



Securities and Exchange Commission of Pakistan
Company Law Division
(Enforcement Department)

Before Tahir Mahmood
Executive Director (Enforcement)

In the matter of

M/s. East West Insurance Company Limited

Number and date of Show cause notice: EMD/233/45/2002-731-37 dated October 7, 2008
Date of hearing April 23, 2009
Present on behalf of the Company: Mr. Imran Ali Dodani-General Manager
(Authorized Representative)

ORDER

Under Section 208 read with Section 476 of the Companies Ordinance, 1984

This order will dispose of the proceedings initiated against the Chief Executive and directors of M/s East West Insurance Company Limited ("Company") pertaining to contravention of the provisions of Section 208 of the Companies Ordinance, 1984 ("Ordinance").

2. The Company is incorporated in Pakistan as public limited company and is listed on Karachi Stock Exchange. Issued and paid up capital of the Company is Rs. 228,526,380 comprising of 22,852,638 ordinary shares of Rs. 10 each and the Company is engaged in the general insurance business.

3. In order to decide the matter, brief narration of the background facts leading to issue of show cause notice is necessary. The examination of the audited accounts (the "Accounts") of the Company for the year ended 31.12.2007 revealed that as per Note 13.4 to the Accounts, the Company has made equity investment in 460,020 shares in M/s The Metropolitan Life Assurance Company of Pakistan Limited ("Associated Company"), amounting to a total value of Rs. 7,118,275 and disclosed in the Accounts that the Company accepted the rights offer made by the Associated Company prior to 31.12.2007 and subsequent to the balance sheet date have obtained approval under section 208 of the Ordinance, of the shareholders of the Company at the Extra-ordinary General Meeting ("EOGM") held on February 25, 2008." It was apprehended that the Company has made investment in its Associated Company without the authority of special resolution, which is in contravention to the provisions of Section 208 of the Ordinance. Therefore, a show cause notice dated October 07, 2008 was issued to the Chief Executive and directors of the company to explain as to why penalties in terms of Sub-section (3) of Section 208 of the Ordinance may not be imposed on them.



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4. The reply to the show cause notice was received from directors vide their letter dated October 20, 2008. The Company made the following written submissions:

- Board of Directors is and was aware at the relevant time of the provisions of section 208 of the Ordinance.
- However due to then prevailing serious Law and Order situation engulfing the country in wide riots and the time frame for the investment in the associated company, the Board meeting could not be convened earlier to regularize the investment.
- Resultantly the Board of Directors in their meeting on February 1st 2008 decided to call Extra Ordinary General Meeting on February 25th 2008 to regularize the investment in an Associate Company.
- The interest of the Company and shareholders at any time was not compromised. The investment has made with diligence and due care was exercised to keep transparency paramount in the transaction. The Company and the shareholders have not suffered any loss on account of the investment and the shareholders approved the same vide a special resolution subsequent to the balance sheet date.
- Company requested to overlook the omission in view of the extraordinary circumstances prevailing in the country at the relevant time.

5. In order to provide an opportunity of personal hearing to the directors, the case was fixed for hearing on April 23, 2009. On the date of hearing, Mr. Imran Ali Dodani-General Manager ("Representative") appeared on behalf of all the directors and reiterated the submission made in written reply and admitted the default in the hearing as Company has not taken approval before making investment in Associate Company and asked for taking a lenient view.

6. I feel it appropriate to quote here the relevant provisions of the Ordinance. Sub-section (1) and Sub-section (3) of Section 208 of the Ordinance provides that:

(1) A company shall not make any investment in any of its associated companies or associated undertakings except under the authority of a special resolution which shall indicate the nature period and amount of investment and terms and conditions attached thereto.

Provided that the return on investment in the form of loan shall not be less than the borrowing cost of investing company.

Explanation: The expression 'investment' shall include loans, advances, equity, by whatever name called, or any amount, which is not in the nature of normal trade credit.

7. I have analyzed the written submissions made by the Company, verbal submissions of the representative at the time of hearing and relevant provisions of the law. My observations in the case are hereunder:



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- Company's stance that they were not able to take prior approval from share holders due to then prevailing serious Law and Order situation engulfing the country in wide riots is not a cogent reason for violating the provisions of Section 208 of Ordinance.
- Provisions of Section 208 of Ordinance are clear and explicit and bound companies to take approval from share holders before making an investment in associated companies and taking approval from shareholders after making investment in Associated Company cannot serve the purpose.
- Inability to hold BOD meeting is also not a cogent justification for not holding the EOGM for the purpose of approval of the said investment by the shareholders.

8. From the above discussion, submissions of the Company and arguments put forward by the representative, I am of the considered view that the provisions of Section 208 of the Ordinance have been violated and directors are liable for the penalties as defined in Sub-section (3) of the aforesaid provisions of the Ordinance. However, keeping in view the circumstances mentioned at paragraph 4 of this order and admission and assurance by the authorized representative that such a default shall not be committed in future, I am inclined to take a lenient view and instead of imposing a maximum fine of Rs. ten million on each director hereby impose fine of Rs. 150,000 (Rupees one hundred and fifty thousand only) on Mr. Naved Younas - Chief Executive only and warned other directors to be careful in future while fulfilling the provisions of law.

9. The above named Chief Executive of the Company is hereby directed to deposit fine in the designated bank account maintained in the name of the Commission with MCB Bank Limited within thirty days from the receipt of this order and furnish receipted bank vouchers to the Commission. In case of non-deposit of the penalty, proceedings under the Land Revenue Act, 1967 will be initiated for recovery of the fines as an arrear of land revenue. It may also be noted that the said penalties are imposed on the Chief Executive and directors in their personal capacity, therefore, they are required to pay the said amount from their personal resources.

Tahir Mahmood
Executive Director (Enforcement)

Announced On:
April 27, 2009
ISLAMABAD