



Corporate Supervision Department
Company Law Division

Before Amina Aziz – Director (CSD)

In the matter of

BankIslami Pakistan Limited

Number and date of SCN: CSD/ARN/327/2016 – 4691-98, dated June 28, 2016
Hearing held on: August 1, 2016 and Sept 7 2016
Present: Mr. Salman Raja, Legal Counsel
Mr. Khawaja Ehrar ul Hassan, Company Secretary

ORDER

UNDER SECTION 158 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE, 1984

This order shall dispose of the proceedings initiated against the following directors including chief executive (together referred to as “respondents”) of BankIslami Pakistan Limited (the “Company” or “Bank”):

| | | | |
|---|--|---|---------------------------|
| 1 | Mr. Ali Hassan, Chief Executive | 5 | Mr. Fawad Anwar |
| 2 | Mr. Ali Mohd Hussain Ali Al Shamali | 6 | Mr. Hasan A. Bilgrami |
| 3 | Mr. Ali Raza Siddiqui | 7 | Mr. Kamal Afsar |
| 4 | Mr. Abdullahakim Habib Mansoor Binherz | 8 | Mr. Shabir Ahmed Randeree |

The proceedings against the respondents were initiated through show cause notice (the “SCN”) dated June 28, 2016 under the provisions of section 158 read with section 476 of the Companies Ordinance, 1984 (the “Ordinance”).

2. The brief facts of the case are that in terms of sub-section (1) of section 158 of the Ordinance, the Bank was required to hold its annual general meeting (the “AGM”) for the year ended December 31, 2015 on or before April 30, 2016. However, review of record revealed that the Company held its aforesaid AGM on June 29, 2016 i.e. with a delay of 60 days without seeking extension / direction from the Securities and Exchange Commission of Pakistan (the “Commission”) as per requirements of the law. The Bank, on enquiry by the Commission informed that *the State Bank has allowed extension to the Bank for submit/publish accounts by June 30, 2016 and that “...the annual account are approved in Annual General Meeting (AGM) only. Hence the extension granted by State Bank of Pakistan covers AGM as well”*. Consequently, the SCN was issued to the respondents whereof they were called upon to show cause in writing as to why penal action may not be taken against them under section 158 of the Ordinance for not holding the AGM.



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3. The Bank submitted its written representation vide its letter dated July 2, 2016, which are summarized as under;
- a. Mr. Abdulhakim Habib Habib Mansoor Binherz is a director of the Bank since August 25, 2014. While Mr. Shabir Ahmed Randeree ceased to be a director since June 7, 2016.
 - b. Section 158 of the Ordinance requires the company to hold its AGM within four months of close of the financial year and within fifteen months of the last AGM, and further provides that the Commission may in exceptional circumstances may grant exemption for a further period not exceeding thirty days.
 - c. The Bank, being a banking company is primarily governed by the Banking Companies Ordinance 1962 (the "BCO"). Section 36 of BCO allows State Bank of Pakistan (the "SBP") to grant extension in preparation and finalization of accounts as passed in an AGM for a period not exceeding six months.
 - d. It is clear from the above discussion that (a) the Commission does not have any powers to extend preparation and filing of accounts; (b) The Commission does have powers to allow a Company to hold its AGM for a period of thirty days only; (c) SBP does have powers u/s 36 to extend the date of preparation and submission of accounts passed in an AGM by a period not exceeding six months.
 - e. The Bank sought extension from SBP for a period of six months which was received on March 28, 2016.
 - f. No permission was sought from SECP as the Commission does not have any powers to extend the date of preparation of accounts. In case of holding of AGM is concerned, the powers of the Commission are limited to thirty days only, where the delay was eighty nine days.
 - g. The SCN is requested to be withdrawn as neither the Bank nor its directors are in breach of any regulation.
4. The Bank further submitted vide its letter dated July 28, 2016 that;
- a. The Bank was unaware of any provision in law that the Commission shall be informed of the delay in approval and publication financial accounts, which shall be followed meticulously now that you have advised.



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- b. The Bank has sought approval from the Commission regarding the delay in approval and finalization of financial statements (*copies of letter attached*), which practice was discontinued when the Commissions itself informed that it has no such powers.

5. The case was fixed for hearing on July 13, 2016, which was re-fixed on August 1, 2016. The Bank informed vide its letter dated July 29, 2016 that in the absence of Mr. Salman Raja, the legal counsel of the Bank, Mr. Khawaja Ehrar ul Hassan, Company Secretary, and Sohail Sikandar, Chief Financial Officer of the Bank, duly authorized by the board of directors (BOD), shall attend the hearing. The Authorized representatives appeared on given time and date and explained the position of the Bank. Subsequently, another hearing was fixed on September 7, 2016, where Mr. Salman Raja, authorized by the BOD, appeared alongwith the Company Secretary and submitted in his verbal and written representations that;

- a. Due to merger of KASB Bank Limited (KASBL) with the Bank, M/s KPMG was appointed to prepare fair valuer accounts in compliance with IFRS-3, which delayed the finalization of quarterly/ half year/annual accounts for the year ending Dec 31, 2015, and hence delayed the holding of AGM for the year ending Dec 31, 2015.
- b. The bank sought extension from SBP under section 36 of the BCO, and submitted the accounts to the Commission as well as held AGM within extended timeline, hence the Bank cannot be held in default. The delay was unavoidable and was only on account of merger of the Bank and KASBL.
- c. In the absence of finalization of accounts, the AGM could not be meaningful, and as the merger is under section 47 and 48 of the BCO, and the scheme of merger was made available to all concerned including the National Assembly, hence there is no question any information being withheld from the shareholders.
- d. Based on the above submissions, the respondents pleaded that the SCN be recalled as the Bank always acted in bona fide belief that it has the legal cover of the extensions allowed by the SBP, hence no occasion arisen for levy of any penalty.

6. Before proceeding further, it is necessary to advert to the following relevant provisions of the Ordinance:

Sub-section (1) of section 158 of the Ordinance, inter alia, provides as under:

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“Every company shall hold, in addition to any other meeting, a general meeting, as its annual general meeting, within eighteen months from the date of its incorporation and thereafter once at least in every calendar year within a period of four months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting:

Provided that, in the case of a listed company, the Commission, and, in any other case, the registrar, may for any special reason extend the time within which any annual general meeting, not being the first such meeting, shall be held by a period not exceeding thirty days.”

Sub-section (4) of section 158, inter alia, provides as under:

“If default is made in complying with any provision of this section, the company and every officer of the company who is knowingly and willfully a party to the default shall be liable,--

(a) if the default relates to a listed company, to a fine not less than fifty thousand rupees and not exceeding five hundred thousand rupees and to a further fine not exceeding two thousand rupees for every day after the first during which the default continues;”

In terms of the Commission’s notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under section 158 of the Ordinance have been delegated to the Director (Corporate Supervision Department).

7. I have analyzed the facts of the case, relevant provisions of the Ordinance, and submissions made by the respondents and observed the following:

- a. The regulatory jurisdictions of the SBP and SECP are entirely separate. SBP being the functional regulator of banking sector endeavor to safeguard the interest of depositors and supervise and regulate the banking companies against systemic risks whereas the Commission safeguard the interest of shareholders and ensure the corporate compliance of the banks as companies registered and governed under the Ordinance. Section 503 (2) clearly spells out the applicability of Ordinance to the companies which are established under special enactments with regard to specific sections including Section 158 of the Ordinance pertaining to holding of AGM. Section 503 (2) is reproduced hereunder for clarity which stated that;



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503. *Application of Ordinance to companies governed by special enactments.- (1) The provisions of this Ordinance shall apply....*

(2) The provisions of sections 156, 158, 230 to 247, 254 to 274, 277 and 278 shall mutatis mutandis apply to listed companies or corporations established by any special enactment for the time being in force whose securities are listed and in the said sections the expression "company" shall include a listed company so established.

Moreover, section 2 of the BCO clearly explain that;

" Application of other laws not barred.- The provisions of this Ordinance shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Companies Ordinance, 1984 (XLVII of 1984), and any other law for the time being in force."

- b. From the above, it is very clear that the Bank has to seek the accord of the Commission for any delay in holding of AGM and any approval from SBP under BCO does not absolve the Bank from its liability towards the mandatory provisions of the section 158 of the Ordinance. The Bank pleaded that since the delay in holding of the AGM was more than what the Commission could grant is not tenable as the Bank could approach the Commission for direction under section 170 of the Ordinance, after applying for extension for 30 days. However, none of these alternatives were adopted by the Bank:
- c. Section 158 prescribe the requirement of holding of AGM, and the powers to accord any extension in holding of AGM rests with the Commission. SBP in its letter dated August 26, 2015 (presented during the proceedings) has not allowed any extension in holding of AGM, and specifically advise to ensure all regulatory requirements within prescribed timelines, which clearly exhibit that Company was not to delay the AGM. The SBP has only allowed extension in timeline for submission of accounts to the SBP and has not overlapped the authority of the Commission, which is evident from the plain reading of section 36 of the BCO that states;

Submission of returns. — The accounts and balance-sheet referred to in section 34 together with the auditor's report as passed in the Annual General Meeting shall be published in the



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prescribed manner, and three copies thereof shall be furnished as returns to the State Bank within three months of the close of the period to which they relate:

Provided that the State Bank may in special circumstances extend the said period of three months for the furnishing of such returns by a further period not exceeding three months.

8. The aforesaid provisions of the law are clear and explicit. A company is required to hold its AGM within four months from the close of its financial year. Holding of the AGM is a very important statutory event and provides an opportunity to the shareholders including those in minority, to participate in discussion and voting on agenda items of the AGM that include consideration and approval of a company's financial statements. The financial statements not only show the financial position and performance of a company but also show the results of management's stewardship of resources entrusted to it. In order to ensure minority participation and transparency, all the companies must meticulously follow the procedure prescribed by the Ordinance for holding an AGM. In addition to their responsibility of overseeing and managing affairs of the Company, directors also have fiduciary duties towards the Company and its shareholders. They are, therefore, liable to a higher level of accountability which requires them to be vigilant and perform their duties with care and prudence. It is directors' responsibility to oversee the functioning of the company, to keep it appropriately staffed and organized to ensure due compliance of law. Directors of a listed company while filing their consents to act as directors, inter alia, give an undertaking that they are aware of their duties under the Ordinance and that they have read the relevant provisions contained therein. It is mandatory for the directors of a listed company to have knowledge of provisions of the applicable laws and in terms of the Ordinance the directors are primarily responsible for holding the AGM. In this context the respondents' cannot absolve themselves of their statutory duties regarding holding of AGMs and preparing and filing of annual and quarterly accounts.

9. In view of the above stated facts, I have concluded that the provisions of the law have been violated by the respondents as they have failed to hold the AGM of the Company for the years ended June 30, 2015, within the prescribed time. However, considering that the Bank was going through special circumstances due to merger with KASB and that the Bank acted in good faith under the impression that the SBP approval is suffice, I while taking lenient view, and



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instead of imposing fine warn the directors of the Bank and direct them to ensure meticulous compliance of the law in future.

Amina Aziz
Director (CSD)

Announced:
November 22, 2016
Islamabad