



SECP  
INSURANCE DIVISION  
Islamabad

Before Shaukat Hussain, Commissioner (Insurance)

In the matter of

M/s. Adamjee Life Assurance Company Limited

Show Cause Notice No. & Issue ID/Enf/Adamjeelife/2018/14753  
Date: Dated May 9, 2018

Date of Hearing: February 28, 2019

Attended By: Mr. Jalaluddin Meghani  
CFO and Company Secretary/ Authorized  
Representative  
M/s. Adamjee Life Assurance Company Ltd.

Mr. Iqbal Bawaney  
Authorized Representative

Mr. Bilal Ashfaq Memon  
Authorized Representative

Date of Order: April 2, 2019

**ORDER**

Under Section 208 of the Companies Ordinance, 1984.

.....  
This Order shall dispose of the proceedings initiated against the Chief Executive and Directors of M/s. Adamjee Life Assurance Company Limited (the "Company") for alleged non-compliance with Section 208 of the repealed Companies Ordinance, 1984<sup>1</sup> (the "Ordinance"). The Chief Executive and Directors of the Company shall be referred to as the "Respondents" hereinafter.

2. During examination of the annual audited accounts and regulatory returns for the year ended December 31, 2016, it was observed that the Company made the following investments in its listed associated companies during the year 2016:

	31-Dec-16			31-Dec-15
	No of Shares	Cost (Rs.)	Market Value (Rs.)	No of Shares
<b><u>Non-unitized Investment linked business</u></b>				
Nishat Chunian Limited	200,000	11,400,000	12,486,000	-
Sui Northern Gas Pipelines Limited	908,500	67,315,170	74,106,345	-
<b><u>Unit Linked Business</u></b>				
Sui Northern Gas Pipelines Limited	764,000	57,704,963	62,319,480	-
DG Khan Cement Company Limited	20,000	3,687,264	4,434,600	-
MCB Bank Limited	1,042,200	226,433,171	247,856,004	-
Nishat Chunian Limited	25,000	1,512,750	1,560,750	-
<b>Total</b>		<b>368,053,318</b>	<b>402,763,179</b>	

<sup>1</sup> Section 217 of the Companies Act, 2017



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3. The Company in Note 15.16 to the Accounts disclosed that during the year it made investment in certain associated companies. Special resolutions were adopted and the shareholders in their meetings held on November 26, 2016 and March 10, 2017 subsequently ratified those investments.
4. The Company in response to the Commission's letter dated November 9, 2017, submitted a copy of the Notice of Extra Ordinary General Meeting (EOGM) held on March 10, 2017 along with statement of material facts in terms of Section 160(1)(b) of the Ordinance, vide letter dated November 23, 2017.
5. The extracts of the minutes of EOGM held on November 26, 2016 and March 10, 2017 were reviewed. The analysis and review of the information revealed that the Company made investment without prior approval from its shareholders through special resolution. The Company ratified the equity investments already made in associated companies through special resolutions passed in EOGMs held on November 26, 2016 and March 10, 2017, in violation of Section 208 of the Ordinance. Furthermore, the same violation was also observed in the minutes of EOGM held on January 9, 2018.
6. Hence, it appeared to the Commission that the Company contravened the provisions of Section 208 of the Ordinance (Section 199 of the Companies Act, 2017) by not obtaining prior approval of the shareholders through special resolution(s) for allowing the equity investments in associated companies.
7. Section 208 of the Ordinance requires that:

*"Investments in Associated companies and undertaking.- (1) Subject to sub-section (2A) 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.*

*(2) No change in the nature of an investment or the terms and conditions attached thereto shall be made except under the authority of a special resolution.*

*(2A) The Commission may-*

*(a) by notification in the official Gazette, specify the class of companies or undertakings to which the restriction provided in sub-section (1) shall not apply; and*

*(b) through regulations made thereunder, specify such conditions and restrictions on the nature, period, amount of investment and terms and conditions attached thereto, and other ancillary matters, companies as it deems fit."*





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8. In view of the violations highlighted in the preceding paras, the Commission initiated penal action by issuance of a Show Cause Notice (SCN) on May 9, 2018 bearing No. Id/Enf/Adamjeelife/2018/14753 to the Respondents, calling upon them to show cause as to why the fine, as provided under Section 208 (3) of the Ordinance should not be imposed for non-compliance with Section 208 (1) & 208 (2) of the Ordinance.

9. In response to the said SCN, Mr. Iqbal L. Bawaney, M/s. Bawaney & partners, (the "Authorized Representative"), vide letter dated May 19, 2018 sought an extension of two weeks to submit the comments. The request was acceded to and the Authorized Representative was allowed to submit the response until June 2, 2018. However, the Authorized Representatives through letter dated June 2, 2018 again requested to allow further ten (10) days for submission of the response. In the interest of justice, the Commission granted additional 10 days for replying to the SCN.

10. Subsequently, the Authorized Representative vide letter dated June 7, 2018 submitted response to the SCN, which is reproduced below:

".....

*There can be no cavil that Section 208 of the repealed Companies Ordinance, 1984 ("Ordinance") had prohibited a company from making investment in its associated companies or associated undertakings without the approval of the shareholders by special resolution. Section 199 of the Companies Act, 2017 ("Act") also contains the same limitation. However, the focal point in our case is that Section 208 of the Ordinance, as well as Section 199 of the Act relate to investments of their own funds by companies. In the instant case, all the investments mentioned in the SCN were made out of the Policyholders' Funds, the benefit of which eventually accrued to the Policyholders and not to Adamjee Life Assurance Company Limited ("Company").*

*The Company carries on business of Life Insurance and under Section 14 of the Insurance Ordinance, 2000, it is required to maintain Statutory Funds, including Statutory Funds relating to insurance linked benefits, capital redemption business, accident and healthcare business, etc., which were established by the Company after due notice to the Hon'ble Commission. The pertinent policies are also linked with the specific Statutory Funds. According to Section 17 of the Insurance Ordinance, all assets, liabilities, revenue and expenses of the Funds are referable to the specific Funds and in particular, Section 17(3) of the Insurance Ordinance, requires that all assets and investments related to the business of a Statutory Fund are required to be included in such Funds. So much so, according to Section 17(6), where an asset, a liability, a revenue or an expense of a Life Insurer is referable to two or more Statutory Funds, the Insurer is required to apportion such asset, liability, revenue or expense on a fair and equitable basis between the Funds.*

*Furthermore, Section 23(1) stipulates that no insurer carrying on life insurance business shall declare or pay any dividend to shareholders or make any payment for services other than from the shareholders' funds. Likewise, Section 23(2) stipulates that no insurer carrying on life insurance business shall appropriate from any Statutory Funds to shareholders funds, any amount, other than as provided in that Section. It may further be appreciated that for the purpose of Solvency Requirements under Section 32 of the Insurance Ordinance, assets in Statutory Funds are not admissible.*





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It is therefore humbly submitted that the moneys available in the Statutory Funds are not the Company's own funds or the funds of the shareholders. Investments of such amounts are therefore made for and on account of the pertinent Funds and not on account of the Company or on account of shareholders. All profits and benefits accruing on investments made on account of Statutory Funds are credited to the accounts of the pertinent Statutory Funds. Therefore, such investments cannot be regarded as investments made by the Company on its own account, but investments are made on account the Statutory Funds.

Without prejudice to the preceding submissions, it is respectfully submitted that all investments were made by the Investment Advisor, namely, MCB- Arif Habib Savings and Investments Limited ("Investment Advisor"), who maintains Discretionary Investment Portfolio for the Company under separate Discretionary Portfolio Management Agreement for Unit Linked Funds and Discretionary Portfolio Management Agreement for Other Investments. The transactions were executed by the Investment Advisor without any intimation to the Company on their understanding that SRO 704(1)/2011 dated July 13, 2011 was also applicable to insurance companies and as such according to the Investment Advisor, approvals of the shareholders were not required. When the Company noticed that investments were made in its associated companies, the Company by way of abundant caution got these investments voluntarily ratified by special resolutions passed by the shareholders of the Company. All the transactions were made on arms-length basis on the discretion of the Investment Advisor. Full disclosures were made in the Financial Statements of the Company.

It may therefore be appreciated that the investment decisions were not made by the Company, but by the Investment Advisor at its discretion who were of the bonafide view that by virtue of the Commission's Notification SRO 704(1)/2011 dated July 13, 2011, the Company was exempt from the purview of Section 208 of the Ordinance. More specifically, according to Item No.(g), a company whose principal business is of acquisition of shares and other securities on behalf of third parties in the ordinary course of business, the Company was not required to seek the approval of its shareholders. At any rate, when this issue surfaced during the course of the discussions with the Auditors, the Company immediately by way of abundant caution got the investments ratified by special resolutions dated November 26, 2016 and March 10, 2017. Hence, there was no malafide intent on part of the Company or its Directors, who have all along acted in good faith. Moreover, no loss has occurred to any of the Statutory Funds on these investments. Therefore, lenient view may be taken.

Without prejudice to the preceding submissions, it is further submitted that Outsourcing of Investment Functions by the Company to the Investment Advisor with the approval of the Company's Board is in consonance with Rule 8(7) of the Unit Linked Product and Funds Rules, 2015 ("Rules"). The investments forming subject matter of the SCN pertained to Unit Linked Funds and the Company has fulfilled all the requirements of the Rules. In particular, all transactions were at arms-length basis and the custody of all listed securities are held in the accounts of the Company with Central Depository Company of Pakistan Limited. The investments in government securities are in an IPS Account of the Company. Separate Bank Accounts are maintained for each Fund. Hence, for all intents and purposes, such investments cannot be regarded as investments of the Company, but investments of the Funds and therefore the limitations contained in Section 208 of the





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*Ordinance is not attracted. Moreover, the law permits Outsourcing of Investment Functions by the Company and the Company has the requisite systems and control in place and the investments are appropriate and properly managed and other requirements of the Rules have been fulfilled. The Company has acted in good faith in accordance with the law and in the best interest of the Policy Holders.*

*In Para 7 of the SCN, it has been mentioned that the same violation was observed in the Minutes of EOGM of January 9, 2018. We respectfully submit that the said special resolution only ratified the disposal of various quantities of shares of MCB Bank, which investments had earlier been voluntarily ratified by the shareholders in their meeting held on November 26, 2016, mentioned above. There was no decision to make any further investments. We honestly believe that the limitation contained in Section 208 of the Ordinance is only in relation to making of investments and not disinvestments.*

*The Hon'ble Commission may please rest assured that it has always been the policy of the Company to conduct its affairs in accordance with the highest legal and ethical standards and to comply with all applicable laws, rules and regulations and the directions of the Hon'ble Commission. Therefore, there is no deliberate act or omission on part of any of the Directors or the Senior Management.*

*We fully respect the Commission's approach in implementing the law in its true letter and spirit and pledge our full co-operation with the Commission in all statutory compliances. Therefore, without prejudice, if the Hon'ble Commission does not concur with our submissions, then we would respectfully request the Commission to take a lenient view, since we have acted in a good faith without any malafide intent. The Company and its Directors further assure that they will be more vigilant in future on such matters. This is without prejudice to the contention that the investments were made on account of the Statutory Funds and not on account of the Company. No benefit has accrued to the Company on these investments.*

*....."*

11. Thereafter, the Commission vide letter dated June 25, 2018 scheduled the hearing on July 4, 2018 at 11<sup>th</sup> Floor, NIC Building, Jinnah Avenue, Blue Area, Islamabad. However, the Authorized Representative, vide letter dated June 30, 2018 requested to defer the hearing for any date in August, 2018. The hearing was rescheduled on February 28, 2019 at the Commission's Karachi Office. The said hearing was attended by the Authorized Representatives namely, Mr. Iqbal Bawaney, Mr. Bilal Ashfaq Memon, and Mr. Jalaluddin Meghani, for and on behalf of the Respondents.

12. During the hearing, the Authorized Representatives reiterated their written comments and stated that the provisions of Section 208 the Ordinance related to investments of their own funds, whereas in the instant case, all the investments mentioned in the SCN were made out of the policyholders' funds. The Authorized Representatives further stated that all profits and benefits accruing on investments made on account of policyholders'/statutory funds were credited to the accounts of the pertinent policyholders'/statutory funds. Therefore, such investments could not be regarded as investments made by the Company on its own account, but investments were made on account of the policyholders'/statutory funds. It was also stated that the





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NBFC regulations also support the understanding of the Respondents in the matter. The Authorized Representatives stated that Company subsequently had ratified those investments in its EOGM. The Authorized Representatives requested the Commission to take lenient view in the instant case.

13. As per provisions of the Ordinance, statutory funds are not separate legal entities. The Company made investment in the associated companies in its own name, therefore the Company was required to adhere to the provisions of Section 208 of the Ordinance at all times i.e. the approval of the shareholders was required prior to making any investment in any of the Company's associated concerns. The Company was also required to take even more precautionary measures before making investment of the policyholders' funds in its own name in the associated companies. Plain reading of Section 208 suggests that the purpose of this provision is to prevent misuse of funds through investment in associated companies or associated undertakings. Therefore, the Ordinance prohibits the Company to make investment in any of its associated companies or associated undertakings except under the authority of special resolution. Even any change in the nature of investment or the terms and conditions of the investment in associated companies or associated undertakings cannot be made except under the authority of a special resolution.

14. The Respondents mentioned that the Company complied with Sections 14, 17, 23 and 32 of the Insurance Ordinance, 2000, while making investments in the associated companies or associated undertakings. Compliance with the said provisions did not mean that the Company was exempted from complying with Section 208 of the Ordinance. Therefore, the Company was required to ensure compliance with Section 208 of the Ordinance in addition to the provisions of the Insurance Ordinance, 2000.

15. Furthermore, Section 208 of the Ordinance does not specify that approval be only sought by the Company for investment of its own funds. Therefore, Company's argument that all investments mentioned in the SCN were made out of policyholders' funds is not tenable. Section 208 of the Ordinance explicitly states that company shall not make any investment in any of its associated companies except under the authority of a special resolution. Regardless of the fact that the funds were used from policyholders' funds, the Company was required to seek prior approval. The Company ratified the equity investments already made in associated companies through special resolutions passed in EOGMs held on November 26, 2016 and March 10, 2017. It has been observed that the Company took these approvals subsequent to the investments, which were in contravention of Section 208 of the Ordinance. Moreover, the same non-compliance was also noted in minutes of the EOGM held on January 9, 2018.

16. In addition, the Company also referred to item no. (g) of SRO 704(I)/2011 which states that the company whose principle business is the acquisition of share stock, debentures etc. on behalf of client in ordinary course of business is exempt from the requirement of Section 208 of the Ordinance. It is clarified that principle business of the Company is insurance and not the businesses as stated above. Any exemption available under the SRO 704(I)/2011 would only be for the investment advisor and not the Company. Furthermore, the investment advisor, under the Discretionary Portfolio



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Management Agreement for unit-linked funds, should also have required to ensure compliance with respective laws and regulations under the Ordinance. Thus, the Company's response appears invalid.

17. I have carefully examined and given due consideration to the written and verbal submissions of the Respondents, and have also referred to the provisions of the Ordinance and other legal references. I am of the view that default of Section 208 of the Ordinance is established, for which fine under Section 208(3) of the Ordinance can be imposed.

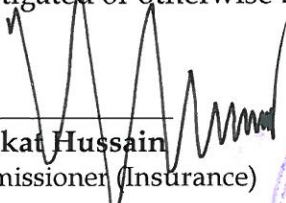
18. Section 208(3) of the Ordinance states that;

*(3) If default is made in complying with the requirements of this section[, or regulations,] every director of a company who is knowingly and wilfully in default shall be liable to fine which may extend to [ten] million rupees and in addition, the directors shall jointly and severally reimburse to the company any loss sustained by the company in consequence of an investment which was made without complying with the requirements of this section."*

19. In exercise of the power conferred on me under Section 208(3) of the Ordinance, I, take a lenient view and do not impose fine on Board of Directors of the Company. However, I impose a fine of Rs. 500,000/- (Rupees Five Hundred Thousand only) on the Company under the said provision of the Ordinance, due to the non-compliances, as mentioned hereinabove. The Company is hereby warned and directed to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

20. Hence, the Company is hereby directed to deposit the applicable fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty (30) days from the date of this Order and furnish receipted vouchers issued in the name of the Commission for information and record.

21. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the Chief Executive Officer of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

  
Shaukat Hussain  
Commissioner (Insurance)

