



Corporate Supervision Department
Company Law Division

Before Mr. Abid Hussain – Executive Director (CSD)

In the matter of

Baluchistan Wheels Limited

Number and date of SCN: No. CSD/ARN/406/2016-1937-44 dated December 22, 2016

ORDER

**UNDER SECTION 160 AND 164 READ WITH SECTION 476 OF
THE COMPANIES ORDINANCE, 1984**

This order shall dispose of the proceedings initiated against the following directors including the chief executive officer (*the "Respondents"*) of Baluchistan Wheels Limited (*the "Company"*) namely:

- 1 Syed Haroon Rashid
- 2 Mr. Razak H. M. Bengali
- 3 Mr. Anis Wahab Zuberi
- 4 Mr. Muhammad Irfan Ghani
- 5 Mr. Syed Zubair Ahmad Shah
- 6 Mrs. Gulbano Razak
- 7 Ms. Saba Nadeem
- 8 Ms. Maheen Irfan Ghani

The proceedings against the respondents were initiated through show cause notice dated December 22, 2016 (*the "SCN"*) under the provisions of sections 160 and 164 read with section 476 of the Companies Ordinance, 1984 (*the "Ordinance"*).

2. The examination of notice of annual general meeting of the Company for year 2016 transpired that the agenda item no. 5 related to amendment in articles of association of the Company for increase in remuneration to only Independent / non Executive Directors which was proposed as a special business. However, the statement of material facts annexed under section 160 (1) (b) of the Ordinance revealed that said special resolution was proposed to be passed by shareholders to amend article 9.11 of the articles of association regarding remuneration of Chairman and Chief Executive also. The information disclosed was as follows:



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" Unless otherwise determined by the Company in general meeting, director other than the Chief Executive or full time working director may be paid by way of remuneration/fees as may be fixed by directors, for each meeting of the board and its committee meeting attended by him/her. Remuneration and terms and conditions of appointment of the Chairman, Managing Director or other Chief Executive by whatever whole time or part time shall be determined by the directors and shall be subject to permission, if any, required by law. Each director shall be entitled to be reimbursed his reasonable expenses incurred in consequence of his attendance at meetings of directors or Committee of Directors."

3. The Commission, through its letter dated October 17, 2016 sought comments from the Company about proposed resolution being limited to non-executive/independent director and statement of material facts disclosing terms of remuneration of Chairman and CEO also. The Company vide its letter dated October 21, 2016 stated that the information in statement of material facts was actually the special resolution proposed. However, the same was inadvertently disclosed in the statement rather than in special business as agenda item.

4. The SCN was issued to the respondents for failure to disclose complete details pertaining to alteration of articles as special resolution and failure to disclose the nature and extent of interest of directors in proposed resolution in the statement of material facts.

5. The Company vide its letter dated January 4, 2017 submitted a written response to the SCN. It was stated therein that the Company admits its inadvertent mistake which was not willful and deliberate as informed in earlier letter dated October 17, 2016. Further, it was stated that the Company had removed the deficiency, obtained approval of the members in the Annual General Meeting held on October 29, 2016 by passing the corrected special resolution and accordingly the documents have been filed and submitted. The extract of resolution submitted to Pakistan Stock Exchange (PSX) contains the resolution as per the Ordinance. The Company further informed that amendment in Articles of Association is a cumbersome process and the fee paid to Non-Executive Directors increases from time to time therefore the quantum of the fee could not be stated. The consent of the members has been taken and any increase in the fee paid is disclosed in the Financial Statements on regular basis. The Company requested for lenient view and ensured compliance of relevant law in future.

6. Before proceeding further, it is necessary to advert to the following relevant provisions of the Ordinance. In terms of clause (b) of sub-section (1) of section 160 of the Ordinance provides:

"where any special business, that is to say business other than consideration of the accounts, balance-sheet 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,



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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."

Further, sub-section (1) of Section 164 of the Ordinance provides:

"With the notice for a meeting, the company shall send to the members copies of draft resolutions, other than routine or procedural resolutions, which are proposed for consideration in the meeting."

In terms of the Commission's notification SRO 751(I)/2017 dated August 2, 2017, the powers to adjudicate cases under sections 160 and 164 of the Ordinance have been delegated to Executive Director (Corporate Supervision Department).

7. I have gone through the facts of the case and submissions of the respondents. Any business other than the businesses mentioned in the provisions of Section 160(1)(b) of the Ordinance is a special business and the statement of material facts is required to be enclosed with notice. The Company has therefore defaulted the requirements of law. However, as the Company has taken the corrective measures and special resolution as passed in the annual general meeting was accordingly amended to conform with the provisions of law and keeping in view of the nature of agenda item the omission of enclosing the statement of material facts is hereby condoned with a warning to the respondents.

Abid Hussain
Executive Director
Corporate Supervision Department

Announced:
March 9, 2018
Islamabad

