastructure.²⁹

- i. **Data localization means the mandatory requirement to keep and process the data within the country in which it is generated.** Various countries have enacted laws for 'forced localization' of data to restrict its flow out of their country and have made it a mandatory condition for doing business by using such data.
- ii. **There is no law in Pakistan for regulating transfer of data to third parties out of Pakistan.** Home to world's 6th largest population, data generated in Pakistan is a very valuable asset due to its huge size and there is a dire need to ensure that all the data generated in Pakistan is stored and processed in Pakistan as it is primarily ownership of the citizens to whom it relates. Another reason for data localization is national security.
- iii. **At present data localization is mandatory only for the banking sector** as SBP has made it compulsory for all banks operating in Pakistan to keep data of consumers' transactions confidential and within Pakistan. As more and more sectors will involve in commercial activities in the digital environment, similar measures will have to be adopted for addressing concerns of their stakeholders.
- iv. **Ownership of data is determined by location of the data centers where data is stored.** Data centers provide services of storage, processing, management, backup and recovery etc. Due to absence of data localization law, the data generated in Pakistan can be transferred and stored on a server located out of country, the governments, citizens and local companies can neither prevent such transfer nor can exercise any control over it.
- v. **For data localization and exercising sovereign rights over it,** it is essential to first have the infrastructure with capacity to store Big Data. At present there are

²⁹Digital Economy Policy in Developing Countries(2018),Bukht, Rumana&Heeks, Richard, 10.13140/RG.2.2.24272.15364.

only 17 data centers in Pakistan. In comparison, Malaysia has 29 and Singapore has 31.³⁰

Recommendations

MoITT is in the process of formulating Pakistan's Cloud Policy. The said policy should cover the following specific areas in relation to e-commerce:

- i. Establishing Pakistan's sovereign ownership over the data generated in Pakistan.
- ii. Creation of a legal and technological framework to put a statutory bar on cross-border flow of data generated in Pakistan by internet users and from digital devices (Internet of Things (**IoT**)) installed in public spaces.
- iii. Allowing the data collected by digital devices (IoT) to be used by local companies, agencies, institutions and non-profits for research and development at the discretion of the company.
- iv. Restricting transfer of data collected and processed in Pakistan for commercial use, to any third party out of Pakistan. Data required to be disclosed to government of another country shall be disclosed subject to prior permission of the Government of Pakistan.
- v. Making it mandatory to disclose data generated in Pakistan, but stored in another jurisdiction, as and when required by the Government of Pakistan.
- vi. Sharing of community data with start-ups, especially social and creative enterprises for ventures initiated in public interest.

³⁰ Data Center Map, available at <https://www.datacentermap.com/>, accessed on May 5, 2019

IX – GLOBAL CONNECTIVITY AND PARTICIPATION IN MULTILATERAL NEGOTIATIONS

Global e-commerce has been growing exponentially since last 2 decades. According to the Information Economy Report (2017), global e-commerce sales amounted to \$25.3 trillion in 2015 in which B2B claimed larger share of \$22.4 trillion and B2C smaller share \$2.9 trillion in 2015.³¹

According to UNCTAD's B2C E-Commerce Index, in 2017 Pakistan ranked 120 (out of 144 countries) on e-commerce readiness index with a score of 24.0.³² Pakistan is the fourth largest growing supplier of freelance services only behind US, UK and Brazil. Keeping in view the exponential increase in global E-Commerce, a large number of countries signed on a declaration for having multilateral disciplines on E-Commerce in the last WTO ministerial held in Argentina in 2017.

Recommendations

- i. Engagement at the entire multilateral e commerce negotiation forums such as WTO, ITU, UNESCAP and UNCTAD to protect Pakistan's economic interest and global connectivity through market access and effective special and differential treatment
- ii. Transformation of TDAP into a digitally savvy and services oriented organization with capabilities for digital marketing and e commerce promotion.

³¹Information Economy Report 2017: Digitization, Trade and Development, United Nations Conference on Trade and Development, p. 27

³²UNCTAD B2C E-commerce Index 2017, UNCTAD Technical Notes on ICT for Development No. 9

ANNEXURE-I: IMPLEMENTATION OF E-COMMERCE POLICY FRAMEWORK

For implementing the measures proposed in this Policy Framework, the national E-Commerce Council would meet at least twice a year and can form various committees and working groups to oversee the implementation. These Committees shall oversee proper implementation of Policy Framework and, where necessary, shall coordinate to resolve any matters among the provinces or between provinces and the Federation.

Composition of the National E-Commerce Council shall be as under:

National E-Commerce Council:

Public Sector Representatives:

- | | | |
|--------------|---|------------------|
| i. | Commerce Minister | Chair |
| ii. | Secretary, Ministry of Commerce | Secretary |
| iii. | Secretary, Ministry of Finance | |
| iv. | Secretary, Revenue Division | |
| v. | Secretary, Ministry of Information Technology & Telecom | |
| vi. | Secretary, Ministry of Law and Justice | |
| vii. | Secretary, Ministry of Communications | |
| viii. | Secretary TDAP | |
| ix. | Chairman, FBR | |
| x. | Chairman, SECP | |
| xi. | Governor SBP | |
| xii. | All Provincial Chief Secretaries | |
| xiii. | Heads of all Provincial Revenue Authorities | |

Private Sector Representatives:

- i. 5 representatives from SME sector
- ii. 5 representatives of online market places
- iii. 5 representatives of Start-up and Micro-enterprises
- iv. PASHA
- v. 2 Technology solutions companies
- vi. 3 representative from Telecom companies engaged in facilitating mobile wallets
- vii. 2 representatives of large enterprises
- viii. 3 representatives from research institutions / facilitating organization such as ignite

Provincial E-Commerce Council

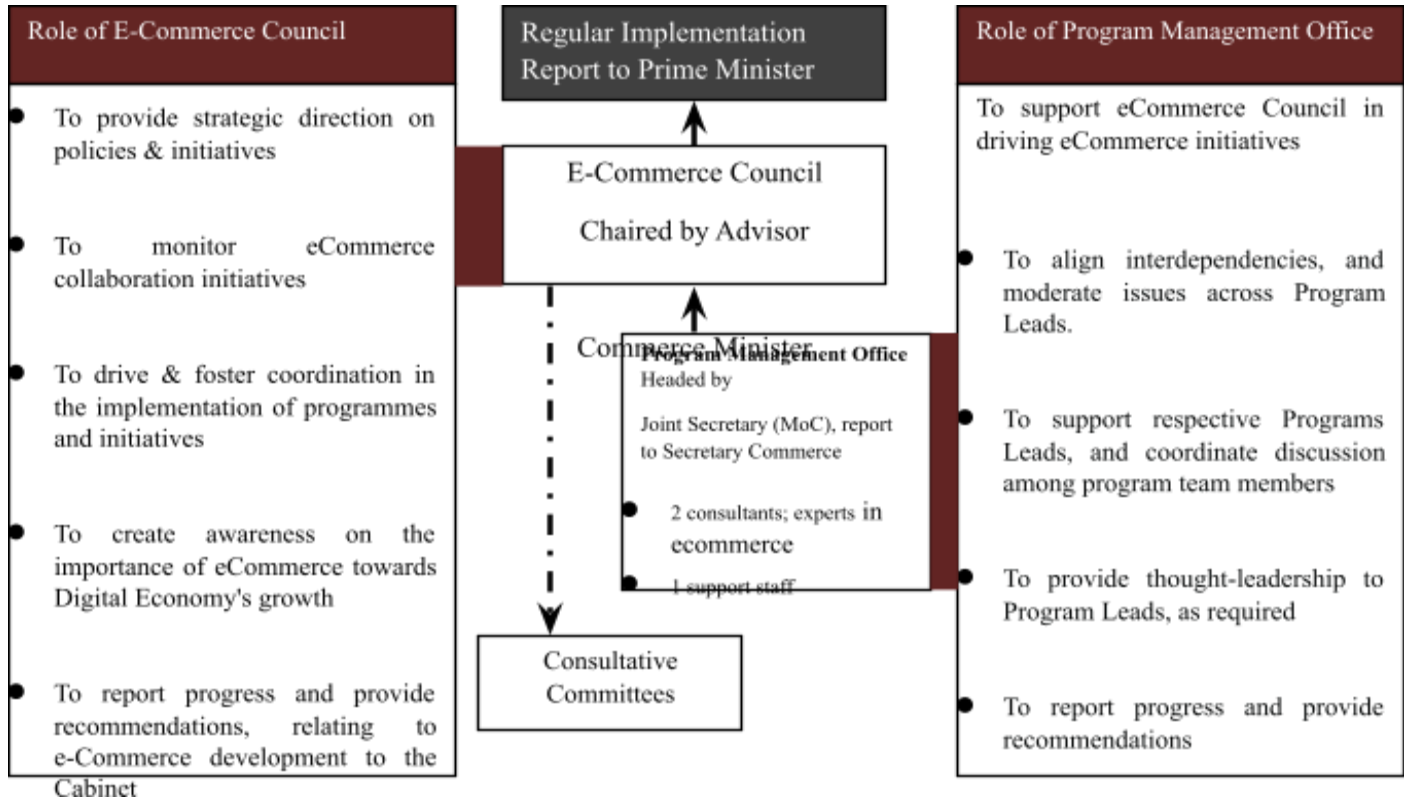
- | | | |
|-------------|--|------------------|
| i. | Chief Secretary | Chair |
| ii. | Secretary, Department of Industry, Commerce and Investment | Secretary |
| iii. | Secretary, Department of Finance | |
| iv. | Secretary, Department of Planning | |

- v. Secretary, Department of Law and Parliamentary Affairs
- vi. Secretary, Department of Transport
- vii. Heads of Provincial IT Boards/Authorities
- viii. Heads of Provincial Revenue Authorities / Boards
- ix. At least 8 representative of relevant private sector related to E-Commerce

Role of the E-Commerce Council

- To provide strategic direction on policies & initiatives
- To monitor E-Commerce collaboration initiatives
- To drive & foster coordination in the implementation of programmes and initiatives
- To create awareness on the importance of E-Commerce towards Digital Economy's growth
- To report progress and provide recommendations, relating to E-Commerce development to the Cabinet

ANNEXURE-II: GOVERNANCE OF E-COMMERCE COUNCIL



**ANNEXURE-III: INITIATIVES THROUGH PUBLIC PRIVATE PARTNERSHIP TO PROMOTE TRAINING,
CAPACITY BUILDING, FREELANCING AND DIGITAL MARKETING.**

1. Creation of an e-commerce business facilitation hub

The e-commerce business facilitation hub will serve as a central point of information on how enterprises can engage in and benefit from e-commerce. It will offer an online portal with relevant information on how to start an online business, highlighting different options depending on the type of goods or services that the enterprise will be offering. The portal will provide easy access to valuable resources, such as established marketplaces, legal information, advisory services and more. It will serve as a gateway for entrepreneurs and SMEs to access relevant government authorities, as well as training programs. Potential partners would include TDAP, SMEDA, Pakistan Post, Easy Paisa, Visa, Google and Incubation centers such as Plan 9. Main components of the initiative are (a) construction of the e-commerce hub platform and the development of relevant resources needed to support aspiring entrepreneurs as well as existing SMEs interested in expanding online, and will also serve as a location where e-commerce service providers such as logistics, banks and export authorities can provide information to SMEs; (b) development and provision of trainings; and (c) development of entrepreneurship diagnostic tools for start-up companies.

2. Empower youth and SMEs for e-commerce

Pakistan's large population of online social media-savvy youths offers potential for developing the e-commerce sector. In 2016, Pakistan's 15–29 years of age comprised more than half of all online shoppers. This initiative would aim at soliciting the help of unemployed university graduates to help SMEs build their own websites or create virtual stores on available e-marketplaces, and promoting freelance opportunities in Urdu. While the Government would play a lead role in catalysing, supporting and coordinating the initiative, it would need to secure a commitment by the private sector to empower youth and SMEs for e-commerce. This initiative is composed of the following components: (a) E-commerce Youth Volunteering Programme, aimed at soliciting the help of unemployed university graduates to help SMEs build websites or to create virtual stores on e-marketplaces; (b) the construction of a local Urdu language freelancing platform aimed at connecting freelancers with SMEs seeking assistance with e-commerce related services; (c) the formation of a virtual network and platform for young entrepreneurs and freelancers to connect with incubators, entrepreneurial institutes and tech parks targeting e-commerce and digital market opportunities; and (d) the creation of digital content and a marketing hub for Urdu content in the industry's key tech parks aimed at leveraging the large youth population .

3. Access to Finance for SMEs to promote digitization in Pakistan

A coordinated micro finance program in collaboration with all micro credit financing facilities with a view to support back end service providers as well as new online market places.

4. Skill Development program

To promote e-commerce as a business opportunity and employment tool, private and public sector will have coordinated programs for skill development at Provincial and District level in collaboration with Kamyab Jawan program.

ANNEXURE-IV: CODE OF CONDUCT FOR ONLINE MARKETPLACES

This code of conduct shall be applicable to online marketplaces ~~as defined in section 2 (38B) of the Income Tax Ordinance, 2001 as an information technology platform run by e-commerce entity over an electronic network that acts as a facilitator in transactions that occur between a buyer and a seller.~~

~~E-Commerce~~ is defined as *buying and selling of goods or services including digital products through electronic transactions conducted via the internet or other computer-mediated (online communication) networks.*

I. Disclosure requirements / Consumer Protection

- a) Prices of goods and services offered on platforms shall be clearly displayed on the website/App. In case of physical goods prices should also be clearly displayed on packaging and invoices. In case of failure a complaint may be sent to the concerned Consumer Protection Council which shall take action against the marketplace.
- b) All marketplaces shall make full disclosure on their websites/Apps regarding data collection. Such disclosure shall also include disclosure about the facility where such data shall be stored and purpose for which it may be used.
- c) Online platforms/websites/Apps shall provide information about the sellers of products. The information shall be provided as clearly as possible and shall contain details to enable consumers to contact the seller. Such information should include name (of individual or business entity), address, telephonic contact and email address of the seller.
- d) All online marketplaces and auction places shall clearly display cell/phone number, email address on a complaint form for redressing consumers' complaints. In addition, a system shall be installed for issuing acknowledgements, manually or automatically, of receipt of complaints. The acknowledgements shall also disclose the process and timelines for expeditious resolution of complaints.

II. Compliance with applicable Laws

- a) Goods shipped from across the border shall be channelized through Customs.
- b) Consumer/Business Payments from Pakistani banks and payment gateways to unauthorized and unregistered (GST non-compliant) sites/apps shall be barred.
- c) Marketplaces shall ensure compliance with all applicable laws. MoITT shall develop mechanisms for ensuring legal compliance.

- The concerned marketplace shall be first sent a notice to take corrective measures within 15 days of receipt of notice.
- In case of persistent failure to comply beyond 15 days period, the non-compliant marketplace shall be taken down and other measures may also be taken for preventing such marketplace from having an access to consumers in Pakistan.

III. Conduct of business

- a) To guard consumers against business malpractices and for privacy protection and safety, it shall be mandatory for all marketplaces having access to consumers in Pakistan to have a registered business entity and a physical address in Pakistan.
- b) Marketplaces shall enter into an enforceable contract with their sellers. In case of any loss to consumers due to non-existence of such a contract, marketplace shall indemnify the consumer.
- c) All marketplaces and auction places shall secure an undertaking and/or a warranty, where applicable, from the sellers regarding genuineness of goods and their condition at the time of sale. Such an undertaking shall be readily forwarded to the consumers upon request.
- d) All marketplaces and auction places shall take adequate measures against sale of counterfeit/pirated goods. Upon receipt of a genuine complaint from a consumer the marketplace shall return the price paid without any deductions and shall forthwith stop hosting the product complained against and shall put a notice about the seller of the products in question.
- e) A seller who continues to place counterfeited goods may be blacklisted for a certain period of time.
- f) Any system of ratings put in place by a marketplace or customer reviews published online shall be done with utmost transparency.
- g) No online marketplace and auction place shall offer such goods for sale on their online platform which are declared 'prohibited' or 'banned' under the prevailing Import Policy Order or any other applicable policy issued by any competent authority under the law. Such products shall be immediately removed from offer within 24 hours of receipt of a complaint or notice.
- h) Any seller offering 'prohibited' or 'banned' goods shall be blacklisted from the platform and the matter shall be reported immediately to the concerned authorities.

ANNEXURE-V: ACTION MATRIX

1. E-commerce Legal and Regulatory & Facilitation Environment

Policy Initiative	Key Areas	Lead / Ministry Department	Facilitating Ministries/Departments/Bodies
Enabling Cross-border trade	- Allowing re-export/re-shipment - Promulgation of National Single Window Act	Ministry of Commerce	FBR (Customs)
Facilitation of digital goods	Building capacity and infrastructure development in tax systems for taxation of digital goods	Ministry of Commerce	FBR
Facilitation of online/e-commerce businesses.	Registration with SECP with mandatory requirement to maintain physical presence in Pakistan	SECP	SECP
Regulation of conduct of business by online marketplaces to prevent malpractices	Code of conduct for online marketplaces	Ministry of Commerce	Consumer Protection Councils

2. Financial Inclusion and Digitization through e-commerce Payment Infrastructure

Policy Initiative	Key Areas	Lead/Ministry Department	Facilitating Ministries/Departments/Bodies
Facilitation of transactions and co-badging with international card schemes	- Enable PayPak to process CNP transactions - Exploring possibilities of co-badging of PayPak with international card payment schemes	SBP	
Facilitation of local online-merchant accounts	Guidelines for improving banking services for local online-merchant accounts	SBP	
Facilitation of order payments	To consider allowing international payment gateways to enter Pakistan or to convert 'Pakistan National Payment Gateway' in 'Pakistan International Payment Gateway'.	SBP	

3. Consumer Protection

Policy Initiative	Key Areas	Lead/Ministry Department	Facilitating Ministries/Departments/Bodies
Strengthening e-commerce in consumer protection laws	- Amendments in federal and provincial Consumer Protection laws to cover e-commerce transactions - Establishing consumer courts in all districts of all provinces - Training of judicial officers	Ministry of Commerce	Consumer Protection Councils
Public awareness	- Messages for public awareness on e-commerce websites/portals/Apps - Seminars for public awareness	Ministry of Commerce	Consumer Protection Councils
Customer Support	Mandatory for online businesses to provide customer support and dispute resolution systems	Ministry of Commerce	Consumer Protection Councils
Online Dispute Resolution	Establishing independent alternate dispute resolution systems	Federal Government/ Provincial Governments	Federal and Provincial Ministries of law and justice

4. Taxation

Policy Initiative	Key Areas	Lead/Ministry Department	Facilitating Ministries/Departments/Bodies
Harmonization of sales tax regimes	Provincial revenue authorities to harmonize their sales tax regimes to avoid double taxation	Provincial revenue authorities / boards	
Streamlining of tax filing system	Introduction of single paged sales tax return form	Provincial revenue authorities / boards / FBR	

5. ICT Infrastructure & Telecom Services in Pakistan

Policy Initiative	Key Areas	Lead/Ministry /Department	Facilitating Ministries/Departments/Bodies
Availability of internet access across Pakistan	- Development of uniform ICT infrastructure across Pakistan especially in remote and far-flung areas		
Development of new IT Valleys and Server Farms	Development of IT valleys and server farms through public private partnership to strengthen the building blocks of ICT	Universal Service Fund,	

	infrastructure such as hardware, software and networks.		
Strengthening of R&D in ICT sector	A separate fund on the analogy of Universal Service Fund but dedicated only for R&D, ideas incubation and business solutions shall be established, to serve as a coordination platform for ICT education institutes, the businesses and entrepreneurs.	Educational Institutes, Private Sector	

6. Logistics and E-Commerce

Policy Initiative	Key Areas	Lead/Ministry/Department	Facilitating Ministries/Departments/Bodies
Automation in B2C	E-commerce marketplaces to adopt automation in logistics	E-commerce marketplaces	
Improving logistical efficiency	Formulation of policy on logistics to address e-commerce related concerns.	Ministry of Communication	

7. Data Sovereignty and Data Localization

Policy Initiative	Key Areas	Lead/Ministry/Department	Facilitating Ministries/Departments/Bodies
Data Sovereignty / Data localization	Pakistan Cloud Policy (under consideration) to provide for data sovereignty, data localization and address issues relating to e-commerce	MoITT	

8. Empowering Youth & SMEs through Business Support Programs

Policy Initiative	Key Areas	Lead/Ministry/Department	Facilitating Ministries/Departments/Bodies

ion of SMEs and Start-ups	▪ Telecom companies to extend coverage to remote areas ▪ SMEDA to impart trainings for App/website development and use of online platforms. ▪ SBP to introduce micro-finance loan schemes	MoITT / SMEDA / SBP	
Initiatives in collaboration with Public-Private partnership	reation of an E-Commerce business facilitation hub onstruction of a national B2C e-Marketplace Empowerment of Youth and SMEs for E-Commerce Access to Finance for SMEs through better design and coordination to promote digitization in Pakistan	ry of Commerce, SMEDA, Microfinance banks, MoITT	