



Securities and Exchange Commission of Pakistan

Company Law Division
(Enforcement Department)

Before

Ali Azeem Ikram
Director (Enforcement)

Order

in the matter of

East West Insurance Company Limited

under Clause (b) of Sub-section (1) of Section 160 read with Section 476 of the Companies Ordinance, 1984

Number and date of show cause notice:	EMD/233/45/2008-1041-1047 dated November 20, 2008
Date of hearing:	April 23, 2009
Present:	Mr. Imran Ali Dodani (General Manager)

This order will dispose of the proceedings pertaining to contravention of the provisions of Clause (b) of Sub-section (1) of Section 160 of the Companies Ordinance, 1984 (hereinafter referred to as "the Ordinance") initiated through show cause notice No. EMD/233/45/2008-1041-1047 dated November 20, 2008 served on the Chief Executive and Directors of East West Insurance Company limited (hereinafter referred to as "the Company").

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. The facts leading to this case are that the Enforcement Department (hereinafter referred to as "the department") of the Securities and Exchange Commission of Pakistan (hereinafter referred to as "the Commission") while examining the notice of Extraordinary General Meeting (hereinafter referred to as "the EOGM") of the Company held on 25.2.2008 it was observed that the following 'special business' was proposed for the approval of the shareholders:

SPECIAL BUSINESS

- "2. The Board of Directors has to decide to increase the Authorized Capital of the company to facilitate the further issue of capital. To consider and if though fit, to pass following Resolution.



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'RESOLVED that the Authorized Capital of the Company be increased from Rs.300,000,000 (Rupees Three Hundred Million) to Rs.500,000,000 (Rupees Five Hundred Million) and divided into 50,000,000 ordinary shares of Rs.10 each. That respective clause of Memorandum and Articles of Association of the company be amended to the extent of increased Authorized Capital and division thereof to become effective immediately.'

3. *The Board of Directors has to decide to consider and approve the issue of 17 % bonus shares in the proportion of 17 shares for every 100 shares held by the shareholder."*

4. It has been observed that notice of EOGM does not contain any material facts with regard to special businesses regarding increase in Authorized Capital and bonus issue as required under Section 160(1)(b) of the Ordinance. Furthermore, director's decision on fractional shares relating to issue of bonus shares had not been communicated to shareholders through the aforesaid notice in the form of agenda item as special business thus depriving the shareholders of their right to decide on the same.

5. In view of the fact that the Company did not disclose material information to the shareholders and failed to place "special business" agenda item before shareholders for their approval, a show cause notice (hereinafter referred to as "the notice") under Clause (b) of Sub-section (1) of Section 160 of the Ordinance dated November 20, 2008 was issued to the directors of the Company in order to explain as to why penalties, provided in the aforesaid provisions of law, may not be imposed on them for not providing the complete and material information to the shareholders necessary to understand the special business to be approved.

6. The Company in reply to the show cause notice vide its letter dated December 5, 2008 made the following written submissions.

INCREASE IN AUTHORISED CAPITAL:

- The only reason for increase in the authorized capital of the company was to cater for the requirements of the SECP to bring the paid up capital to a particular level which was being required to be increased every year to bring it Rs.30 crore by December 2009. The paid up capital can only be increased if the authorized capital is in excess or equal to the intended increase of the paid up capital.
- The directors instead of raising authorized capital every year to meet above requirements considered that the authorized capital should be in one go raised to Rs.50 crore as the paid up capital of the insurance companies is likely to be brought to that level in 3-4 years period.
- The reason for increase in authorized capital being a requirement by the Regulatory Authority, there were no material factors which needed disclosure nor was there any interest of the directors requiring disclosure in terms of the statement u/s160(1)(b).

BONUS ISSUE:

- The conjunctive reading of section 160 (1)(b) of the Ordinance indicated that the issue of bonus shares does not squarely constitute special business in terms of the said provision.



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- The directors by virtue of the powers and authority conferred upon them by the charter of the company and also in terms of section 196 of the Companies Ordinance could decide to issue bonus shares.
- The issue of such shares or interim dividend if any declared is generally placed in annual general meeting for information of the shareholders. Since before the AGM this extra ordinary meeting had been convened, the matter was placed in the EOGM but not as a special business.
- The treatment of fractional shares is by general practice and by the power available to the directors under the Articles of Association a matter to be decided by the Board and could be dealt with as provided by the Companies Ordinance and the Articles of Association of the Company.
- The Company requested this Commission for withdrawal of the show cause notice and hearing in the said matter.

7. In order to provide an opportunity of personal representation, the case was fixed for hearing on April 23, 2009 before the undersigned, at Head Office of this Commission at Islamabad. The hearing was conducted as per schedule and was attended by Mr. Imran Ali Dodani (General Manager) of the Company. During the hearing, he reiterated the same arguments as were earlier given in response to the show cause notice.

8. Before proceeding further, I feel appropriate to quote the provision of Clause (b) of Sub-section (1) of Section 160 of the Ordinance which states:

"where any special business, that is to say business other than consideration of the accounts, balance-sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected shall be specified in the statement; and

9. I have gone through the facts of the case, record of the Company, relevant provisions of the Ordinance, discussion taken place in the hearing and written submissions given in response to the show cause notice, and I have observed that the Company has classified both the agenda items under the heading of special business but has not provided the mandatory material facts to the shareholders as required by Section 160 of the Ordinance. The Company was also required to pass resolution with regard to fractional shares as special business; however the Company has stated that it is the power of directors to decide on the treatment of fractional shares whereas it was necessary to take prior approval of shareholders regarding fractional shares. The notice of meeting, therefore, did not comply with the provisions of Section 160 of the Ordinance.



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10. In view of the above discussion, I am of the firm opinion that the provisions of Section 160 of the Ordinance have been violated and the chief executive and directors are liable for the penalties as defined in Section 160 (8) (a) of the Ordinance. Sub-section (8) (a) of Section 160 of the Ordinance, applicable in the relevant period, provides that if default is made in complying with the requirements of this section every officer of a company who is knowingly and willfully in default shall be liable to a fine which may extend to fifty thousand rupees and in the case of a continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues. I instead of imposing maximum fine on all the directors hereby impose fine of Rs.10,000 (Rupees Ten Thousand only) each on the following directors:

Name of Directors	Penalty (Rs)
Mr. Chief Justice (R) Mian Mehboob Ahmed, Chairman	10,000
Mr. Naved Younus, Chief Executive	10,000
Mr. Javed Yunus, Director	10,000
Mr. Pervez Yunus, Director	10,000
Ms. Maheen Yunus, Director	10,000
Total	50,000

11. The two directors, Mrs. Rubina Javed Yunus and Mrs. Samina Pervez Yunus have informed vide their letter dated 5.12.2008 that they have both seized to be directors of the Company and requested for withdrawal of the show cause notice in their case.

12. The Chief Executive and directors are hereby directed to deposit the aforesaid amount of 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 voucher 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.

Ali Azcem Ikram
Director (Enforcement)

Announced
April 27, 2009
Islamabad