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The Sweet Sounds of the Bazaar: Pakistan's Efforts to Lure Foreign Investors

Mikaal Shoaib

On September 24, 1994, Pakistani Prime Minister Benazir Bhutto announced on Pakistani television a "landmark in the history of Pakistan in private sector investment"¹—the signing of fifteen agreements between U.S. businesses² and the Government pledging an investment of \$4 billion into Pakistan's energy and power generation sector. The leader of the delegation of over eighty American businessmen, U.S. Secretary of Energy Hazel O'Leary, praised the agreements as "revolutionary,"³ noting that they were made possible only by the Pakistani Government's "profoundly deep"⁴ economic reforms that had resulted in an "absolutely perfect"⁵ investment climate. In December, eighteen additional deals pledged an investment of \$2.5 billion more into the energy and power generation sector.⁶

¹ *US Energy Cooperation; Agreements Signed*, BBC Monitoring Service, Sept. 27, 1994, available in LEXIS, Asiapc Library, Paki File.

² The American firms signing agreements included: AES, The Powell Group, ENRON, Armstrong International, Sceptre Power, Intrag, Occidental Petroleum, ABB Energy Ventures, Ogden Projects, General Electric, Solar Turbines, Tenaska, Union Texas, Caterpillar, Synergics Energy Development, and ENTECH. See *Energy Secretary Advances U.S. Projects in Pakistan*, U.S. DEPT. OF ENERGY NEWS, Sept. 26, 1994.

³ Farhan Bokhari, *US Firms in US\$ 4B Pakistan Energy Coup*, BUSINESS TIMES (Singapore), Sept. 26, 1994, available in LEXIS, Asiapc Library, Paki File.

⁴ Tahir Ikram, *U.S.-Pakistan Energy Deals Worth \$4 Billion Signed*, Reuters World Service, Sept. 26, 1994, available in LEXIS, Asiapc Library, Paki File.

⁵ Bokhari, *supra* note 3.

⁶ Andrea Felsted, *US Signs \$2.5 BN Energy Deals with Pakistan*, Lloyd's List, Dec. 20, 1994, available in WESTLAW, Int-News Database. Four deals worth \$2.01 billion covered power generation projects. American participants in these projects included Alterm, American United Machinery, Leesburg Financial, and BBI. Four agreements worth \$425 million covered renewable energy technology and energy efficiency. The American companies involved in these agreements included Kentech, Omega Zond, Synergics, and Condyne. The ten other deals worth \$58 million covered a range of projects from seismic work to the construction of a liquefied petroleum gas terminal.

These developments and Secretary O'Leary's remarks underscore the ambitious program undertaken by the Pakistani Government to attract foreign investment to finance economic reform. The signing of the aforementioned energy investment agreements is only the most recent indication that the Government's ongoing efforts to privatize and liberalize the economy have succeeded in luring foreign investors.

Nevertheless, serious impediments remain. First, infrastructure deficiencies in energy, water supply, transportation, and telecommunication constrain industrial development by delaying project implementation.⁷ Second, the capital city of Karachi is an ethnic battleground.⁸ More than 1000 people died violently in incidents involving political or ethnic violence in 1994, with over seventy deaths in a three week stretch in November.⁹ Thus, despite statistical indications that foreign investment in Pakistan has soared as a result of the Government's ongoing reforms,¹⁰ obstacles to such investment threaten to undermine and unravel the successes achieved thus far.¹¹ Until these obstacles are overcome, Pakistan will not be able to compete successfully for foreign capital with other emerging markets in Asia. Without that capital, the Government's program of economic liberalization cannot be fully implemented. Therefore, to overcome these impediments, the Government must take three critical steps. First, it must increase its own investment in the nation's infrastructure. It must also improve the safety and security of expatriate personnel working in the country. Finally, it must assure investors that economic liberalization will continue. These three measures should be combined with an aggressive marketing campaign to underscore to foreigners the attractiveness of investing in Pakistan.

Deputy Energy Secretary William White and Pakistani ministers also signed five bilateral agreements involving hydrocarbon research, renewable energy resources, and energy conservation.

⁷ *Pakistan-Investment Climate Statement*, Market Reports, Apr. 14, 1993, available in LEXIS, Asiapc Library, Paki File.

⁸ Alistair Lyon, *Karachi Violence Clouds Foreign Investment Prospects*, Reuter Newswire-India, Dec. 5, 1994, available in WESTLAW, Int-News Database.

⁹ Paula R. Newburg, *The Two Benazir Bhuttos*, N.Y. TIMES, Feb. 11, 1995, at 19. *Press Digest—Pakistani Newspapers—November 24*, Reuter Newswire—India, Nov. 24, 1994, available in WESTLAW, Int-News Database; The fact that many Karachi policemen travel to work in civilian clothes for fear of attack further underscores the deterioration of personal safety in the capital. Lyon, *supra* note 8.

¹⁰ Ibrahim Khan, *Foreign Investors Discount Pakistan Nuclear Fuss*, Reuter Newswire-India, Aug. 31, 1994, available in WESTLAW, Int-News Database.

¹¹ Ibrahim Khan, *Foreign Investors Delay Investment in Pakistan*, Reuter Newswire-India, May 10, 1993, available in WESTLAW, Int-News Database.

Part I of this Comment discusses the measures the Government has taken to attract foreign capital since former Prime Minister Nawaz Sharif announced the program of reform in 1991. Part II then considers the success of this and other programs.¹² Part III analyzes the obstacles that remain to foreign investment. Finally, Part IV suggests measures which would overcome these obstacles and provide foreigners with greater incentive to invest in Pakistan.

PART I

In 1991, the newly elected government of Nawaz Sharif launched an ambitious program of privatization, deregulation, and reform aimed at spurring economic development and industrialization.¹³ Recognizing the importance of foreign investment to finance such industrial development, Sharif announced measures to attract more private overseas capital by liberalizing regulations governing foreign investment and exchange.

A) Procedures for Establishing Industrial Projects

Prior to 1991, the establishment by a local or foreign investor of any industrial project contained in the 1989 List required prior approval from the government. Establishment of a project not con-

¹² Including a discussion of the energy investment agreements signed in both September and December 1994.

¹³ Sharif became Prime Minister in October 1990 after his Islamic Democratic Alliance ("IDA") was convincingly elected to power. A coalition of right wing and Islamic parties, the IDA, also known as the Islami Jamhoori Ittehad ("IJI"), won 105 of 206 seats in the National Assembly, with its closest challenger, the People's Democratic Alliance ("PDA") claiming only 45 seats (led by Benazir Bhutto, the PDA later changed its name to become the Pakistan People's Party ("PPP")). The October 1990 election also installed governments in all four provinces that were either run directly by the IDA or involved coalitions which included the IDA as a major, if not dominant, partner. *Political Stability*, Bus. Int'l Forecasting, Feb. 1, 1992, available in LEXIS, Asiapc Library, Paki File.

Sharif's personal history introduced two new elements into the prime ministership. First, as a Lahore-based executive, he was the first Punjabi Prime Minister after 42 years of Sind-based premiers. He was also the first industrialist to assume a position normally filled by a member of the landowning classes. Prior to being elected prime minister in October 1990, Sharif had been the Chief Minister of Punjab province. *The Hurdles Still Facing Pakistan*, Middle East Econ. Digest, Oct. 11, 1991, available in LEXIS, Asiapc Library, Paki File.

Upon assuming power, Sharif introduced and helped pass the Sharia Bill establishing Islamic law as Pakistan's supreme law. *Political Stability*, *supra*. However, he also introduced a radical program of industrialization financed by foreign capital. It is therefore possible that his support for the Sharia Bill was only to assuage the Islamic fundamentalists and thus disarm a group that has always played a vital role in bringing down Pakistani governments. Sharif's appeal of the Federal Sharia Court's ("FSC") ban on the payment of interest as contrary to Islam supports this interpretation. For more on that ruling and on the influence of Islam on foreign investment. See *infra* Part III.E.

tained on that list did not require such approval.¹⁴ The 1989 List included:

- a) industrial projects costing over \$33 million;
- b) all investment in arms and ammunitions; the printing and minting of currency; high explosives; radioactive substances; alcohol and beverages based on imported concentrates; manufacturers of automobiles, tractors, and farm machinery; and petroleum blending products;
- c) any project where foreign equity was fifty percent or more; and
- d) any area where major policy decisions were involved.¹⁵

Because the Government could designate any area as one involving a major policy decision, the establishment of an industrial undertaking in Pakistan effectively required Government approval. In these cases, the foreign investor was required to submit a detailed application to the Investment Promotion Bureau (IPB). That agency then liaised with others to scrutinize the proposal for the foreign exchange and technology transfer benefits it would bring the nation.¹⁶ Corruption made delays inevitable.¹⁷ After examining the potential merits of the proposal, the IPB would then decide whether or not to approve the establishment of the project, and, in cases of approval, the level of foreign participation which would be allowed.¹⁸

In addition, a Prohibited List detailed sectors of the economy in which foreigners were not allowed to invest under any circumstances. Foreign investment in agricultural land, forestry, irrigation, real estate, radioactive minerals, and insurance and health was not permitted.¹⁹

In 1991, the Government reduced the categories requiring its approval for establishing a foreign industrial undertaking to a "Specified List" of four sectors: arms and ammunitions; security printing currency and mint; high explosives; and radioactive substances.²⁰ More recently, in 1993, the Prohibited List was also reduced to allow foreign investment in insurance and health.²¹ No prior government approval

¹⁴ Tony Khindria & Ailish Mahler, *Pakistan-The Next Dubai?*, 19 INT'L BUS. LAW. 450, 451 (Oct. 1991).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ In the aftermath of the Gulf War and the American suspension of economic and military aid to Pakistan, bureaucrats motivated by anti-westernism often refused to grant approval for the establishment of these projects. See *The Pakistan Investment Fund, Inc.*, Form N-2, SEC, Apr. 16, 1992, p. A-2. For more on how corruption has impacted the implementation of reform, Part III.B.

¹⁸ Khindria & Mahler, *supra* note 14, at 451.

¹⁹ This seems to constitute a defacto ban on all ownership of land by foreigners.

²⁰ Khindria & Mahler, *supra* note 14, at 451.

²¹ *AIG to Establish Life Insurance Company in Pakistan*, PR Newswire, May 16, 1994, available in WESTLAW, Int-News Database. In October 1993, the Government announced the opening of the insurance industry to foreign participation provided that the foreign companies

is required for the establishment of any other industrial undertaking—irrespective of the level of foreign equity participation—unless that undertaking falls within one of the four areas of the Specified List. Thus, foreign investors can now own up to 100 percent of the shares of a company engaging in such a project.²²

B) Investment Opportunities Created Through Privatization

A cornerstone of the Government's reforms has been the denationalization of state-owned industries to attract private foreign capital. Beginning in 1991, the Government began the disinvestment of over 115 such enterprises, ranging from ceramics to fertilizers, cement to cooking oil, and automobiles to engineering.²³ By early 1994, more than sixty of these previously state-owned industries had passed to their highest private bidders, as had control of two of the six now denationalized commercial banks.²⁴ Ten new private commercial banks were also established.²⁵ The elimination of government monopoly over oil and gas distribution, electric power generation and distribution, telecommunications, and transportation has also been a promi-

were incorporated as public limited companies and invested a minimum of \$2 million. In May 1994, American International Group Inc. ("AIG") thus announced that its subsidiary, American Life Insurance Company ("ALICO") had received permission to establish a life insurance company in Pakistan, the first foreign insurer allowed in Pakistan in over twenty years. ALICO had previously operated in Pakistan between 1951-1972, "during which time it helped pioneer the development of Pakistan's life insurance market."

²² Khindria & Mahler, *supra* note 14, at 451.

²³ *Incentives for Foreigners in the Insurance Market*, Insurance Research Letter, Jan. 12, 1992, available in WESTLAW, Int-News Database.

²⁴ *Pakistan-Country Marketing Plan FY '94*, Market Reports, Dec. 20, 1993, available in LEXIS, Asiapc Library, Paki File; Joji Takanosu, *Pakistan Tastes Fruits of Liberalization*, Japan Econ. J., Dec. 28, 1992, available in WESTLAW, Int-News Database; *Karachi Pakistan's Future Looks Bleak*, S.F. CHRON., Aug. 3, 1992, at A10. The two privatized banks are Muslim Commercial Bank and Allied Bank of Pakistan. The first bank sold, however, was acquired by an associate of Prime Minister Sharif; it is unclear whether he was the highest bidder. For more on the issue of whether and how such possible corruption has tainted reform efforts, see Part III.B.

²⁵ *Pakistan-Foreign Economic Trends*, Market Reports, March 1992, available in LEXIS, Asiapc File, Paki File. The State Bank of Pakistan heads the banking system. The four public sector nationalized commercial banks—Habib Bank Limited, National Bank of Pakistan, United Bank Limited, and First Women Bank—are the largest deposit institutions and the main source of short and medium-term credit for domestic investment. The twelve private sector Pakistani banks include the ten commercial banks formed in 1992 in response to the Government's privatization policy, as well two banks that were denationalized and sold at auction—the Muslim Commercial Bank and Allied Bank Limited. Of the twenty-four foreign banks, four are American: American Express, Bank of America, Chase Manhattan, and Citibank. Roughly over 80 percent of commercial bank assets in Pakistan are held by the domestic banks. These banks offer the full range of financial services, including foreign trade and working capital financing, term finance facilities, and retail banking. *Pakistan-Country Marketing Plan FY '94*, *supra* note 24.

nent aspect of privatization. For instance, deregulation of the airline industry led to the creation of five private sector airlines.²⁶ The planned privatization of two thermal plants in the Water and Power Development Authority (WAPDA), the state-owned electric utility, attracted over thirty proposals from foreign power companies to build power plants adding over 7500 megawatts of electrical power.²⁷ The late 1994 privatization of 10 percent of the Pakistan Telecommunications Corporation (PTC) also attracted some \$900 million.²⁸

Thus, in combination with the simplification of the procedure for the establishment of an industrial project, privatization has made investment more attractive. Without provisions protecting invested foreign capital, however, it is unlikely that the Government would have been able to attract investment on the scale it has.

C) Exchange Control and Protection of Foreign Private Investment

The Foreign Private Investment (Promotion and Protection) Act of 1976 provides security to foreign investors against the threat of expropriation by guaranteeing compensation.²⁹ Before 1991, the Act gave foreign investors the right to reclaim the amount of the original investment in the currency of origin; these investors could also recover profits earned and any additional amounts resulting from profits that were reinvested or from appreciation of the investment.³⁰ It is also possible for foreign nationals working in industrial enterprises that involve foreign private investment to make remittances of their salaries or of their savings.³¹ However, such repatriation and remit-

²⁶ BOARD OF INVESTMENT, GOVERNMENT OF PAKISTAN, INVESTMENT OPPORTUNITIES IN PAKISTAN 31 (1994). Those five airlines are Aero Asia, Bhoje, Hajveri, Raji, and Shaheen. They service only domestic air routes. The national carrier, Pakistan International Airlines (PIA), serves ninety cities in forty six countries, in addition to thirty-five cities in Pakistan.

²⁷ Jane Macartney, *Foreign Power Companies Rush into Pakistan*, Reuter Newswire-India, June 30, 1994, available in WESTLAW, Int-News Database. The response to the privatization of WAPDA has been so great that officials maintain they have actually been forced to reject proposals from foreigners to build power plants.

²⁸ Antonia Feuchtwanger, *Pakistan-Stability-The Key to the Prize of Reform*, DAILY TELEGRAPH (London), Nov. 29, 1994, at 11. However, the deal turned sour when an error inflating the line utilization figure provided by the Pakistani Government was discovered. The discovery led to a profits warning, with the shares of PTC that were purchased now trading at a discount to the issue price. For more on both deficiencies and improvements in the telecommunications sector, see *infra* Part III.D.

²⁹ *Incentives for Foreign Investors in the Insurance Market*, *supra* note 23. The Act covers investment made through foreign capital by a person who is not a citizen of Pakistan or by a company incorporated outside Pakistan.

³⁰ *Pakistan-Investment Climate Statement*, *supra* note 7.

³¹ *Pakistan-Investment Climate Statement*, *supra* note 7.

tance both required the approval of the central bank. In addition, other measures restricted foreign currency accounts by both firms and individuals, limited royalty and technical fee payments to non-residents, and capped foreign investors' equity share at a maximum of 51 percent of an industrial undertaking.³² Expatriate managerial and technical staff wishing to engage in these undertakings were also required to secure work permits that were sometimes difficult to obtain.³³

While provisions providing both security against expropriation and compensation in the case of acquisition remain in effect, the reforms initiated in 1991 abolished many of the aforementioned restrictive requirements to cut bureaucratic red tape and attract capital intensive projects bringing in advanced technology and managerial expertise. Thus, although foreigners holding 51 percent equity in an industrial undertaking is not uncommon, the Government abolished limits on foreign investors' equity shares to allow investments with 100 percent foreign equity.³⁴ The upper ceiling previously fixed for payment of royalties and technical fees to non-residents and the work permit requirement for expatriate managerial and technical staff were also removed,³⁵ as were government restrictions on foreign currency accounts held by both firms and individuals.³⁶ Investments by non-residents in the shares of Pakistani companies are now fully repatriable, and the repatriation of foreign investors' capital and profits does not require approval from the central bank.³⁷ Such approval is also no longer required either for remittances from dividends or for disinvestment proceeds, except for the profits of banks and insurance, airline and shipping companies.³⁸ In addition, foreign-owned firms today may issue equity shares freely and enjoy higher ceilings on local currency loans.³⁹ Foreign banks can now also compete on an equal basis with their Pakistani counterparts in underwriting equity securities.⁴⁰

³² *Pakistan-Country Marketing Plan FY '94*, *supra* note 24.

³³ *Incentives for Foreign Investors in the Insurance Market*, *supra* note 23.

³⁴ *Pakistan-Country Marketing Plan FY '94*, *supra* note 24.

³⁵ *Incentives for Foreign Investors in the Insurance Market*, *supra* note 23.

³⁶ *Pakistan-Country Marketing Plan FY '94*, *supra* note 24.

³⁷ *Pakistan-Country Marketing Plan FY '94*, *supra* note 24.

³⁸ *Pakistan-Country Marketing Plan FY '94*, *supra* note 24.

³⁹ *Pakistan-Country Marketing Plan FY '94*, *supra* note 24.

⁴⁰ *Pakistan-Country Marketing Plan FY '94*, *supra* note 24. In addition to the aforementioned commercial banks, *see supra* note 25, approximately sixteen specialized banks and development finance institutions exist. Development finance institutions provide medium and long term loans in both Pakistani Rupees and foreign currency to the industrial sector. Their services include underwriting public issues of shares and securities, participating in equity through ownership of shares and debentures, and assisting foreign investors locate suitable investment oppor-

In contrast to these improvements, the public debt markets in Pakistan are relatively undeveloped. Although a number of federal and provincial debt securities are listed, little trading in these securities occurs on the stock exchanges because most institutional investors and banks either hold such securities until maturity or trade them off-market.⁴¹ The Federal Government issues Federal Investment bonds, which constitute the biggest category of listed debt securities.⁴² WAPDA has also issued bonds.⁴³ The most actively traded debt securities are the Rupee denominated Foreign Exchange Bearer Certificates which are issued by the Pakistani Federal Government in exchange for foreign currency deposits.⁴⁴ These have three year maturities but may be cashed on demand into foreign currency.⁴⁵ In late December 1994, the Government also issued its debut Eurobond.⁴⁶

Finally, the Government has made it possible for non-resident firms and individuals to trade freely on the stock exchanges through reforms establishing Special Convertible Rupee Accounts from foreign currency remittances.⁴⁷ Thus, dealers in foreign exchange can now freely import and export foreign currency notes — for instance, to replenish stocks — without central bank approval.⁴⁸ Moreover, although the rupee is not yet fully convertible, anyone can buy foreign exchange on the open market with rupees and use the foreign exchange acquired to open up a Private Foreign Currency Account (FCA) to make payments both locally and abroad; these FCAs are also exempt from income tax.⁴⁹

tunities in Pakistan. In addition the World Bank and the Asian Development Bank channel loans through these institutions to finance both public and private sector projects. The specialized banks, such as the Saudi-Pak Investment Company, are all joint ventures providing term financing and equity support facilities.

There are also about ten investment banks which, through affiliation with major international financial institutions, provide financial expertise to local markets. Forty modaraba companies provide working capital finance under a system in which capital may be drawn by checks and credited on a daily basis, with the pricing of debit balances calculated on a daily basis at a rate agreed upon by the borrower and company according to financial market conditions. Finally, the National Investment Trust, an open ended mutual fund, and the Investment Corporation of Pakistan are large investors in the stock market and provide financing for major projects.

⁴¹ *The Pakistan Investment Fund, Inc.*, *supra* note 17, at 29.

⁴² *The Pakistan Investment Fund, Inc.*, *supra* note 17, at 29.

⁴³ *The Pakistan Investment Fund, Inc.*, *supra* note 17, at 29.

⁴⁴ *The Pakistan Investment Fund, Inc.*, *supra* note 17, at 29.

⁴⁵ *The Pakistan Investment Fund, Inc.*, *supra* note 17, at 29.

⁴⁶ For more on the Government's debut Eurobond, *see infra* Part IV.

⁴⁷ *Pakistan-Country Marketing Plan FY '94*, *supra* note 24.

⁴⁸ *Pakistan-Country Marketing Plan FY '94*, *supra* note 24.

⁴⁹ Khindria & Mahler, *supra* note 14, at 454.

D) Concessions to Industry and Investment-Facilitation Services

The Government also introduced tax concessions and set up mechanisms to facilitate and attract investment in industry. Thus, a three year tax waiver was granted to any industrial sector investment in a developed area of the country before June 30, 1995,⁵⁰ while a five year tax holiday was granted to any industry set up in a rural area before that date.⁵¹ Industries established in such rural areas also benefit from a reduction in payment of the import license fee to two percent from the normal rate of six percent. Moreover, if the industry was established in an underdeveloped area before June 30, 1995, the tax waiver is extended for a period up to eight years.⁵² Machinery not manufactured in Pakistan used to set up an industry in either of these underdeveloped or rural areas is also completely exempt from customs duty, surcharge, and sales tax.⁵³

The Government also created twelve Special Industrial Zones to boost industrial investment. These areas offered investors both the facilities and concessions necessary to utilize local raw materials, technical expertise, and cheap labor to produce sophisticated, export-oriented goods.⁵⁴ Tax holidays, the free import of machinery, materials, and components, and duty-free exports provided further incentives for foreigners to invest in these zones. Other fiscal benefits included exemptions from import licenses, duties, and sales taxes.⁵⁵

⁵⁰ *Liberal Bid for Foreign Investment*, S. CHINA MORNING POST, Mar. 22, 1994, available in WESTLAW, Int-News Database. Developed areas are those near major cities such as Karachi and Lahore.

⁵¹ *Incentives for Foreign Investors in the Insurance Market*, supra note 23. Rural areas are all areas outside the limit of any municipal corporation, municipal committee, cantonment board, and the Islamabad Capital Territory and, in no case, within: 1) the industrial estates of Hub, Nooriabad, Chunian, Hattar, and Gadoon or within ten kilometers of the limits of those estates; 2) forty kilometers of the municipal or cantonment limits of Karachi; 3) thirty kilometers of the municipal or cantonment limits of Lahore; and 4) ten kilometers of the existing limits of municipal corporations and cantonment boards. BOARD OF INVESTMENT, GOVERNMENT OF PAKISTAN, RURAL INDUSTRIALIZATION IN PAKISTAN (1994).

⁵² *Liberal Bid for Foreign Investment*, supra note 50. The underdeveloped areas include the North West Frontier Province, most of Baluchistan, federally administered tribal areas, Azad Kashmir, divisions of Dera Gazi Khan and Bahawalpur in Punjab, and the divisions of Sukkur and Larkana in Sind.

⁵³ *Incentives for Foreign Investors in the Insurance Market*, supra note 23.

⁵⁴ *Liberal Bid for Foreign Investment*, supra note 50; *Exporters Enjoy Incentives*, S. CHINA MORNING POST, Aug. 11, 1994, available in WESTLAW, Int-News Database. Three such zones were established in Punjab, three in Sind, two each in the North West Frontier Province and Baluchistan, and one each in Azad Kashmir and Northern Areas. All of these zones were established in rural, non-commercial areas of the country most needing industrial development and aimed to boost the production and export of electrical, electronic, and engineering products.

⁵⁵ *Exporters Enjoy Incentives*, supra note 54.

Finally, the Government also created several institutions to make investing easier for foreigners. The Board of Investment (Board) was established in April 1994 as an investment promotion and facilitation agency to coordinate investment proposals and their processing with other government departments.⁵⁶ The Board was created as the "focal point of contract [sic] between potential investors and all government agencies which are concerned with investments and responsible for providing infrastructural facilities."⁵⁷ In addition to heightening administrative and procedural efficiency, the Board also sponsors investment conferences for high level delegations of foreign businesspersons and supports investors by arranging feasibility studies for their proposed investments and undertakings at no cost.⁵⁸ The establishment of such an agency, devoted exclusively to the concerns and interests of (mostly) foreign investors exemplifies the Government's commitment to attracting the foreign capital needed for its ongoing economic reform.⁵⁹

E) Marketing the Reforms to Attract Investors

In addition to effecting substantive change, the Government has also marketed these reforms to potential foreign investors. Recognizing that many multinational corporations and investors had very limited knowledge of the nation, the Government planned to spend approximately \$4 million in 1992 to launch a public relations campaign to heighten overseas awareness of the available incentives.⁶⁰ In addition to advertising on Cable News Network (CNN) and in international publications,⁶¹ Pakistani diplomats and other state officials residing overseas often lobbied for investment from local businesspersons.⁶² Even Prime Minister Bhutto entered the public relations cam-

⁵⁶ BOARD OF INVESTMENT, *supra* note 51.

⁵⁷ BOARD OF INVESTMENT, *supra* note 51.

⁵⁸ *Pakistan Moves to Attract Foreign Investment*, XINHUA NEWS, Apr. 30, 1994, available in WESTLAW, Int-News Database. There is no literature on the objectiveness of the feasibility studies. Thus, it is possible that the Board might reach overly optimistic or encouraging conclusions to attract prospective investors when asked to perform a feasibility study.

⁵⁹ See *Exporters Enjoy Incentives*, *supra* note 54. Several other institutions have also been created to provide investors with more specialized services, including research tailored to their individual investment needs. These include the Technology Advisory Centre, the Pakistan Institute for Scientific and Industrial Research, the Technology Information Service Center, and the National Institute of Electronics.

⁶⁰ S.N. Vasuki, *Govt. Launches World Blitz to Woo Investors*, BUSINESS TIMES (Singapore), Feb. 18, 1992, available in WESTLAW, Int-News Database.

⁶¹ Those publications include *Time*, *Newsweek*, and *The Economist*.

⁶² Vasuki, *supra* note 60; Furqan Ahmed, *Investment Climate in Pakistan Generating Interest Among Investors*, RIYADH DAILY, Mar. 14, 1994, available in WESTLAW, Int-News

paign. In a two month span in early 1994, she visited Iran, Turkey, China, Switzerland, and Germany both to convince business leaders of the viability of investing in Pakistan and to stress the potential for lucrative returns that such investment offers.⁶³ In combination with this discussion of the favorable investment climate, the Government moved to assist potential investors by establishing foreign investment promotion offices in six world financial centers.⁶⁴ Staffed by professional investment personnel hired to provide businessmen with on-site information on regulations, administrative procedure, and the advantages of investing in Pakistan, the offices also helped investors locate appropriate and viable investment opportunities.⁶⁵ Conferences and seminars sponsored by the Government both in Pakistan and abroad aimed at similar confidence-building by underscoring the reforms and their effects on attracting investment.⁶⁶

PART II

The initiatives described in Part I have spurred a dramatic rise in foreign investment. Statistics evidence the increased capitalization of

Database. For instance, in March 1994, the *Riyadh Daily News* reported the efforts of the Pakistani ambassador to Saudi Arabia, Shahid Amin, in "strongly pursuing his country's case for foreign investment." Apart from detailing the competitive advantages of investing in Pakistan, Amin also boasted that the country aspired to "become another Asian Tiger" and claimed that "[i]nvestments have . . . started to pour in, as foreign investors are arriving in droves to participate in the country's boom."

⁶³ *Liberal Bid for Foreign Investment*, *supra* note 50; *Focus on E. Europe Helped Fundamentalism—Bhutto*, Reuter Newswire—Western Europe, Apr. 20, 1994, available in WESTLAW, Int-News Database. For instance in Beijing, Bhutto personally offered Chinese investors feasibility studies on different industries to help them identify those projects best suited to their resources, suggested the establishment of reciprocal export zones by private investors in both countries, proposed areas in which Chinese private investment would be most appropriate, and identified areas in which Sino-Pakistani joint ventures would be viable.

Bhutto also visited Britain in late 1994. She plans to visit the United States in the spring of 1995 in part to discuss U.S. investment in Pakistan.

⁶⁴ Stephen Ward, *Pakistan Plans Hong Kong Office to Attract Investors*, S. CHINA MORNING POST, Oct. 16, 1992, available in WESTLAW, Int-News Database. These offices were established in Hong Kong, Dubai, London, New York, Tokyo, and Riyadh.

⁶⁵ *Id.* For instance, the offices offer investors a comprehensive Pakistan Investment Guide that lists all investment policies and incentive packages under one cover.

⁶⁶ *Pakistan Team Explains Advantages of Foreign Investment*, TIMES OF OMAN, May 31, 1994, available in WESTLAW, Int-News Database. For instance, during a series of conferences held in the Gulf States of Dubai, Abu Dhabi, and Muscat, government officials, including both the President and the Director of the Islamabad Stock Exchange ("ISE") highlighted Pakistan as the seventh most promising emerging market for investment and underscored how both direct and indirect (i.e., through the stock exchanges) investment ensured profitable returns. The Director of the ISE thus specifically noted the exemption from tax of all capital gains from investment in the stock exchanges over a five year period and stressed the full repatriation of foreign capital and profits available to all investors.

the Karachi Stock Exchange, the creation and success of numerous mutual funds investing in Pakistan, and the heightened activity of multinational corporations in Pakistani markets. Part II discusses these and other developments resulting from the measures described in Part I.

A) Statistical Indications of Increased Foreign Investment

The effects of these reforms on foreign investment in Pakistan, and of the Government's attempts to market them to potential investors, have been significant. Such investment, excluding remittances and the sale of government bonds, rose by 47 percent to approximately \$650 million in Pakistan Fiscal Year (PFY) 1993-94 from \$440 million the previous fiscal year.⁶⁷ Since direct foreign investment actually declined by 30 percent over the first nine months of PFY 1993-94 compared to the same period in PFY 1992-93, this increase in total foreign investment is mostly attributable to the rise in foreign indirect and portfolio investment, particularly in the nation's stock markets.⁶⁸ Activity on the Karachi Stock Exchange (KSE) best evidences this attraction of foreign indirect investment into Pakistan. After restrictions on foreign participation were lifted, by March 1994, capitalization of the KSE reached \$14.09 billion from \$8.66 billion in June 1992.⁶⁹ In June 1991, before the Government lifted those restrictions, capitalization was only \$2.74 billion.⁷⁰ Between pre-reform March 1991 and March 1994, the number of companies listed on the KSE also rose from 500 to 665,⁷¹ while the number of multinational corpo-

⁶⁷ Khan, *supra* note 10. The fiscal year in Pakistan runs from July to June.

⁶⁸ *Foreign Investment*, Investment Licensing & Trading, July 1, 1994, available in LEXIS, Asiapc Library, Paki File. While direct foreign investment declined by 30.1% over the first nine months of PFY 1993-94 compared to the same period in PFY 1992-93, foreign portfolio investment more than offset that decline by more than doubling during only the first six months of PFY 1993-94, compared to the first six months of PFY 1992-93. The signing of the energy and power generation agreements between US businessmen and the Government in September 1994 promises to boost foreign direct investment during PFY 1994-95.

⁶⁹ *Pakistan Capital Markets Set to Grow—Bank Governor*, Reuter Newswire—India, Mar. 20, 1994, available in WESTLAW, Int-News database; Jane Macartney, *IFC Sees Strong Economy, Markets in Pakistan*, Reuter Newswire—India, Oct. 12, 1992, available in WESTLAW, Int-News Database.

⁷⁰ Macartney, *supra* note 69. By comparison, on December 31, 1991, the market capitalization of the New York Stock Exchange was \$3.71 trillion. See *The Pakistan Investment Fund, Inc.*, *supra* note 17, at 9.

⁷¹ *Pakistan Capital Markets Set to Grow—Bank Governor*, *supra* note 70. The principal criteria for listing are that the company applying have a minimum paid up capital of Rs. 20 million (including the capital issued to the public), that it has made a public issue resulting in at least 250 applicants, and that the prospectus relating to the public issue or offer for sale be approved by the Controller of Capital Issues ("CCI"), the Corporate Law Authority ("CLA"), and the KSE.

rations investing in the country doubled between 1991-94 to reach approximately 200.⁷² In December 1994 the KSE introduced a recomposed KSE-100 Index, formulated in response to the increase in both the number of listed companies and the turnover of shares.⁷³ Moreover, while many of the stock exchanges in other emerging Asian markets lost 23-25 percent of their value in the first quarter of 1994, the KSE grew by 14 percent over the same period.⁷⁴

The interest in numerous emerging market mutual funds investing in Pakistan also reflects confidence in the buoyancy of the KSE. For instance, a Morgan Stanley backed Pakistan Investment Fund floated on the New York Stock Exchange in November 1993 raised \$187 million, more than triple its target subscription of \$60 million.⁷⁵ A Regent Pacific fund launched in March 1994 also raised \$55 million, of which eighty percent was earmarked for investment in Pakistan,⁷⁶ while several Saudi groups are currently planning to establish similar

The CCI requires most companies to obtain a listing for their shares when their capital exceeds Rs. 100 million. All companies in the financial sector including investment banks, commercial banks, leasing companies, mutual funds) and modarabas, *see supra* note 25 and *supra* note 40, are required to obtain a listing prior to the start of operations, regardless of issued capital, unless specially exempted by the CCI. *See The Pakistan Investment Fund, Inc., supra* note 17, at 24.

⁷² John Frank-Keyes, *Stability to Provide Lift for Reforms*, S. CHINA MORNING POST, Mar. 22, 1994, available in WESTLAW, Int-News Database. Major U.S.-based corporations investing in Pakistan include Eastman Kodak, Singer, Coca-Cola, Pepsi-Cola, IBM, American Express, Citibank, The Bank of America, and Chase Manhattan Bank.

⁷³ *Press Digest—Pakistan Newspapers—December 16*, Reuter Newswire—India, Dec. 16, 1994, available in WESTLAW, Int-News Database. In 1994, sixty-six new companies were listed on the KSE. Ovais Subhani, *Karachi Violence Clouds New Year Equities Outlook*, Reuter Newswire—India, Dec. 13, 1994, available in WESTLAW, Int-News Database.

⁷⁴ Charlotte Bloom, *Stock Exchange Holds Its Own*, Middle East Econ. Digest, May 9, 1994, available in WESTLAW, Int-News Database. The December 1994 devaluation of the Mexican peso abruptly and dramatically reversed this trend. In January 1995, the KSE was amongst the world's worst performing markets. Floyd Norris, *Market Place: Mexican Shadow Falls on Emerging Markets*, N.Y. TIMES, Feb. 1, 1995 at D1. Share prices fell by over ten percent in the month as a result of the devaluation. *Id.* The share price of the nation's most prominent blue-chip stock, Dawan Salman Fibre, fell 4.8% in a single day in what dealers called a wave of foreign selling attributed to scares generated by the peso crisis. *Pakistan's Dewan Salman Falls 4.8 Pct.*, Reuter Newswire-India, Jan. 29, 1995, available in LEXIS, Asiapc Library, Paki File. In fact, Federal Reserve Board Chairman Alan Greenspan specifically noted the rapid flow of capital out of Pakistan as a result of the peso devaluation. James Hill, *Looking Beyond Mexico: More Chaos Looms on Global Horizon*, PHOENIX GAZETTE, Feb. 7, 1995, at B13, available in LEXIS, News Library, Papers File. The Fed's recent increase in short-term interest rates will likely increase this flow, rather than reverse it. Norris, at D3.

Finally, the January 1995 earthquake in Kobe, Japan also caused many Japanese institutions to withdraw money from the KSE and invest domestically instead. *Id.*

⁷⁵ *Id.*; *Liberal Bid for Foreign Investment, supra* note 50.

⁷⁶ Bloom, *supra* note 74.

such funds to invest in equities and government securities.⁷⁷ Morgan Grenfell's Singapore-managed Pakistan Investment Fund was named the "World's Best Specialist Fund" by *International and Offshore Financial Review*, after achieving returns of 91 percent for the year to September 30, 1994.⁷⁸ In part as a result of the capital generated by these funds, by March 1994 the KSE-100 Index had more than doubled since October 1993.⁷⁹

The deregulation of the economy has also made it easier for the nation to obtain loans to finance infrastructure improvement. In July 1994, for instance, the World Bank approved a \$230 million loan to help the Government restructure the power generation sector,⁸⁰ while, four months earlier, both the International Monetary Fund (IMF) and the Asian Development Bank (ADB) guaranteed financial packages of \$1.4 billion and \$456 million, respectively, to help fund industrial projects.⁸¹ In November 1994, the ADB also announced that it expected to lend Pakistan \$1.5 billion over the next three years, half of it interest-free, to help finance social and environmental projects, in addition to infrastructure improvements.⁸² Citing Pakistan's deregulation and privatization initiatives, the World Bank affiliate International Finance Corporation (IFC) also approved a \$300 million loan, bringing the total cost of the projects it has financed in Pakistan to over \$2.8 billion.⁸³ Regional agencies have also provided

⁷⁷ *Templeton of Luxembourg Sets Up Pakistan Fund*, Reuter Newswire—India, Apr. 29, 1993, available in WESTLAW, Int-News Database. In addition to Morgan Stanley and Regent Pacific, other reputable international financial companies have also sponsored Pakistan Investment Funds. These include Templeton Management's Pakistan Balanced Fund and Credit Lyonnais' Pakistan Special Situation Fund.

⁷⁸ *Morgan Grenfell's Pakistan Fund Wins Award*, BUSINESS TIMES (Singapore), Nov. 18, 1994, available in WESTLAW, Int-News Database. For the year to September 30, 1994, the market had achieved returns of approximately sixty percent.

⁷⁹ Fahrhan Bokhari, *Pakistan Share Prices Show First Signs of Recovery*, S. CHINA MORNING POST, Mar. 30, 1994, available in WESTLAW, Int-News database. However, by December 13, 1994, the KSE-100 Index had fallen to 2075.77 from a high of 2661.31 on March 22 after another outbreak of ethnic violence in Karachi. Subhani, *supra* note 73. For more on the ethnic violence and law and order deficiencies that plague Karachi, see Part III.A. and Part III.C.

⁸⁰ *World Bank Approves 230 MLN Dollar Loan to Pakistan*, XINHUA NEWS, July 3, 1994, available in WESTLAW, Int-News Database.

⁸¹ Frank-Keyes, *supra* note 72.

⁸² Alistair Lyon, *ADB to Lend Pakistan \$1.5 Billion over Three Years*, Reuter Newswire-India, Nov. 21, 1994, available in WESTLAW, Int-News Database. The ADB has committed an average of about \$500 million annually to Pakistan, with disbursements in 1994 reaching \$640 million.

⁸³ Nizam Siddiqui, *IFC Approves \$300M Loan to Finance Pak Projects*, SAUDI GAZETTE, Nov. 10, 1994, available in WESTLAW, Int-News Database. At a news conference announcing the loans, Jamaluddin Kassum, Vice President of the IFC, noted that the privatization of the energy sector promised to "usher in an era of prosperity" by attracting foreign investors.

loans. On July 27, 1994, the Saudi-Pak Industrial and Agricultural Investment Company approved a loan of over \$15 billion to help the Government finance projects in the chemical, fuel, and energy sectors, as well as merchant banking services, including direct equity investment and the underwriting of public issues of shares.⁸⁴ Finally, as a further reflection of the increase in foreign investment, the nation's foreign exchange reserves soared from \$338 million in early 1991 to \$1.33 billion by March 1994 to \$2.1 billion by September 1994, including a rise of over \$110 million in a single week.⁸⁵

B) Optimism of Market Analysts Regarding Foreign Investment in Pakistan

The effects of the Government's reforms are also evident in the optimism of market analysts about investment opportunities in Pakistan. Such experts have fueled the investor optimism accounting for both the heavy subscription of funds investing in Pakistan and the increasing capitalization of the KSE with the expectation that Pakistan will emerge as an important investment market.⁸⁶ In addition to highlighting emerging markets in general as providing investors with possibilities for lucrative returns, some private analysts have specifically tapped Pakistan as a profitable investment,⁸⁷ and have also recommended investment in the Morgan Stanley backed Pakistan Investment Fund.⁸⁸ Finally, officials at the IFC also cited the tremendous growth potential of the KSE, noting it as among the strongest of the exchanges in the world's emerging markets.⁸⁹

⁸⁴ *Joint Firm OKs SR 58M for Pak Projects*, ARAB NEWS, Aug. 25, 1995, available in WESTLAW, Int-News Database.

⁸⁵ Frank-Keyes, *supra* note 72; *Tight Policies Will Help Eurobond Launch*, EUROMONEY, Sept. 30, 1994, available in WESTLAW, Int-News Database.

⁸⁶ Indira Chand, *Investment to Pakistan Soars*, EGYPTIAN GAZETTE, June 28, 1994, available in WESTLAW, Int-News Database.

⁸⁷ *Id.* For instance, at a seminar organized by the Merrill Lynch International Bank to introduce investment opportunities in Pakistani markets, Malik Sarwar, the bank's Resident Executive Director, opined that Pakistan was expected to grow faster than the other emerging markets in Asia. In fact, he reported that Merrill Lynch had allied with a Karachi-based investment company to provide its clients with greater investment opportunities in Pakistan.

⁸⁸ James K. Glassman, *Your Money—The Inside Scoop*, WASH. POST, May 1, 1994, at H1. For instance in the widely read daily "Your Money—The Inside Scoop" column in the *Washington Post*, Thomas Herzfeld, the Miami-based expert in foreign funds, named the Pakistan Investment Fund as one of four foreign funds in which he recommended investment. The others were Latin American Discovery, India Growth, and Morgan Stanley Africa.

⁸⁹ Macartney, *supra* note 69. Andre Hovaguimian, the IFC Director for central Asia, the Middle East, and North Africa specifically noted the effects of "the impressive steps the Government [of Pakistan] has taken to deregulate and privatize the industrial and financial sectors" to

C) Heightened Activity of Multinational Corporations

The entry of corporations into the Pakistani market and the expansion in the operations of others already established there as a result of the reforms evidences the success of these changes in attracting foreign capital. By mid-1992, a year after the reforms were initiated, more than 50 U.S.-based corporations had direct investments in Pakistan, totaling over \$300 million.⁹⁰ U.S. Department of Commerce data also indicates that these investments had become more profitable — returns averaged 21.3 percent in 1992, compared to 7.5 percent in 1991.⁹¹ Moreover, by early 1994, approximately 30,000 companies had been incorporated in Pakistan, of which about 530 had foreign capital.⁹²

While these statistics indicate the scope of foreign capital involvement in Pakistan, a consideration of the activity of individual corporations best evidences the effects of the Government's reforms on foreign investment activity. Thus, in addition to the entry of AIG — through its subsidiary ALICO — into the previously closed insurance market, other foreign firms have also begun to invest in Pakistan.⁹³ For instance, in July 1994, Merrill Lynch established an advisory firm to guide clients interested in investing in Pakistan, while Bankers Trust USA agreed to provide technical services and expertise to the newly created Marine Delta Bank, Pakistan's first bank dedicated to ship financing.⁹⁴ Also, by mid-1994, the U.S. firm Tenaska was seeking to establish a 584 megawatt power plant in the North West Frontier Province, while First City Bank aimed to raise \$45 million for the expansion of a synthetic fiber plant.⁹⁵

The reforms have also provided large multinational corporations already active in Pakistan with incentive to expand that activity. Citing the Government's program to liberalize the economy, Citibank opened its fourth branch in Pakistan, in the city of Faisalabad. Citibank officials noted four specific reasons for the expansion: 1) to generate further foreign currency deposits; 2) to mobilize equity in-

create "the potential to make major strides in [the nation's] economic development" by attracting international financing and investment.

⁹⁰ *Pakistan-Foreign Economic Trends*, *supra* note 25.

⁹¹ *Foreign Investment*, *supra* note 68. Returns are total income expressed as percentage of total cost of investment.

⁹² *Pakistan-Country Marketing Plan FY '94*, *supra* note 24.

⁹³ For more on the entry of AIG into the Pakistani insurance market, *see supra* note 21.

⁹⁴ *Examples of Foreign Investment in Pakistan*, Investing Licensing & Trading, July 1, 1994, available in LEXIS, Asiapc Library, Paki File.

⁹⁵ *Id.*

vestments in the KSE; 3) to arrange financing for private sector power generation; and 4) to provide retail banking services to customers in the Faisalabad area.⁹⁶ In 1993, another prominent multinational corporation, Royal Dutch Shell Oil Co.(Shell), also decided to increase its investment in Pakistan by acquiring a majority holding in Pakistan Burmah Shell (PBS).⁹⁷ According to a spokesman, Shell's decision "to increase its investment in Pakistan reflects the growing confidence of foreign investors in the economic reforms introduced by the present government."⁹⁸

D) The Effect of Privatization on the Power Generation Sector

The recent signing of energy agreements between private U.S. and U.K. firms and the Pakistani Government demonstrates how the privatization of the power generation sector has attracted foreign capital.

In September 1994, fifteen agreements pledging over \$4 billion investment in the power generation sector were signed.⁹⁹ The projects promise to add over 3500 megawatts to Pakistan's power generation capacity, raising total output by over thirty-five percent from its present capacity of about 9800 megawatts.¹⁰⁰ Some three months later, Deputy Energy Secretary William White led another delegation of American businesspersons to Pakistan to sign eighteen more deals pledging a further \$2.5 billion into the energy sector.¹⁰¹ The signing of the energy agreements validates Pakistan's initiatives to attract in-

⁹⁶ *Citibank Opens Branch in Faisalabad, Pakistan*, PR Newswire, July 29, 1992, available in WESTLAW, Int-News Database. Operating in Pakistan since 1961, Citibank is currently the nation's largest foreign bank. In addition to Faisalabad, it also has offices in Karachi, Lahore, and Rawalpindi.

⁹⁷ *Shell Asset Moves in Pakistan and Canada*, Lloyd's List, Feb. 25, 1993, available in WESTLAW, Int-News Database. Already holding a 24.5% stake in PBS, Shell purchased Burmah Castrol's 24.5% stake in PBS to give itself a 49% stake in PBS. Shell then acquired another 2% of PBS's shares in the market to give itself majority control.

⁹⁸ *Id.*

⁹⁹ Farhan Bokhari, *US Investors to Pour Cash Into Energy Sector*, S. CHINA MORNING POST, Sept. 29, 1994, available in WESTLAW, Int-News Database; *US, Pakistani Firms to Set Up Hydro-Power Plant*, Reuter Newswire-India, Sept. 23, 1994, available in WESTLAW, Int-News Database; *US-Pakistani Energy Agreements in Works*, Reuter Newswire-India, Sept. 23, 1994, available in WESTLAW, Int-News Database. Both Secretary O'Leary and Pakistani ministers expected agreements worth about \$3 billion, and the actual scale of the agreements exceeded the expectation by about 25%.

¹⁰⁰ Farhan Bokhari, *US Firms in US \$4B Pakistan Energy Coup*, S. CHINA MORNING POST, Sept. 26, 1994, available in WESTLAW, Int-News Database. The scale of these agreements is further illustrated by the fact that US businesses have only invested \$450 million equity in Pakistan in the past 47 years.

¹⁰¹ Felsted, *supra* note 6.

creased foreign capital as both Secretaries O'Leary and White hailed the signings as milestones in the development of a U.S.-Pakistani energy partnership made possible only by the privatization of the energy sector.¹⁰²

American businesses have not been the only ones attracted by the privatization of the energy sector. British companies signed nine commercial agreements worth over \$600 million at the Conference of British Industry in late 1994.¹⁰³ At the conference, Bhutto and British Prime Minister John Major also signed an Investment Promotion and Protection Agreement to encourage British investment, particularly in recently privatized sectors of the Pakistani economy.¹⁰⁴ Three of Britain's largest utility companies — Midland Electricity, British Gas, and National Power — also expanded their investments in the Pakistani energy sector, with the latter investing over \$100 million to help finance the largest private power generation project in the world, the Hub River oil-fired power station.¹⁰⁵ Finally, Hong Kong investor Gordon Wu signed agreements for energy projects costing up to \$8

¹⁰² *U.S., Pakistani Firms Sign 2.5 Billion Energy Deals*, Reuter Newswire-India, Dec. 17, 1994, available in WESTLAW, Int-News Database. However, another factor likely motivated Secretaries O'Leary and White to encourage and oversee the signing of the agreements. Secretary O'Leary made this apparent when she stated that "Pakistan. . . will opt for nuclear non-proliferation in lieu of economic gains being offered by the United States." Zahid Hussain, *Investment "Gold Rush" Brings in 10BN-Pakistan Economy*, THE TIMES (London), Nov. 29, 1994, available in WESTLAW, Int-News Database. According to this view, the U.S. should be willing to pay a considerable price to nip in the bud a nuclear arms race in South Asia. *Id.* For Pakistan, that price should take the form of helping economic development by promoting non-nuclear sources of energy. *Id.* Thus, from the American perspective, the energy deals signed were likely designed as a first step in ensuring that Pakistan start backtracking in its quest for nuclear capability. *Id.*

¹⁰³ *Pakistan's Investment Gamble is Being Played for High Stakes*, Lloyd's List, Dec. 12, 1994, available in WESTLAW, Int-News Database.

¹⁰⁴ *Britain, Pakistan Sign Investment Agreements*, Reuter Newswire-United Kingdom, Nov. 30, 1994, available in WESTLAW, Int-News Database; *DTI-Pakistan a Priority for Investment-Heseltine*, U.K. Govt. Press Release, Nov. 30, 1994, available in WESTLAW, Int-News Database. Major cited Pakistan as a priority market and also announced the creation of the Southern Asia Advisory Group to advise him and the British Overseas Trade Board on investment promotion in the South Asian countries.

¹⁰⁵ *Pakistan's Investment Gamble is Being Played for High Stakes*, *supra* note 103; Robina Gibb, *Pakistan is Lifting the Veils on Investment*, SUNDAY TELEGRAPH (London), Nov. 13, 1994, at 4, available in WESTLAW, Int-News Database. National Power is the manager and major investor in the Hub River Project, holding \$90 million of the \$500 million of equity in the \$1.5 billion project. Although the project is presently due to be completed in early 1997, delays in financing threaten to push back that date. The delays are attributable to the Sharia Court's ruling that the payment of interest is illegal under Islamic law. For more on that ruling and its impact, see *infra* Part III.E. and *infra* note 157.

In addition to National Power, Midland Electricity invested \$50 million in a 586 megawatt power plant in Balochistan, while British Gas estimates its development spending in Pakistan to reach \$1.5 billion over the next fifteen years. Gibb, at 4.

billion, including one to build a power plant 40 kilometers from Karachi.¹⁰⁶ With more proposals for power plants likely in the future, the privatization of the energy sector best evidences the Government's success in attracting foreign capital.

PART III

Although Part II evidences the Government's success in attracting foreign investment to Pakistan, obstacles still threaten to undermine that success. Political instability, the lack of adequate law enforcement, infrastructure deficiencies, and the inescapable influence of religion on the nation's economic affairs all must be overcome in order to attract the foreign capital necessary to sustain and eventually complete the Government's program of economic liberalization. Part III discusses these problems, while Part IV proposes solutions for their rectification.

A) Political Instability and Ethnic Violence

Although Prime Minister Bhutto's Pakistan People's Party (PPP) controls the presidency and the prime ministership, and forms the largest group in the Upper House of Parliament (the Senate), the frequent changes in government characteristic of Pakistani politics concern investors.¹⁰⁷ Sharif and his Islamic Democratic Alliance (IDA)

¹⁰⁶ *Pakistan's Investment Gamble is Being Played for High Stakes*, *supra* note 103. The construction of this and the other plants discussed will help alleviate the chronic power shortages, blackouts, and brownouts that plague the country. For more on these problems and their effects on foreign investment, see Part III.D.

¹⁰⁷ Frank-Keyes, *supra* note 72. To assure potential investors of the nation's stability, officials note that no single party in Pakistan's post-independence history (i.e., post-1947) has ever commanded such power by controlling the presidency and the prime ministership, and by holding the largest number of seats in the Senate.

As for the structure of government, Pakistan has a federal parliamentary system in which its provinces enjoy considerable political autonomy. Each of the four provinces—Punjab, Sind, North West Frontier, and Balochistan—has a governor, a Council of Ministers headed by a chief minister, and a unicameral provincial assembly. The seats of government for the provinces are Lahore, Karachi, Peshawar, and Quetta, respectively. Punjab is the largest and most populous province.

The seat of the federal government is Islamabad. The national legislature is bicameral. The National Assembly, the lower house, has 207 directly elected members who serve for five years. The Senate, the upper house, has 87 members elected for six years with one half retiring every three years. Each of the provincial assemblies elects nineteen senators, with the remaining eleven elected from the Federal Capital Territory and by the members from the tribal areas in the National Assembly.

The head of state is the President, who has certain important executive powers (such as the power to dismiss the Prime Minister) but is generally required by the Constitution to act on the advice of the Prime Minister. The President is elected for a period of five years by the members

also once appeared to enjoy such stability. The IDA commanded a comfortable majority in the National Assembly, had a controlling majority in two of the four provincial assemblies (including the powerful Punjab Assembly), and Sharif apparently had the support of the President and the army.¹⁰⁸ However, his agenda of economic liberalization alienated the Islamic fundamentalists who had previously supported the IDA.¹⁰⁹ The Jamaat-e-Islami (JI), the National People's Party (NPP), and, most importantly, the Mohajir Quami Movement (MQM) withdrew their support of the IDA, particularly after Sharif decided to appeal the Sharia Court's ban on the payment of interest as contrary to Islam.¹¹⁰ Charges of financial mismanagement and scandal further undermined Sharif's and the IDA's control.¹¹¹ In mid-1993, he was summarily dismissed by President Ghulam Ishaq Khan amidst charges of such corruption. Thus, although Bhutto has now held power for some time, investors' fears over political instability are not unfounded.

Fears of instability are also attributable to the ethnic violence rampant in Karachi. Clashes between the local Sindhi population and the Mohajir settlers from India often transform the city into a war

of the National Assembly, the Senate, and the four provincial assemblies. The current President is Ghulam Ishaq Khan. The Prime Minister may remain in office as long as he has the support of the national Assembly, but not exceeding the term of Parliament, which is five years.

As for the judiciary, each province has a separate court system consisting of a provincial high court, district courts to hear civil cases, and sessions courts to hear criminal cases. The national Supreme Court hears appeals from the provincial courts and also has original and advisory jurisdiction in certain areas.

In addition, in 1979, then President Zia-ul-Haq promulgated Constitution (Amendment) Order 1979 creating the Sharia courts which were consolidated into a Federal Sharia Court ("FSC") in 1986. The FSC has exclusive jurisdiction to determine whether any law violates the principles of the state religion of Islam. The 1991 passage of the Sharia Bill established Islamic law as the supreme law of the nation, and thus gave the FSC broad authority. A ruling by the FSC that a law violates Islamic principles usually results in the annulment of that law or in its amendment to conform with Islamic principles. Decisions of the FSC may also be appealed to the Appellate Sharia Bench of the national Supreme Court.

The FSC's ruling relevant to this Comment—that the payment of interest violates Islamic principles—was appealed by Sharif to the Appellate Sharia Bench. No decision has yet been rendered.

See *The Pakistan Investment Fund, Inc.*, *supra* note 17 at A2-3; see also RUBYA MEHDI, *THE ISLAMIZATION OF THE LAW IN PAKISTAN* 212-213 (Curzon Press, 1994).

¹⁰⁸ *The Pakistan Investment Fund, Inc.*, *supra* note 17 at A-2. As a result, it was forecast in 1992 that the IDA would be able "to retain control of the government until the next general elections, which are due by 1995" and that Sharif would likely win those 1995 elections. *Political Stability*, *supra* note 13.

¹⁰⁹ *Political and Social Outlook*, Bus. Int'l. Forecasting, Sept. 14, 1992.

¹¹⁰ *Id.* For more on the ruling and its effect, see Part III.E. The MQM subsequently split into a faction that supported the Government and a larger, more radical militant wing. All future references to the MQM refer to this militant wing and its supporters.

¹¹¹ *Political Stability*, *supra* note 13.

zone. In 1994, over 1000 people had been killed and another 700 wounded in such fighting.¹¹² In particular, the PPP's refusal to grant the MQM Islamic fundamentalists representation in the National Assembly has led to a series of violent protest strikes and attacks on both politicians and civilians.¹¹³ By December, widespread violence had driven the KSE-100 Index to its lowest point of the year, down over 25% from its high point in March.¹¹⁴

Although he has not endorsed such violence, Sharif has also attempted to unseat Bhutto,¹¹⁵ leading investors to fear a repetition of the violence that engulfed the nation when Bhutto unsuccessfully sought to overthrow him.¹¹⁶ For instance, in September 1994, Sharif

¹¹² Subhani, *supra* note 73; Newburg, *supra* note 9.

¹¹³ Bokhari, *supra* note 79. For instance, in March 1994, a strike called by the MQM engulfed Karachi in political violence and sent the KSE-100 Index tumbling by over sixty-one point, or almost 2.4%. In November 1994, twenty-three days of clashes between rival factions of the MQM left over seventy people dead. *Press Digest-Pakistan Newspapers-November 24, supra* note 9. In September 1994, over seventy people were injured in clashes between another PPP opposition group, the Pakistan Muslim League, and police. *Press Digest-Pakistan Newspapers-Sept. 24*, Reuter Newswire-India, Sept. 24, 1994, available in WESTLAW, Int-News Database. In November 1994, MQM supporters shot and killed a PPP representative of the Sind Provincial Assembly. *Press Digest-Pakistan Newspapers-Nov. 4*, Reuter News Service-India, Nov. 4, 1994, available in LEXIS, Asiapc Library, Paki File.

¹¹⁴ Subhani, *supra* note 73. The headlines of Pakistan's *Dawn* newspaper evidence the scale of this violence. On December 23, 1994, *Dawn* reported that President Leghari held talks with MQM leaders to restore peace to strife-torn Karachi. *Press Digest-Pakistan Newspapers-Dec. 23*, Reuter Newswire—India, Dec. 23, 1994, available in WESTLAW, Int-News Database. On December 19, 1994, "Eight more people died in gunfire in Karachi. . . Arsonists set ablaze eleven vehicles and a bank branch." *Press Digest-Pakistan Newspapers-Dec. 18*, Reuter Newswire-India, Dec. 18, 1994, available in WESTLAW, Int-News Database. On December 16, 1994, "At least thirteen people were killed, many others wounded and twelve vehicles set ablaze as fierce shooting between rival factions of. . . [the] MQM and gun battles with police paralyzed the city." *Press Digest-Pakistan Newspapers-Dec. 16, supra* note 73. On December 8, 1994, "Eight people were shot dead in an attack on a mosque and four others killed in scattered. . . shootings." *Press Digest-Pakistan Newspapers-Dec. 8*, Reuter Newswire—India, Dec. 8, 1994, available in WESTLAW, Int-News Database. On November 24, 1994, "Seven people, including a young pregnant woman, were killed and ten others were injured in clashes between rival factions of the. . . MQM." *Press Digest-Pakistan Newspapers-Nov. 24, supra*, note 9.

¹¹⁵ Khan, *supra* note 10. To undermine the foreign support crucial to Bhutto's power, in August 1994, Sharif publicly announced that Pakistan possessed nuclear weapons. Although foreign bankers, industrialists, and stockholders disavowed the statement would affect their financial interest in the country, Japan opted to withhold a previously promised yen credit worth \$500 million for 1994-95 to seek clarification from both the Government and Sharif's IDA.

¹¹⁶ Uli Schmetzer, *Pakistan's Capital Bracing for New Bhutto-led Mass Protests*, CHI. TRIB., Nov. 24, 1992, § 1, at 6. In November 1992, Bhutto led thousands of her supporters in demonstrations marred by violence to topple Sharif's government. Each time Bhutto led her followers in marching on the capital, riot police armed with truncheons guarding key junctions and parks of the city beat them back, wounding hundreds and arresting thousands. With barbed wire surrounding the buildings of the Parliament, observers remarked that the capital resembled a city under siege.

called for a nationwide strike and instructed opposition parliamentarians to wear black armbands to protest government crackdowns against his supporters during an earlier strike.¹¹⁷ Such threats aimed at overthrowing Bhutto would likely shake investor confidence in Pakistan, and, in December 1994, led a senior World Bank official to warn both Sharif and Bhutto that "consistent political acrimony is not favourable to economic growth and investment" and would deter foreign investors.¹¹⁸

B) Bureaucratic Opposition and Corruption

Investors also fear bureaucratic opposition and corruption will undermine reforms even before they can be implemented. While senior-level bureaucrats generally support the policies, the mid- and lower-level bureaucrats usually responsible for their implementation often do not understand the intent of the reforms and, in some cases, actively oppose reforms they perceive as threats to their privileged positions.¹¹⁹ Many of these bureaucrats feel the Government has moved too quickly in the direction of deregulation and fear that the process will result in the concentration of wealth in the hands of the few or lead to a nation entirely dependent on foreign capital and investment for its own economic health.¹²⁰

Partly as a result, corruption in the implementation of reforms is rampant. In 1992, the first of the six denationalized banks was sold at auction, not to the highest bidder but to one of then-Prime Minister Sharif's associates. Shortly afterward, that bank lent Sharif's family industries \$16.1 million to repay other loans provided by state-owned banks.¹²¹ Sharif's Government, in fact, was actually dismissed on charges of economic mismanagement and corruption. More recently, in March 1994, share prices on the KSE plummeted when, on charges of fraud, the State Bank removed two top officials of one of the ten

¹¹⁷ *Press Digest-Pakistan Newspapers-Sept. 22*, Reuter Newswire—India, Sept. 22, 1994, available in WESTLAW, Int-News Database.

¹¹⁸ *World Bank Asks Pakistanis to Cool Tensions*, Reuter Newswire-India, Dec. 8, 1994, available in WESTLAW, Int-News Database. Indeed, when Sharif was ousted in 1993, investors concerned over the nation's political turmoil postponed planned investments. For instance, South Korea's Daewoo Group postponed a proposed \$400 million investment in southern Pakistan until assured that the PPP was committed to Sharif's economic program. See Khan, *supra* note 10.

¹¹⁹ *Pakistan-Investment Climate Statement*, *supra* note 7.

¹²⁰ S.N. Vasuki, *Will Islamabad Stay the Course?*, BUSINESS TIMES (Singapore), Mar. 6, 1992, available in WESTLAW, Int-News Database.

¹²¹ *Karachi Pakistan's Future Looks Bleak*, *supra* note 24.

private commercial banks created in 1992.¹²² By undermining investors' confidence in the operation of the Pakistani market, such corruption deters investment.

C) Deficiencies in Law Enforcement

Political instability and bureaucratic corruption, however, are not the only deterrents to foreign investment. Investors' perception of low personal security in Pakistan, particularly in those less developed areas where the Government would most like to encourage industrial undertakings, is equally damaging. Thus, in light of the rise in house burglaries, kidnappings, and muggings, the Government must attempt to ensure the safety of expatriate personnel.¹²³

The kidnapping of leading industrialists for ransom has proven particularly acute, especially in underdeveloped areas of Sind. In 1991, police reported 495 cases of kidnapping for ransom in Sind alone.¹²⁴ One textile magnate paid \$355,000 for his release after he was kidnapped while returning to Karachi from the Nooriabad Industrial Area, an underdeveloped area fifty miles east of Karachi targeted by the Government for industrial development.¹²⁵ Despite reportedly successful crackdowns by the army,¹²⁶ the effect of such rampant lawlessness has been to transfer industrial investment to safer, more peaceful areas, and, consequently, to drive such investment from those areas that most need it.¹²⁷ In addition to the safety threat it poses, the expenses associated with the possibility of kidnapping also serves to deter foreign investors. First, the payment of an often large ransom from corporate funds can adversely affect corporate results. When coupled with the cost of employing security guards to protect expatriate staff and investors' families, these expenses attributable to the threat of kidnapping make investment in other markets less per-

¹²² Bokhari, *supra* note 79.

¹²³ Vasuki, *supra* note 120. In fact, a prominent delegation of Japanese businessmen visiting the country as far back as early 1992 conditioned investment partially upon the Government's assurance that the safety of expatriate personnel working in Karachi would be improved.

¹²⁴ Ibrahim Khan, *Pakistan Political Unrest, Crime Hit Industries*, Reuter Newswire—India, Jan. 10, 1993, available in WESTLAW, Int-News Database.

¹²⁵ Khan, *supra* note 124. For more on the tax concessions available for investment in rural areas, see *infra* Part I.D.

¹²⁶ Khan, *supra* note 124. In early 1993, the army reported that 160 bandits had been killed and 487 arrested, and that 800 were still at large in the Sind.

¹²⁷ Khan, *supra* note 124. For instance, the aforementioned kidnapped textile magnate reportedly abandoned attempts to set up industries in the Nooriabad Industrial Area, and chose instead to establish them in the more peaceful Punjab province.

sonally dangerous and more cost efficient and hassle-free.¹²⁸ The tax breaks and other incentives offered by the Government in return for investment in these underdeveloped areas thus rarely outweigh the threats to personal security inherent in such an investment.¹²⁹ Even where statistics may indicate an increase in overall foreign investment in Pakistan, it is unlikely that the underdeveloped and rural areas that most need such investment are receiving it. As a consequence, deficiencies in infrastructure are perpetuated, particularly in those areas that would benefit most from exactly such industrialization.

D) Deficiencies in Infrastructure

Infrastructure deficiencies in energy, transportation, and telecommunications also constrain industrial development by imposing substantial costs on industrial production and efficiency. These shortcomings frequently delay project construction and implementation, thereby increasing investors' costs and frustration. For instance, transportation shortcomings are widespread. Although 98 percent of the nation's foreign trade passes through Karachi,¹³⁰ the Port of Karachi has a cargo handling capacity of only 16.1 million tons.¹³¹ Shipping materials once they arrive in Karachi to the areas of industrial undertakings where they are needed is also difficult since only 46 percent of the nation's roads are paved.¹³² Investors are therefore forced to utilize the nation's railroads. Although more extensive than the nation's roads, Pakistan's railroads are extremely slow and inefficient. Cargo takes fifteen days to travel by single track railroad from Karachi to Peshawar, the capital of the North West Frontier Province, a distance of only 1800 kilometers.¹³³

Telecommunications are also deficient. The nation has less than one phone line per 100 persons, compared with eleven per 100 for other developing Pacific Rim countries.¹³⁴ International direct dialing from Pakistan is impossible; calls from Pakistan to the United States

¹²⁸ Khan, *supra* note 124. The fact that an investor's family is also at risk is evidenced by the not atypical kidnapping for several weeks of two Japanese students in 1992.

¹²⁹ Khan, *supra* note 124.

¹³⁰ Peregrine Hodson, *Gateway to Asia Opens Wider-Pakistan Economy*, THE TIMES (London), Nov. 29, 1994, available in WESTLAW, Int-News Database.

¹³¹ BOARD OF INVESTMENT, *supra* note 26, at 29.

¹³² *An Emerging Market in Pakistan*, BUS. TIMES (Singapore), Feb. 9, 1994, available in WESTLAW, Int-News Database. By contrast, over 90% of the roads in England are paved.

¹³³ Hodson, *supra* note 130.

¹³⁴ *Pakistan Needs Billions of Dollars for Telecommunications-Vickery*, Reuter Newswire-India, Nov. 20, 1994, available in WESTLAW, Int-News Database.

must be placed through an operator and are time-restricted. Power failures, shortages, and blackouts are also frequent.

The Government has begun to address some of these deficiencies.¹³⁵ The privatization of WAPDA and the recently signed energy agreements promise to boost energy production and to relieve shortcomings in the energy sector.¹³⁶ In mid-1994, the Government set up a \$20 billion energy development program and announced the privatization of power generation.¹³⁷ Within months, it had received proposals from foreign companies to build power plants adding over 7500 megawatts of power.¹³⁸ By November 1994, it had also attracted \$8 billion of private investment in coal development.¹³⁹ In response to investors' concerns, the transportation infrastructure has also been improved. By late 1994, Pakistan had four seaports and thirty-four airports, including five international ones.¹⁴⁰ The Government recently decided to modernize three of these seaports to increase cargo handling capacity.¹⁴¹ The Karachi Port Modernization Project aims to expand existing terminals and to equip them with modern machinery,¹⁴² while the port of Gawadar is being developed as a gateway to access the vast oil and gas reserves of the Central Asian Republics.¹⁴³ The Government aims to link the latter port with motorways to the Central Asian Republics that are also under construction.¹⁴⁴

The Government is also addressing the shortage of roads. It signed a memorandum of understanding with the South Korean conglomerate Daewoo in which the latter pledged to implement \$2 billion worth of projects, including the construction of a \$730 million, 315 kilometer motorway between the nation's second largest city, Lahore,

¹³⁵ *Pakistan Lures Investors with 'Investment Havens'*, Japan Econ. Journal, July 27, 1992, available in WESTLAW, Int-News Database. The Government's efforts were probably responses to the frequent complaints by investors about the nation's infrastructure. At a series of investment conferences in mid-1992, for instance, the Government's attempts to attract Japanese capital received unenthusiastic responses from Japanese investors concerned about Pakistan's lack of adequate infrastructure.

¹³⁶ Macartney, *supra* note 27.

¹³⁷ Hodson, *supra* note 130.

¹³⁸ Macartney, *supra* note 27.

¹³⁹ Hodson, *supra* note 130.

¹⁴⁰ BOARD OF INVESTMENT, *supra* note 26, at 29, 31. The four seaports are: Karachi, Port Qasim, Gawadar, and Pasni. There are two major ports—Karachi and Port Qasim, 29—both having a cargo handling capacity in the 16 million ton range. The five international airports are: Karachi, Lahore, Islamabad, Peshawar, and Quetta.

¹⁴¹ BOARD OF INVESTMENT, *supra* note 26, at 29-30.

¹⁴² BOARD OF INVESTMENT, *supra* note 26, at 30.

¹⁴³ BOARD OF INVESTMENT, *supra* note 26.

¹⁴⁴ BOARD OF INVESTMENT, *supra* note 26.

and the capital, Islamabad.¹⁴⁵ The other major highway project involves the construction of the 1200 kilometer Indus Highway linking Karachi to Peshawar.¹⁴⁶ In addition, work on a motorway between Islamabad and Peshawar and between Peshawar and the Afghanistan border has also commenced.¹⁴⁷ The latter aims to facilitate the flow of traffic and cargo between the seaports of Karachi and Gawadar and Central Asia.¹⁴⁸

While still inefficient, the telecommunications infrastructure will also likely improve as the privatization of the PTC continues.¹⁴⁹ By early 1994, fiber optics had finally been introduced, with Telecom Australia working on a \$40 million contract to lay fiber optic cable from Karachi to Islamabad.¹⁵⁰ By early 1994, other foreign telecommunications companies, including Alcatel, Siemens, Ericsson, and Cable and Wireless had also begun installing digital communications networks in the Sind, Punjab, and North West Frontier provinces.¹⁵¹ By mid-1994, 5430 telex lines had been installed, and a cellular mobile telephone system had been introduced.¹⁵² The Government had also authorized private companies to install card operated public pay phones.¹⁵³

Despite these improvements, infrastructure deficiencies, in combination with the aforementioned political instability, ethnic violence, bureaucratic corruption, and shortcomings in law enforcement, seriously deter foreign investment. Nevertheless, the largest obstacle to such investment likely remains the Sharia Court's ruling that the payment of all interest is illegal as contrary to Islam.

E) Influence of Religion on Economic Policy

The sweeping powers given to the federal Sharia (or religious) Court threaten to undermine all reform. Affirmation and enforcement of the Court's 1991 ruling that the payment of all interest is illegal would make the nation's Islamic banking system simply

¹⁴⁵ Vasuki, *supra* note 60.

¹⁴⁶ BOARD OF INVESTMENT, *supra* note 26, at 29.

¹⁴⁷ BOARD OF INVESTMENT, *supra* note 26.

¹⁴⁸ BOARD OF INVESTMENT, *supra* note 26.

¹⁴⁹ This assumes that foreign investors are not deterred by the controversy surrounding the privatization of the first 10% of the PTC. See *infra* Part I.A. and *supra* note 28.

¹⁵⁰ *An Emerging Market in Pakistan*, *supra* note 132.

¹⁵¹ *Special Report-'Free Market' Government Aims to Attract Foreign Investment*, Lloyds List, Dec. 31, 1992, available in WESTLAW, Int-News Database.

¹⁵² BOARD OF INVESTMENT, *supra* note 26, at 31.

¹⁵³ BOARD OF INVESTMENT, *supra* note 26.

unworkable to foreigners.¹⁵⁴ According to the Court, interest charged on loans, or *riba*, constitutes usury, which is "repugnant to the Koran" and outlawed by Islam.¹⁵⁵ The ruling thus threatens to deter and even undermine the foreign financing and lending upon which the Government relies for most its industrial infrastructure improvement projects.¹⁵⁶ Although the Government has assured investors that appropriate mechanisms will be adopted, if necessary, to honor all financial commitments, and has even appealed the ruling to the Appellate Sharia Bench of the nation's Supreme Court, a definitive decision is not expected soon; uncertainty over the issue has thus delayed foreign financing for some important projects.¹⁵⁷ Even if the ruling is overturned, the Government likely will face a backlash from a religious right that warned against petitioning the Supreme Court in the first place.¹⁵⁸ The disturbances and surge in fundamentalism likely to result from a reversal might deter investors and delay investment as much as an affirmation of the decision would.

PART IV

The Government must address the aforementioned deterrents if it hopes to attract the increased foreign investment necessary to finance its continuing reforms. This part offers proposals that address the problems raised previously. Their implementation will provide foreigners with even greater incentive to invest in Pakistan.

First, the Government must also improve the personal security of expatriate personnel, particularly in those underdeveloped areas of

¹⁵⁴ Molly Moore & John Ward Anderson, *Islamic Law and Zeal-Rise to Challenge Secular Politics in Pakistan*, WASH. POST, Oct. 21, 1992, at A29. The Court's recent ruling mandating the death penalty for all persons found guilty of blasphemy against the Islamic prophet Muhammad evidences its broad powers. One example of the Court's use of this power involved a well-known 81 year old social worker jailed and sentenced to death for blasphemy because religious leaders found a children's book he wrote about a lion could be interpreted as a slight against Islam.

¹⁵⁵ Ruth Pitchford, *Pakistan's Bankers Pray for Islamic Compromise*, Reuter Newswire-India, Jan. 7, 1992, available in WESTLAW, Int-News Database.

¹⁵⁶ *Pakistan-Investment Climate Statement*, *supra* note 7.

¹⁵⁷ BOARD OF INVESTMENT, *supra* note 26. For example, the financing of the \$1.5 billion power plant on the Hub River has been delayed because of uncertainty over the issue, according to one Wall Street lawyer.

¹⁵⁸ Kathy Evans, *Banks Contest Usury Ruling in Court*, THE GUARDIAN (London), Jan. 22, 1992, available in WESTLAW, Int-News Database. In 1992, the leader of the influential religious party Jamaat Islaami warned the Government not to delay implementation of the ruling by petitioning the Supreme Court for reversal and threatened to withdraw his part from Sharif's ruling coalition should it do so. While Bhutto's Government is not dependent on an alliance for power, the opposition of the religious right and influential clergy would nevertheless prove extremely bothersome at the very least.

the country most prone to crime. Sweeps by the army of crime-ridden areas, or of regions where criminal activity against foreigners has been documented, should become more regular, and bandits and other law-breakers should be arrested and promptly jailed. These sweeps have proved effective in the past at capturing and jailing known bandits.¹⁵⁹ Foreign companies involved in significant industrial undertakings should be offered the services of local law enforcement authorities, or even of army personnel, as security guards, instead of having to finance such protection themselves. Industrial complex areas being created by foreign investors should be provided heightened protection and placed under increased surveillance by the army. The general visibility of the army or local law enforcement should be increased in these regions.

Of course the danger in giving the army a heightened role in the effort to attract foreign investment is that the effect of such a role could be actually to discourage foreign investors. Foreign investors do not want to invest in a military state, especially not in one that has had a history of military rule, like Pakistan does. Nevertheless, since employment of the army seems to be the only means through which to address the deficiencies in law enforcement and to guard the safety of expatriates, its use seems essential.

The Government must take other steps to assure investors that the program of economic liberalization will continue and that there will not be any sudden repudiation of the changes implemented.¹⁶⁰ This concern is evidenced in the Prospectus of the Pakistan Investment Fund which warns investors "that there can be no assurance that these reforms will persist and any reversal thereof by the current of some future Government could adversely affect the Fund."¹⁶¹ To help allay this fear, the Government should gradually replace bureaucrats known to be opposed to reform with those who embrace and endorse it. Since most PPP bureaucrats firmly support the liberalization initiatives, this change would be far from a wholesale one and would likely not entail widespread replacements. And although such action could further antagonize Islamic fundamentalists, its benefits outweigh this cost. It would likely reduce corruption in implementing specific reforms by ensuring that such implementation actually occurred and occurred more efficiently. More importantly, such action would

¹⁵⁹ See Khan, *supra* note 124.

¹⁶⁰ To some extent, investor confidence in the reforms is a function of time. Thus, that confidence will likely grow as time passes and the reforms are not repudiated.

¹⁶¹ *The Pakistan Investment Fund*, *supra* note 17, at 9.

symbolize to foreign investors the Government's commitment to the reforms. As such, its impact would be far more powerful than the hyperbole of seminars and conferences in convincing investors of the Government's commitment to liberalization.

The Government should also underscore its commitment by continuing to privatize and denationalize industries and sectors of the economy. The success of the privatization of the energy sector in attracting foreign investors should serve as a model for what the privatization of previously state-owned industries can achieve. Such privatization would then lure industrial proposals for infrastructure improvement. The Government seems to have made this realization and has commenced privatizing some state-owned entities and sectors. For instance, it privatized PTC and has continued privatizing the transportation and oil and gas production and distribution industries. These efforts have resulted in a dramatic inflow of foreign capital.¹⁶² In addition, the Prohibited List should be shortened to attract investment to areas of the economy that have been closed to foreigners. In particular, the latter's prohibition on foreign investment in agricultural land, irrigation, forestry, and real estate should be lifted to allow the beneficial development and more efficient use of land.

While the privatization of the economy will attract projects to improve the nation's infrastructure deficiencies, the Government also must increase its own spending on infrastructure. With a fiscal deficit amounting to approximately six percent of Gross Domestic Product, however, it presently lacks the funds to make an increased investment.¹⁶³ Since military expenditures and the repayment of foreign debt account for approximately 50 percent of the nation's annual expenditures, cutting military spending at the expense of infrastructure investment seems a simple solution. However, that proposal would only undermine investors' concerns over the aforementioned deficiencies in law enforcement and would also increase the nation's vulnerability vis-a-vis India.¹⁶⁴ A better idea is for the Government to defer

¹⁶² For instance, the privatization of oil pipelines and oil terminals has led Pakistan's plan to woo foreign investors for \$5 billion worth of oil-related projects. *Pakistan's Investment Gamble is Being Played for High Stakes*, *supra* note 103. The privatization of 10% of the PTC also raised over \$900 million. Jackie Horne, *Pakistan Sets Euromarket Benchmark with Reduced \$150M Sovereign Debut*, *EUROWEEK*, Dec. 16, 1994, at 6, available in WESTLAW, Int-News Database.

¹⁶³ Takanosu, *supra* note 24.

¹⁶⁴ See *German TV Interviews Bhutto on Kashmir, Nuclear Issue*, BBC Monitoring Service, Apr. 21, 1994, available in WESTLAW, Int-News Database. In an April 1994 interview with German television, Bhutto justified Pakistan's high level of defense spending by citing the perceived threat of India and the consequent need to defend territorial integrity. Specifically,

repayment on its foreign debt or to raise capital by selling such debt on the international market through a Eurobond issue. Since such an issue would convert short-term into medium-term or long-term government debt, it would free funds otherwise earmarked for the immediate repayment of debt for investment in infrastructure.

In December 1994, the Government issued its debut Eurobond for exactly this purpose and ostensibly also to set a benchmark for similar such issues in the future.¹⁶⁵ With Bear Stearns as the lead manager, the \$150 million issue was 84 percent subscribed by some 77 global institutions from fifteen different countries.¹⁶⁶ Pricing expectations undoubtedly suffered, however, when the nation's credit rating was deemed sub-investment-grade by both Standard & Poor's (S&P) and Moody's.¹⁶⁷ According to S&P, the social and ethnic tensions and violence that plague the nation outweighed Pakistan's record of uninterrupted external debt service.¹⁶⁸ Thus, while a successful Eurobond issue would undoubtedly help raise the funds necessary for infrastructure investment, such an issue cannot be successful until the Government addresses the aforementioned problems of political instability and ethnic violence. Without addressing these problems, the Government will not be able to secure an investment-grade credit rating. If and when the Government does take the steps recommended to address these problems, a Eurobond issue would provide the short-term capital necessary to increase infrastructure investment and thereby to address one of investors' chief concerns.

Finally, once the Government has taken some of these measures, it must market these efforts to foreign investors. It must improve its advertising of Pakistan as an attractive investment by developing a comprehensive and aggressive marketing campaign.¹⁶⁹ Not only must the Government continue to educate foreign businesspersons as to the investment opportunities available in Pakistan, but it must also demonstrate if, how, and why those opportunities offer more lucrative and profitable returns on investment than opportunities available in

Bhutto noted that India had raised its defense budget by twenty percent, thereby exerting pressure on Pakistan similarly to do likewise.

¹⁶⁵ *Wanted-A Benchmark*, EUROMONEY, Dec. 28, 1994, at 94, available in WESTLAW, Int-News Database.

¹⁶⁶ *Pakistan Eurobond to Attract More Investment*, Reuters News Service-India, available in LEXIS, Asiapac Library, Paki File.

¹⁶⁷ *Wanted-A Benchmark*, *supra* note 165. As a result of the sub-investment-grade rating, the issue was downsized from \$200 million to \$150 million.

¹⁶⁸ Horne, *supra* note 162 at 6.

¹⁶⁹ The advertising and marketing efforts undertaken by the Government are described *infra* Part I.E.

other emerging markets.¹⁷⁰ It must heighten its advertising both on television and in widely circulating publications, such as *Time*, *Newsweek*, and *The Economist*, and must begin to advertise in more financially-oriented publications catering to investors. At investment conferences, the Government must invite representatives of foreign companies already involved in Pakistan to explain why their companies decided to invest there and what further economic opportunities they foresee in the nation. For example, representatives of Citibank could discuss why their company recently decided to expand its operations in Pakistan, while Shell representatives could explain the rationale behind their company's decision to increase its investment in Pakistan.¹⁷¹ The six Foreign Investment Promotion offices must also become more active in the advertising campaign. These offices should sponsor similar investment seminars and information sessions which should include appearances by high level officials and representatives of companies active in Pakistan. Rather than only extolling the benefits of investing in Pakistan, government officials and company representatives should also candidly address investors' concerns. Finally, in addition to encouraging overseas ambassadors and diplomats to lobby for investment, the Government must also actively seek further investment missions, such as O'Leary's, by aggressively marketing newly privatized sectors of the economy. These marketing efforts, in combination with the aforementioned efforts to address substantive obstacles to investment, should encourage such investment on a much larger scale than at present.

CONCLUSION

Thus, although the Government's ongoing program of economic reform has succeeded in attracting foreign investment to Pakistan, serious obstacles to such investment remain. Only when those obstacles are overcome—or, at the very least, addressed in a meaningful fashion—will the nation attract foreign capital on a scale large enough both to compete with the other emerging markets in Asia and to finance the Government's ambitious program.

¹⁷⁰ Indeed, the Government's efforts to market investment opportunities often focus exclusively on introducing investors to the specific incentives available, such as tax concessions, or on educating them as to the administrative and procedural hurdles they must clear prior to investing, rather than underscoring why investment in Pakistan would be more profitable than investment in another emerging market.

¹⁷¹ These events are discussed *infra* Part II.C.