

# **BARRISTER ABDUL RAZAK SATTAR SENIOR COUNSEL, SATTAR AND SATTAR**

## **INTERVIEWED BY**

**Qazi Mohammad Salman**

College of Management Sciences

PAF-Karachi Institute of Economics and Technology

E-mail: [qazi@pafkiet.edu.pk](mailto:qazi@pafkiet.edu.pk)

**Market Forces:** The Musharraf government has made a number of reforms since 1999, how do you see this reform process going?

**Sattar:** The reforms have been good for Pakistan. If you look at the last six years, there are a lot of areas where there has been growth. However, what is more important is that this has been an organized growth. If you look at the banking sector, the spiral growth has been there but it is regulated by the State Bank through good governance, prudential regulations, and all kinds of other measures. So the growth has not been left uncontrolled and is properly managed. In the corporate sector you have the SECP. The SECP regulates the stock exchange, corporations, insurance business, and securities. The focus is on good governance. So a strong regulatory and legal management system has been put in place. This is very critical if we have to avoid any South East Asia ‘bubbles’ kind of situation.

**Market Forces:** What have been the legal implications of this growth?

**Sattar:** If you look at the legal scene, one of the most common complaints made by the average Pakistani is that justice is delayed and is, hence, denied. To get around this, several things have been considered. One is to encourage a system of mediation. The business community has been asked to get used to the system of mediation. So, instead of running to court, the first thing parties are encouraged to do in a disputed situation is to mediate. There is going to be a mediation forum with probably forty professional mediators who are been trained. So before going to the court you will have an option for an outside-the-court mediation so that the matter may be resolved in good time and without crowding the already crowded courts. Another thing, which is in advanced stages, is the establishment of the Central Arbitration Board that will serve as a buffer between the business community and the regulators. Long delays in litigation will be

avoided. A third measure is that in case of a dispute with any government authority, the affected party will be able to turn to Alternate Dispute Resolution (ADR). The government has set up a committee of three people for this purpose. So in case of a dispute with any government agency, businesses have two options: first, to use their legal rights and go to the courts or tribunals and wait for years. Alternatively, without jeopardizing their legal rights the businesses can approach ADR. A commercial gentleman heads the ADR committee, there is a bureaucrat there on a panel of three, but a non-bureaucrat heads the committee. Whatever the committee decides is final and binding. Moreover at ADR you can negotiate. Thirdly, if you do not get the solution that you were looking for at ADR, you can still go back to the regular legal process. Hence, the trend is, not to crowd the courts but create a new culture of mediation and arbitration in business trade, and commerce. The end result, I hope, is going to be that much of the load of the judiciary will be transferred to other forums. So the courts will be able to address the problems of the common man. The other thing that we must remember is, that a Presidential Ordinance has just been issued saying that, in case of a dispute between an international party and a Pakistani party in which the Pakistani party has agreed to negotiate in Geneva or in London, Pakistani courts will respect that decision and would expect you to go and arbitrate first before coming to the courts. So now we are recognizing the sanctity of international contracts and this is going to encourage more investment to come to Pakistan. This will help overcome the fear of International Investors that Pakistan does not have any independent forum for conflict resolution and that Pakistani legal system does not respect international agreements. This is a very positive sign.

**Market Forces:** I would like you to give an example.

**Sattar:** There are two recent examples. In both these cases there was an arbitration issue between a Pakistani company and an International Investor. The Pakistani parties decided to go to the Sindh High Court. In both these cases, the Sindh High Court decided that it had no jurisdiction due to the Presidential Ordinance mentioned above. It ruled that as there is an arbitration clause in both contracts, the parties should first arbitrate within an International forum. Once this has been done, the Pakistani party can come to the courts but only on the question of law. The Pakistani court will not discuss facts as that is up to the International Arbitrator to decide upon. So the Pakistani courts are telling the Pakistani businesses to read the contracts before making any commitment. Now, Pakistani businessmen, entrepreneurs, and investors will have to learn to turn to the specialists and professionals before entering into any cross-border contracts or business deals. There are a lot of cross-border transactions going on especially in the media industry. It is very critical that we create a habit of consulting the professionals before committing to international contracts. This, unfortunately, is not part of our culture.

**Market Forces:** Some critics say that the growth that has occurred in recent years is a consumer-centered growth and is not beneficial for a country like Pakistan. Your comments?

Sattar: I think that recent growth is consumer-centered. The consumer has to have money in order to spend money. The money has been made available through financing. Growth is taking place, which ultimately provides the funds for further consumer lending. So growth is consumer driven in every economy where there is an upsurge. One reason for inflation is that there is more money in people's pockets and they are spending more of it. The bottom line still is that the system is generating enough funds through industrial and commercial activity to provide enough financing for the consumer who in turn supports the industrial and commercial activity by spending the money he has.

**Market Forces:** So this is a positive trend?

Sattar: Definitely, but only if we regulate. You can have a system where you create big conglomerates playing in different industries. We need to have some mega groups, and we need mega groups in order to compete in the WTO era. Size does matter as only then economies of scale can be realized which is absolutely critical for competing internationally. At the same time, we don't want them to become too big, cumbersome and left unregulated. So we don't want to get into a situation where someone could say that we have "twenty one families" again. My personal feeling is that we are regulating well but striking a balance is very important.

**Market Forces:** So what you are saying is that the investment climate has improved. What are the remaining bottlenecks?

Sattar: Law and order is the number one bottleneck. However, my own feeling is that though the law and order situation leaves a lot to be desired, it is like this almost anywhere in the world. However, it is a bigger problem for us. Being a frontline state we have a bad global image. Incidences of violence can happen anywhere but with us even a small incidence can get magnified. Many American and European entrepreneurs are put off because they can't travel to Pakistan and how can you invest if you can't travel and explore opportunities. So the perception and law and order problem need to be addressed immediately. The other thing that we need to improve is that though we have a lot of good people on the top there is a considerable amount of delay in processing. I think that most assignments that I take up could be speeded up. The various agencies have to learn to work closely with each other because sometimes the left arm doesn't seem to know what the right arm is doing. So if we want to encourage investors, be they local or foreign, we need to expedite processing. The best way to do this is to deregulate. A government should do only what it needs to do. The private entrepreneur should be given maximum freedom within the law. For the bureaucracy this might not be good, but I say get the bureaucracy out of a Pakistani's life.

**Market Forces:** Do foreign investors prefer joint ventures or wholly owned subsidiaries?

Sattar: Wherever they can, the foreign investor likes to hold on to hundred percent of equity. It is not that they like to monopolize. They just find it hard to find credible partners in Pakistan. That is not to suggest that such partners are not available but it takes

time and good due diligence. So, wherever the law permits, foreign companies like to hold hundred percent of the equity. The other thing is that if you have a joint venture, your joint venture partner should be compatible. Otherwise, you get into problems. While some of our Pakistani business community members are very compatible, this is not the case with everyone. So the important thing is to find a good compatible partner. As this is difficult, there is reluctance on behalf of the foreign investors to forming joint ventures. Pakistani law allows hundred percent equity ownership and we are not the only country to do this as the whole world is allowing this now. So the answer is yes, foreign investors do like to hold hundred percent equity unless they find a compatible partner.

**Market Forces:** Are there any special sectors or types of businesses where joint venture is a better option?

Sattar: A foreign investor looks for a local joint venture partner for a reason. The foreign investor brings in equity, know how, and management. Why is he looking for a local partner? It is not for money. Most of these companies have large funds at their disposal. The foreign investor looks for a local partner because he wants the local partner to pave the way for him. The local partner makes it easier for the foreign investor through public relations, government contacts, and the knowledge of local customs and culture. Wherever, there is a greater interaction with the regulatory authority, the requirement to deal with government departments, or increased contact with the local population there is a desire to look for a joint venture. I think one area that comes to mind is oil and gas. When you are exploring oil and gas, you are on the ground away from the cities in the rural, often tribal areas. You have to interact with the local population, village elders, and local machinery. So in the oil and gas sector, the preference is for forming joint ventures. You may also have to look at a joint venture if, for instance, you are involved in a project like Tarbela Dam. Here, you will have a tremendous need to handle local labor, local elders, local villagers, and there will be a strong need to have local understanding.

**Market Forces:** How do public officials conduct themselves when they are dealing with foreign investors?

Sattar: As consultants, our advice to all investors, whether local or foreign, is “Please follow the law”. As long as you follow the legal procedures, you will succeed. The procedures are in place. Sometimes there is a question of interpretation. Our advice to everybody is that if you want speedy progress, follow the procedures and you will be better off.

**Market Forces:** What are the specific complaints that foreign investors make about public officials?

Sattar: I will go back to my earlier point that the best thing that could be done is to have better coordination and faster processing. In case of foreign investors, one thing that we need to make easier is issuance of work permits to foreign executives who come here to work. These executives may be working for a local enterprise, a joint venture or a wholly owned subsidiary. In Pakistan, work permit is now known as Multiple Entry Visa. This Multiple Entry Visa is a combination of a work permit and a multiple visa. I think that experience suggests that it takes too long to get a multiple visa. It could take about three months and in some cases even longer. This keeps the expatriate executives in limbo. He is not sure whether he and his family are going to live in Pakistan and this

uncertainty causes distress to the executives. So it is very important that the expatriate executives work permit process should be speeded up.

**Market Forces:** I think that there was an issue in some recent Indian election where a party's slogan was, "We need microchip, not potato chip". How do you see this?

**Sattar:** I think that they are right.

**Market Forces:** Yes, but a lot of foreign investment in Pakistan is in the form of pizza outlets, burger shops and ice cream parlors. Where is Microsoft, where is IBM?

**Sattar:** Well, they are here.

**Market Forces:** But they only have a representative office and no development office?

**Sattar:** Yes, but they also have channel partners. That is how they operate. The important thing is that the brand is here. You don't need a large Microsoft investment here. All you need is that Microsoft is present and that they are feeling good about being here. Are the international banks here? Are the international brands here? They are all coming in. What they also do is that they create a sense of association for the foreign investor. They create a sense of confidence, which is often an important decision-making criterion. The typical foreign investor, when making a decision to invest or not looks at the law and order situation, he assesses the procedural system, he looks at the legal protection available to him, he sees his options of investing and disinvesting, he sees the visa situation, but he also considers whether or not major brand names are in Pakistan. The rationale is that if these market leaders are comfortable investing in a certain country, that country is safe for most foreign investors. It gives an additional incentive to feel good.

**Market Forces:** There is a school of thought in Pakistan that feels that unchecked foreign investment will hurt Pakistan's national identity. Any comments?

**Sattar:** If you look at the FDI around the world, it is in billions. We are only getting chicken feed. Let us face it; we are in no position to pick and choose. A Polish gentleman, that I met recently, told me that the annual input of FDI in Poland is over fifty billion dollars. They can pick and choose. We cannot. The whole ballgame has changed. It is no longer countries that decide what company should be allowed to invest in its boundaries. It is the other way round. Now, the investors decide whether they want to come in or not and what incentives do they want. So we have a long way to go. I think that we should continue providing incentives. Foreign investment is not just hard cash but also management and technical know how. We also need to protect intellectual property because if we don't do that, we will not get new medicines, new technology and we would be doomed to using outdated technology. This means curtains in the WTO regime. The world is the ballpark under WTO. If you do not have new technology, you will be left out completely.

**Market Forces:** Economists like Joseph Stiglitz have repeatedly criticized excessive financial market liberalization. Do you agree with this skepticism?

**Sattar:** I think that you have to define what excessive means. Our economy has just taken off. We have been at it for the last four or five years only. The total size of our economy is very small. So, that criticism may be valid in more developed countries. In Pakistan, however, I think that we have a long way to go.