



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before Shahzad Afzal Khan, Director / Head of Department (Adjudication-I)

In the matter of

THK Associates (Private) Limited

Show Cause Notice No. & Issue Date:	No. 1(110)SMD/Adj-1/KSE/2017 dated November 16, 2022
Date of Hearing:	February 06, 2023
Present at the Hearing Representing the Company	i. Syed Shomail A. Naqvi, Chief Executive & Managing Director ii. Syed Asim Abbas Abidi, Manager Compliance

ORDER

UNDER SECTION 159(5) OF THE SECURITIES ACT, 2015

This Order shall dispose of the proceedings initiated against THK Associates (Private) Limited (the Respondent and/or the Company) through Show Cause Notice No. 1(110)SMD/Adj-1/KSE/2017, dated November 16, 2022 (the SCN) issued under Section 159(5) of the Securities Act, 2015 (the Act). The Company was incorporated on August 19, 1989. The principal activity of the Company is to provide share registrar and share accounting services.

2. Employee Old-Age Benefits Institution (EOBI) vide its letter dated August 15, 2022 informed that it is exempted from Income/ Withholding tax as per 2nd Schedule of Income Tax Ordinance, 2001 (Income Tax Ordinance).
3. The Tax Exemption Certificate was shared by EOBI with the Company as on August 11, 2021 being registrar of United Bank Limited (UBL) which is also acknowledged by the Company vide its letter dated June 10, 2022.
4. UBL announced dividends during the tax year 2021. However, despite timely sharing of exemption certificate, an amount of Rs. 74.792 million was incorrectly withheld from EOBI by UBL due to the reason that the Company did not accurately maintain the tax exemption data of shareholder/ EOBI.
5. Details of dividend issue by UBL during the tax year 2021 are provided as:

Date of Issue	Book Closure Date	Rs. in million	
		EOBI's Dividend	Tax Withheld
08-Sep-21	28-Aug-21	124.653	37.396
04-Nov-21	02-Nov-21	124.653	37.396
		249.306	74.792

6. The Company, *prima facie*, failed to maintain/ update record of shareholder's tax status and share the same with UBL resulting in incorrect withholding of tax amounting to Rs. 74.792 million therefore, contravening the provisions of regulation 10(1) and 15(1) of the Share Registrar and Balloters Regulations, 2017 (the Regulations).

7. Relevant provisions of the law are provided as:





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10. Duties and obligations of share registrar and balloter. — (I) A share registrar and balloter shall, ...

(e) act with due skill, care and diligence in performing all its functions and discharging all its obligations and responsibilities; ...

(x) maintain a data base of dividend mandate option, Zakat exemption, tax deduction status, and contact details of the security holders of its clients and update the same on continuous basis.

15. Maintenance of Books of Accounts and other records. — (I) In addition to the requirements of the Ordinance and section 79 of the Act, the share registrar and balloter shall properly maintain the following records, namely: -

...
(e) record relating to dividend, bonus and right shares; profit payments and redemption of principal amount;

8. The afore-mentioned contraventions of the law, prima facie, attracts applicability of penal action provided in Section 159(5) of the Securities Act, 2015 (the Act), provided as under:

159. Offences and penalties. -

(5) Notwithstanding sub-sections (1), (2), (3) and (4), any person who—

(a) contravenes or fails to comply with any provision of this Act, or of any rules or of any regulations made under this Act;

...shall be liable to pay by way of penalty—

...
(ii) in the case of a company, such sum which may extend to two hundred million rupees and..."

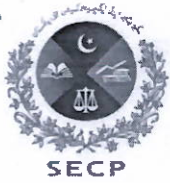
9. In view of the aforesaid contraventions of the Act and the Regulations, SCN was served on the Respondent. The Respondent submitted its written response to the SCN vide letter dated December 15, 2022, relevant extract of which is reproduced below:

"We would like to raise our concerns with the competent authority with regards to the issuance of a SCN based only on a complaint of a shareholder without obtaining any clarifications on the matter with THK. The subject complaint is an ongoing matter which is being reviewed by and was under discussion between United Bank Limited ("the UBL" or "client"), Employees Old-Age Benefits Institution ("EOBI" or "shareholder") and THK Associates (Pvt) Ltd ("THK"), with the Securities and Exchange commission of Pakistan ("SECP") being kept aware of the discussions and progress.

THK is one of the pioneers and leading Share Registrar with over 33 years of experience since its formation in 1989, currently serving around 80 companies as a share registrar. It enjoys great good will and reputation among all stakeholders continues to provide a high level of service to all its stakeholders and endeavors to ensure compliance with the relevant laws and regulations issued by the competent authorities

THK ensures that the due process is followed, and care taken in updating the relevant shareholder data, however errors/ omissions may occur to the pressure and manual nature of work. THK has previously, on multiple occasions, raised concerns with SECP regarding the absence of; tax exemption details in Shares Book Details ("SBD") provided by CDC at the time of processing of the dividends, and/or a list directly from the FBR detailing the Tax Exemption and its validity period for the respective entities. Further, THK has raised the concerns with the competent authorities with regards to the variance in format of the Shareholders data received as part of the FBR Active Taxpayers List and CDC e.g. the digits and characters in the NTN numbers. THK has to maintain separate record of the tax exemption certificates, their validity and ensuing manual checking against





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the data maintained in THK's Share Accounting System at the time of processing. Further, there is the additional burden on the shareholders who are required provide the requisite details of their tax exemption each time it is provided/ renewed.

THK would appreciate and request SECP to take up the matters with the relevant regulatory bodies such as FBR and CDC and facilitate and support the share registrars in addressing the above and similar concerns, to ensure enhanced efficiency and reduction of risk of errors and omissions. In order to do away with this tedious exercise which may result in delay in processing of dividend entitlement, FBR may be requested to make a list of entities available for whom exemptions have been granted, on its website on a real-time basis enabling the Share Registrars to download it on the 1st day of the closure period for processing. Further, FBR may also be requested to issue exemption certificates for the whole financial year, instead of e.g. six months period. This will reduce the hassle to obtain and submit exemption certificate every time the exemption is granted / renewed or the requirement to update FBR's website as and when this has been implemented.

With regards to the said matter, THK would like to appraise the competent authority that the letter indicating the exemption of EOBI from tax was originally dispatched by EOBI THK's previous address. The letter was eventually received at the THK's current address, we understand, due to the sheer volume of the communications being received in the busy closing period and the reduction in the timelines for processing of the dividends, the requisite letter was handled by one of the operations team's groups which was responsible for managing clients including MCB and hence the exemption was recorded and processed accordingly against MCB.

Subsequent to the relevant complaint being raised from EOBI, various communications have been undertaken between UBL, EOBI and THK including a physical meeting. Concerns were about the delay of around 9 months in EOBI connecting with UBL or THK to identify deduction of WHT. EOBI has also been advised on multiple occasions to initiate the claim for refund of the deducted WHT from the Federal Board of Revenue ("FBR") which has been deposited by UBL on behalf of EOBI with FBR within the stipulated time, evidence of which has already been provided by UBL to EOBI. THK is again endeavoring to connect with the EOBI representatives, in coordination with UBL, to obtain an update on the progress of the initiation of the claim of refund.

Further, THK would like to appraise the competent authority that it is in process of implementing a Communication Management System ("CMS") and has also reviewed the structure of the operations team e.g. centralization of Share Holder Data management, and Corporate Actions, to further enhance the monitoring and controls around the receipt of communications, ensuing processing and communications with the internal & external stakeholders and management & maintenance of records across THK.

In light of the above submissions, we would like to pray to the competent authority that THK endeavors to ensure that it complies with the relevant regulations including e.g. acting with due skill, care and diligence in performing all its functions and discharging obligations and responsibilities and maintains an appropriate database of the dividend mandate options, zakat exemptions, tax deductions status and contact details of the shareholders made available to THK on an ongoing basis.

We would also like to appraise the competent authority with regards to the records relating to dividends, bonus, and right shares; profit payments and redemption of principal amount that THK maintains the appropriate books of accounts including relevant registers / records relating to dividends, bonus and rights in appropriate manner.





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It is therefore prayed that in the interest of justice, equity and fair play that the Show Cause Notice be withdrawn, and no adverse action be taken against THK in this regard."

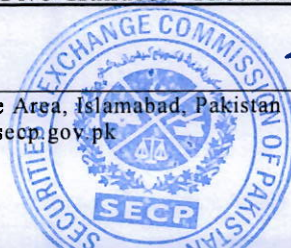
10. The Respondent was accorded hearing opportunity on February 06, 2023 which was attended by Syed Shomail A. Naqvi (Chief Executive & Managing Director) and Syed Asim Abbas Abidi (Manager Compliance) as Authorized Representatives (the **Representatives**) on behalf of the Company. During the hearing, the Representatives were inquired regarding the failure to maintain/ update record of shareholder's tax status and share the same with UBL resulting in incorrect withholding of tax amounting to Rs. 74.792 million. Key submissions of the Respondent are provided as under:

- I. There was no centralized database for shareholders tax details and the Company was maintaining separate record of the tax exemption certificates, their validity and ensuring manual checking against the data maintained in THK share accounting system at the time of processing. Such errors/ omissions occurred mainly due to communication gap and inadequacy of the centralized database management of the Company.
- II. The Company is in the process of implementing a Communication Management System (CMS) to further enhance the monitoring and controls around the receipt of communications, ensuring processing and communications with the internal and external stakeholders and management and maintenance of records across the Company.
- III. EOBI was advised to initiate the claim of refund with Federal Board of Revenue (FBR) on multiple occasions.

11. I have gone through the relevant provisions of the law and submissions made by the Company in its written response as well as during the subsequent hearing. I have also perused regulation 10(1) and 15(1) of the Regulations read with Section 159(5)(a) of the Act, which stipulates penal provisions for contravention of the Regulations and noted that:

- a. The tax exemption certificate issued under Section 159(1) and 150 of the Income Tax Ordinance for the tax year 2021 to EOBI was provided to the Respondent on August 11, 2021 and is also acknowledged by the Respondent vide its letter dated June 10, 2022. The said tax exemption certificate already contained the name of UBL as an investee company of EOBI, among others, and was received well before the date of book closure of UBL dividends i.e. August 28, 2021 and November 02, 2021.
- b. It is pertinent to mention here that the tax exemption certificate is issued in the name of the tax payer entitled for exemption valid for all its investments and therefore, separate exemption certificate for each investment is not required. Hence, the dividend income payable to EOBI in the matter of UBL was not taxable and there was no excuse to treat it as such. As a result, an amount of Rs. 74.792 million was wrongfully deducted from the dividend income of EOBI.
- c. The Respondent had failed to maintain/ update its records of shareholder's tax status and share the same with UBL resulting in incorrect withholding of tax amount of Rs. 74.792 million from EOBI. It is evident that the Respondent did not have adequate database management systems in place with regard to the dividend mandate and tax exemption details of its clients and failed to update the same on continuous basis. Further, the Respondent acted with negligence and injudiciousness in performing its functions and discharging its obligations and responsibilities.

12. In view of the aforesaid facts, the Respondent has contravened the provisions of Regulation 10(1) and 15(e) of the Regulations. Therefore, I, in terms of the powers conferred upon me under Section 159(5) of the Act, impose a penalty of **Rs. 500,000/- (Rupees Five Hundred Thousand Only)** on the Respondent.





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13. The Respondent is directed to deposit the aforesaid penalty in the account of the Commission being maintained in the designated branches of MCB Bank Limited within 30 days of date this Order and furnish the original deposit challan to this Office.
14. This order is being issued without prejudice to any other action(s) that may be initiated/taken against the Company and/or its directors/officers responsible for the violations of the aforesaid provisions of the law, accordingly.



A handwritten signature in blue ink is located to the right of the seal. The signature appears to be 'Shahzad Afzal Khan'.

(Shahzad Afzal Khan)
Director/Head of Department
(Adjudication Department-I)

Announced:
March 15, 2023
Islamabad