



Corporate Supervision Department  
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

**Gray Mackenzie Restaurants International Limited**

Number and date of notice: No. CSD/ARN/309/2016-2329-35 dated January 13, 2017

Date of hearing: February 16, 2017, August 7, 2017, September 11, 2017,  
September 21, 2017, October 30, 2017, November 30, 2017,  
December 18, 2017, April 12, 2018, May 17, 2018

Present: Mr. Khalid Mahmood Siddiqui, Advocate,  
(Authorized Representative)

**ORDER**

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

This order shall dispose of the proceedings initiated against the directors including Chief Executive (*the "Respondents"*) of Gray Mackenzie Restaurants International Limited (*the "Company" or GMRIL*) through show cause notice dated January 13, 2017 (*the "SCN"*) issued under the provisions of Section 208 read with Section 476 of the Companies Ordinance 1984 (*the "Ordinance"*).

2. Brief facts of the case are that the review of annual audited financial statements for the year ended on June 30, 2014 and 2015 (*the "Accounts"*) of the Company revealed advances to associated company namely Cupola Pakistan Limited (*"CPL"*). Clarification was sought from the Company through Commission's letter dated July 15, 2016 about the aforesaid advances. The information provided by the Company vide letter dated August 26, 2016 in response to the Commission's letter and the Accounts of the Company revealed the following advances given to CPL:

Rs. in '000

Year	2015	2014	2013	2012	2011	2010
Balance as on 1 July	460,267	441,726	390,000	317,422	251,150	182,248
Additions during the year	9,491	19,365	52,923	85,010	67,945	35,620
Received during the year	-	(824)	(1,197)	(10,390)		
Interest accrued	-	-	52,138	49,754	37,327	32,282
Provision for impairment	-	-	(52,138)	(51,796)	(38,000)	
Balance	469,758	460,267	441,726	390,000	318,422	250,150

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3. It was further noted that following resolution was passed in the annual general meeting of the Company held on October 31, 2014:

*"Further Resolved that consent and approval of Gray Mackenzie Restaurants International Limited be and is hereby accorded under section 208 of the Ordinance to extend the limit of loan, advances or facility of Rs600 million up to an aggregate sum of Rs700 million to be disbursed in the form of loans, advances or facility of similar nature from time to time to Cupola Pakistan Limited an associated company of the Company at the mark-up rate of above the borrowing cost of the Company".*

4. The auditor of the Company in his report to the members on the accounts for year ended June 30, 2015 reported the following:

*"Note 8.1.3 to the financial statement which explains the non-compliance of Section 208 of the Ordinance and related rules pertaining to balance receivable from Cupola Pakistan Limited amounting to Rs.470 million".*

5. Note 8.1.3 to the Accounts of the Company of financial statement for the year ended June 30, 2015 states that:

*"Companies (Investment in Associated Companies & Associated Undertakings) Regulations, 2012 issued by the SECP on January 16, 2012 contains certain conditions and restrictions on the companies making investment by way of loans and advances to associated companies. These include the fact that interest, etc, shall be recovered periodically by the investment company in line with the standards terms normally applied by the commercial banks, etc. on similar facilities extended to the borrowers. Management is making arrangements to recover the above balance due from the associated company".*

6. Subsequently, the SCN was issued to the directors of the Company including the chief executive wherein the respondents were called upon to show cause in writing as to why penal action may not be taken against them. In order to provide opportunity of personal hearing, the case was fixed on February 16, 2017, August 7, 2017 and September 11, 2017 however the hearings fixed were adjourned at the request of the Company. The hearing was then fixed on September 21,



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2017. Mr. Golraiz Habib Khan, Country Head, KFC and Mr. Noor Din Khurram, Manager Admin, KFC appeared on the date of the hearing. They submitted the following written reply to the SCN on behalf of the Company.

## QUOTE

2. *Before we forge ahead with our reply, we would like to highlight the facts and would state as under:*

- a) *At the inception of loan, Cupola Pakistan Limited ["CPL"], was a commercially active entity and loan / advances were accordingly disbursed on such commercial terms;*
- b) *CPL, after sustaining huge losses wrapped up its business affairs and has been dormant since March 2014;*
- c) *In order to portray the true and fair view of the affair of Gray Mackenzie Restaurants International Limited ["Company"], the Company did not charge interest on loans / advances to CPL, in the year 2014 and 2015 as per terms and conditions approved by the shareholders of the Company and also made provisions for impairment in the year 2011, 2012 and 2013;*
- d) *Due to the conditions beyond the control of the Company, the Company was unable to recover the interest as required under Regulation 7 (c) of the Regulations;*
- e) *The majority of shares (95%) in the Company are held by Cupola Mauritius. The present pattern of shareholding is as under:*

<i>Cupola Mauritius Services</i>	<i>87557910</i>
<i>Rafiq Rangoonwala</i>	<i>4608313</i>
<i>Waqar Hassan Siddique</i>	<i>10</i>
<i>Irfan Mustafa</i>	<i>4</i>
<i>Asim Hameed</i>	<i>1</i>
<i>Kazim Raza Awan</i>	<i>1</i>
<i>Muhammad Rafique Lakhani</i>	<i>1</i>
<i>Mohammad Harris Mustafa</i>	<i>1</i>
<i>Mr. Mazhar Ul Haq</i>	<i>1</i>

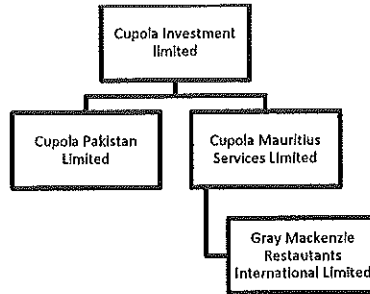
- f) *It has to be borne in mind that the Company and CPL are associated companies by virtue of common directorship and their ultimate parent company is the same, as is charted herein below:*



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- g) *As stated above that the Company is a closed company (viz, a company whose shares are owned by a small number of investors and are not traded publicly), except for the afore-named Investor and there are no other stakeholders of the Company, therefore, no interest of any stakeholder has been vitiated or otherwise destroyed;*
3. *Based on the foregoing, in view of CPL's dormancy with a likelihood of its liquidation, the Company, under a force majeure condition but without the intention of violating any law or its regulation(s), had to take such steps, which it did, however, coming with clean hands had disclosed correct position in its financial statements.*
4. *We would very humbly request you to kindly condone the unintentional violation under regulations 7(c) and 8 of the Companies (Investment in Associated Companies & Associated Undertakings) Regulations, 2012 and the suggested imposition of penalty as is provided under section 208 of the erstwhile Companies Ordinance 1984 on the grounds that:*
- a) *It is a closed company and that there are no other stakeholders of the Company, therefore, no interest of any stakeholder has been vitiated or otherwise destroyed;*
- b) *CPL is dormant since three and half years and there is a strong likelihood that the company may soon be liquidated; and*
- c) *Conditions precedent were such that Company had no other option but to carry out these transaction which it did with the approval of its investors meeting.*

UNQUOTE

7. Hearing in the matter was again fixed on October 30, 2017 and November 30, 2017 but was adjourned at the request of the Company. Next hearing was held on December 18, 2017 which was attended by Mr. Mr. Khalid Mahmood Siddiqui, Advocate on behalf of the



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Respondents (the "Authorized Representative"). Matters in relation to the non-recovery of the advances and interest thereon were discussed during the hearing. The authorized representative submitted that further information in the matter will be provided. It was decided that next hearing will fixed after the information is received. Written submissions dated December 16, 2017 submitted during the hearing are reproduced hereunder:

## QUOTE

- i. *That Gray Mackenzie Restaurants International Limited ("the Company") is the subsidiary of Cupola Mauritius Services Limited which in turn, is a wholly owned subsidiary of Cupola Investment Limited. Similarly, Cupola Pakistan Limited ("CPL"), to whom the facility has been extended by the Company, is also the subsidiary of Cupola Investment Limited. As such, the beneficial owner of both entities is essentially the same.*
- ii. *That the Company was incorporated on 02-11-1995, as a Private Limited Company and converted into public limer company on 3 Feb 2000. However, for all intents and purposes, it has remained a Private Limited Company, as the number of its shareholders is only nine (9) with Cupola Mauritius Services Limited holding 95% shares an individual holding 5% shares and seven (7) Directors together holding only 19 shares. The proceedings for converting the Company back into a Private Limited are being commenced shortly.*
- iii. *The shares of the Company are not traded publicly and there are no other stakeholders of the Company.*
- iv. *The Company does not intend to offer its shares to the public, at least till the recovery / adjustment of its investments in the associated companies.*
- v. *At the inception of loan, CPL was commercially active entity and loan / advances were accordingly disbursed on such commercial terms.*
- vi. *The "Receivables" of CPL from various other sources are in excess of its "Payables" to the Company. Thus, the Company expects to recover / adjust its investment from the receivables of CPL from various other sources, within a span of 36 months.*



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- vii. In order to portray the true and fair view of the affairs of the Company, the Company did not charge interest on loans / advances to CPL, in the year 2014 and 2015 as per terms and conditions approved by the shareholders of the Company and also made provisions for impairment in the year 2011, 2012 and 2013.
- viii. Due to the conditions beyond the control of the Company and CPL, the Company was unable to recover the interest on the investment in CPL.
- ix. The Company has been substantially complying with the requirements of the Section 208 of the Companies Ordinance, 1984 and passing resolutions in the Annual General Meetings of the Company.
- x. That vide SRO No. 704(1)/2011, dated 13-07-2011, the following class of Companies are exempted from the requirements of Section 208 of the Companies 1984:
- (f) A holding company, to the extent of investments made in its wholly own subsidiary..
  - (g) ...
  - (h) ...
  - (i) A private company which is not a subsidiary of a public company.
- xi. That in view of the foregoing submissions, it is humbly prayed that a lenient view may be taken and the Show Cause Notice under reply may kindly be vacated on the above facts and following grounds:
- A. That as the ultimate holding company of the Company and its associated Company is the same, the investments made by the Company are basically in the nature of a holding Company making investment in its wholly owned subsidiary and thus exempted from the requirements of Section 208 of the Companies Ordinance, 1984, under the SRO quoted *ibid*.
  - B. That for all practical purposes and ramifications, the Company is a Private Company which is not a subsidiary of a Public Company and thus exempted from the requirements of Section 208 of the Companies Ordinance, 1984, under the SRO quoted *ibid*.



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- C. *That no interest of any stakeholder has been affected.*
- D. *That the Company has a fair chance to recover the investments.*

UNQUOTE

8. Further information was called from the authorized representative through Commission's letter dated January 31, 2018. The written submissions dated March 8, 2018 from the authorized representative reiterated the previous submissions, however, he presented the following additional grounds requesting a lenient view:

QUOTE

*That no amount of loan has been remitted outside Pakistan. All amounts have been utilized for the operations and closure of CPL and its subsidiaries.*

*That the principal amount and accrued interest has been guaranteed by the Holding Company – Cupola Investment Limited (CIL). GMRIL is expected to be reimbursed by CIL for any amount due from CPL. GMRIL will recover this amount from CIL over the next two years.*

*That the shares of the Company are not traded publically and there are no other stakeholders of the Company.*

*That the Company has been substantially complying with the requirements of the section 208 of the Companies Ordinance, 1984 and passing resolutions in the Annual General Meetings of the Company.*

UNQUOTE

9. Before proceeding further, it is necessary to advert to the following relevant provisions of section 208 of the Ordinance and to the relevant regulations of Companies (Investment in Associated Companies & Associated Undertakings) Regulations, 2012 ("Regulations") which provides that:

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

*(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.*

*(3) If default is made in complying with the requirements of this section [or regulations,] every director of a company who is knowingly and willfully 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.*

Regulation 7 of the Regulations provides that:

*"Conditions & restrictions applicable to companies making investment by way of loans and advances in its associated companies or associated undertakings. - A company intending to make investment in its associated company or associated undertaking shall comply with the following conditions and restrictions, namely-*

*(c) Interest, mark up, profit, fees or commission etc., as the case may be, shall be recovered periodically by the investing company in line with the standard terms normally applied by*





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*the commercial banks or the Islamic Financial Institutions on similar facilities extended to the borrowers”;*

Para 8 of the Regulations provides that:

*(2) A company shall not make any further investment in its associated company or associated undertaking in which previous investment has been written off by the investing company, or which is already indebted to the company and such associated company or associated undertaking has failed to repay the loan or advance including interest, mark up, profit, fees or commission etc. thereon as per schedule or has failed to comply with any of the terms and conditions of the agreement in this regard, unless such loan has been rescheduled under approval of special resolution of the members of the investing company”.*

9. In terms of the Commission's notification SRO 751 (I)/2017 dated August 2, 2017, the powers to adjudicate cases under section 208 have been delegated to the Executive Director (Corporate Supervision Department).

10. It is pertinent to discuss the importance of the provisions of section 208 of the Ordinance, particularly the importance with respect to protection of the shareholders rights. Transactions with associated companies have an inherent risk of conflict of interest for the common directors as undue benefit can be directed towards a private company at the cost of a public company. The law requires that any investment in associated companies shall be under the resolution of the company's shareholders. The law further requires that all the relevant details for any such investment in an associated company shall be disclosed to the shareholders along with notice of the general meeting, thus to enable the shareholders to make an informed decision.

11. I have analyzed the facts of the case, provisions of Sections 208 of the Ordinance, arguments put forth in writing and during the hearings by the Authorized Representatives. I am of the view that the provisions of section 208 of the Ordinance have been violated. However, it is necessary to refer to certain facts of the case before concluding the proceedings. The ultimate owner of both the Company and CPL is the same i.e. Cupola Investments Limited ("CIL") and that there is no public money invested in the Company. It is further noted that the Company is a closely held entity with only ten shareholders as per the Form A made up to October 31, 2014 and



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eight of the shareholders hold ten shares or less whereas CIL holds 95% shares of the Company. There is no complaint on record in the instant matter and it has been submitted that all amounts have been utilized for the operations and closure of CPL and its subsidiaries and it has been assured that the principal amount and accrued interest has been guaranteed by CIL and the Company is expected to be reimbursed by CIL for any amount due from CPL. It has been further submitted that the Company will recover this amount from CIL over the next two years.

12. In view of the foregoing, I am inclined to take a lenient view in the matter and conclude the proceedings with a warning to the respondents to ensure meticulous compliance with all applicable provisions of the law in future. Further the Chief Executive is directed to submit report to the Commission after recovering the amount from the associated company as per the commitment given in the hearing.

Abid Hussain  
Executive Director

*Announced:  
May 31, 2018  
Islamabad*