

Securities and Exchange Commission of Pakistan
Enforcement and Monitoring Division
NIC Building, Blue Area, Islamabad

IN THE MATTER OF
M/S ISLAMIC INVESTMENT BANK LIMITED

Nature of application	Application under Sub-Section (1) of Section 158 and Sub-Section (1) of Section 233 of the Companies Ordinance, 1984.
Date of application	June 25, 2001
Date of Order	August 17, 2001

Order

An application of the *Islamic Investment Bank Limited* (the "IIBL") made under Sub-section (1) of Section 158 and Sub-Section (1) of Section 233 of the Companies Ordinance, 1984 (the "Ordinance") was placed before me to consider extension in the period upto August 30, 2001 for holding of Annual General Meeting (AGM) and to lay therein balance sheet and profit and loss account of the company for the period ended December 31, 2000.

2. Briefly stated, the facts of this case are that IIBL, a listed company, applied for extension in the period upto August 30, 2001 for holding of AGM and to lay therein its annual accounts for the period of eighteen (18) months ended December 31, 2000. The application dated June 22, 2001, was received in this Commission on June 25, 2001. The following reasons have been stated in the application for not holding of AGM by due date and justification for extension in the period to the extent applied for:

- The finalization of the financial statements has been held up due to increase in scope of work with the inclusion of cash management accounts.
- The matter of approval of proposed merger of First Islamic Modaraba with IIBL was in the High Court of Peshawar. The final decision, which was expected in February/March, 2001 was ultimately announced in June 2001.
- The period of financial accounts this year is of 18 months due to the change of the accounting year. Therefore, the audit of the financial statements could not be completed in time.

The application was also accompanied by a certificate from the auditors of IIBL M/s. Yousaf Adil Saleem & Co. Chartered Accountants, stating that audit of the accounts for the period ended December 31, 2000 of IIBL is in progress for the reasons explained by IIBL in their application.

3. The aforesaid application was examined in the light of the provisions of Sub-section (1) of Section 158, Sub-Section (1) of Section 233 of the Ordinance and Rule 14 and 30 of the Companies (General Provisions & Forms) Rules, 1985(the "Rules").

4. Sub- Section (1) of Section 158 provides that "*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 six months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting.*" Proviso to the Sub-section (1) of Section 158 empowers the Commission to extend, for any special reasons, the time within which any AGM, not being the first such meeting, shall be held by a period not exceeding ninety days. Proviso to Sub-Section (1) of Section 233 empowers the Commission to extend, for any special reasons, the period for laying balance sheet and profit and loss account before the Company in AGM for a term not exceeding three months. Sub-rule (1) of Rule 14 of the Rules requires that the application for the grant of an extension in time for holding of AGM and laying before AGM a balance sheet and profit and loss account, shall, in the case of a listed company, be submitted to the Commission *not less than thirty days* before the last day on which such AGM is required to be held under the aforesaid provisions of the Ordinance.

5. IIBL did not submit the application timely as required under Sub-rule (1) of Rule 14 of the Rules. Sub-section (1) of Section 158 requires every company to hold its AGM once at least in every calendar year within a period of six months following the close of its financial year, however, the period between two AGMs should not exceed fifteen months. The current financial year of IIBL comprising eighteen months period was closed on December 31, 2000 after obtaining permission from the Registrar of Companies. The last preceding AGM of IIBL was held on February 28, 2000. Therefore, the last date on which AGM of IIBL was required to be held under the aforesaid provisions of the Ordinance was May 31, 2001. The last date for submission of application was May 01, 2001. The application was, however, received on June 25, 2001 i.e. with a delay of one month and 24 days. IIBL vide its letter No. ARJ/0044/2001 dated June 30, 2001 have given the following reasons for delay in filing of the application:

- IIBL petition for merger with First Islamic Modaraba was pending in the Honorable Peshawar High Court and the decision was expected in the month of March/April 2001. However, the decision was announced in the month of June rejecting the proposal of merger of First Islamic Modaraba with IIBL. So, it was not possible to apply for extension 30 days before the AGM.
- Election of directors is to be held in this AGM and by law IIBL have to hold Board Meeting 35 days before the election date to fix the number of directors.

I have given due consideration to the arguments given by the management for the late submission of application. In my view, the proposed merger of First Islamic Modaraba with IIBL did not in any way prevent the management from filing application within the prescribed time period. The other argument is also without any force because the directors are required to hold election of directors in accordance with the procedure laid down under Section 178 of the Ordinance. In my view, the management has not been able to demonstrate any special reasons for delay in filing of application. I am, therefore, not inclined to entertain the application of IIBL.

6. Although, I am not entertaining the application of IIBL however, I consider it necessary to discuss the justification given by IIBL for extension in the period for holding of AGM and laying of balance sheet and profit and loss account therein. The reasons of increase in scope of work with the inclusion of cash management accounts, approval of merger of First Islamic Modaraba with IIBL and change of the accounting year are absolutely devoid of any force and

cannot be regarded as special reasons for not holding the AGM within prescribed time. The certificate of the auditors of the company states that the audit is in progress for the reasons explained by IIBL in the application. Clause (V) of Sub-rule (2) of Rule 14 of Rules requires that the application of extension shall state reasons for non-finalization of the audit along with auditors certificate as to the exact state of the accounts, reasons for delay in completion of audit and the minimum time required for the purpose. The application failed to fulfill the aforesaid legal requirement. Moreover, the cash management accounts is a regular business activity of IIBL and the management should have made arrangement for the timely recording of transactions relating to the cash management accounts. As regards to the late decision of the Honorable Peshawar High Court, if the management was foreseeing delay in the decision, it should have made arrangement for the timely audit of accounts of both the entities which could be later on merged on the basis of court decision. The argument that financial year comprises of 18 months is also not a justifiable reason as IIBL had obtained permission from the Registrar of Companies on July 10, 2000 and there was sufficient time available with the management to plan the audit in order to meet the statutory obligation of holding its AGM within the prescribed time. The reasons given by the management, therefore, cannot be regarded as “*special reasons*” for not holding AGM within prescribed period and presentation of balance sheet and profit and loss account therein.

7. For the reasons stated, the aforesaid application of IIBL is not accepted.

(RASHID SADIQ)
Executive Director

Announced
August 17, 2001
Islamabad.