

Before Ali Azeem Ikram, Executive Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to M/s. Arif Habib Limited

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Date of Hearing

July 28, 2020

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**Order-Redacted Version**

Order dated September 15, 2020 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of Arif Habib Limited. Relevant details are given as hereunder:

<b>Nature</b>	<b>Details</b>
1. Date of Action	Show cause notice dated June 24, 2020
2. Name of Company	Arif Habib Limited
3. Name of Individual*	Not relevant. The proceedings were initiated against the Company i.e. Arif Habib Limited
4. Nature of Offence	Proceedings under Section 40A of SECP Act, 1997 for the violations of Regulation 4(a) read with 13(7) and Regulation 6(3)(a), 13(1), 9(4)(a) and Regulation 6(4) read with Annexure I (Note i) of the AML and CFT Regulations, 2018
5. Action Taken	<p>Key findings of default of Regulations were reported in the following manner:</p> <p>I have examined the written and oral submissions of the Respondent. In this regard, I observe that:</p> <ol style="list-style-type: none"><li>i. With regard to the observation regarding trading activity of the corporate client, the Respondent had submitted that it had obtained the identity of Customer and beneficial owners through relevant company's registration documents. Further, the identity of its beneficial owners/ Shareholders is also verified through obtaining identity documents of all individuals. Further, the Respondent also provided that they have a long-standing relationship with the Client group of companies having joint ventures and associations between the two groups. The inspection team had observed that the client had significant trading activity in the account in response to which the Respondent provided that the transaction was carried out between</li></ol>



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	<p>two associated companies having common directorship in a negotiated deal arrangement for which they have obtained extract of board resolutions/ consent letters from both the companies which also specify the mechanism to execute such transactions. It has been observed that the shareholders of the said client also hold majority shareholding in the transferor company thereby exercising effective ownership and control over both the associated companies as per the requirement of AML Regulations. In view of the said, both companies effectively have common beneficial owners belonging to same family. The requisite documentation with respect to identification of beneficial owners and extract of Board Resolutions/ Consent letters were obtained prior to the inspection and were also provided in response to the Letter of Findings shared with the Respondent. The stance of the Respondent appears to be tenable.</p> <p>ii. With regard to the information regarding the source of funds/ income of ultimate beneficial owner for a corporate client, the Respondent submitted that they had already obtained profile of all directors of the said client at the time of account opening. The Respondent provided that the directors of the corporate clients are also directors/ shareholders in major energy corporation. The Respondent was inquired regarding the remuneration of directors from the energy corporation. The Respondent thus provided extracts from the June 2018 Audited Accounts of the energy corporation, whereby the Dividend paid to the shareholder of the company is disclosed. However, it has been observed that information pertaining to the remuneration/ dividends were not provided at the time of inspection. Further, it has also been observed that the tax returns with respect to the directors of the said corporate clients were also acquired subsequent to the observation of the inspection team. The classification of client as "low risk" based on insufficient information pertaining to their source of income/ funds for such significant activity may not be regarded as tenable. Further, with regard to the beneficial ownership of the individual household client, the Respondent submitted that the client's son is the beneficial owner of the account which was established through their respective NICOP. However, information pertaining to the source of income/ funds of the beneficial owner was provided subsequent to the observation of the inspection team. The Respondent is therefore, found non-compliant with Regulation 6(3)(a) &amp; 13(1) of the AML Regulations.</p> <p>iii. With regard to the source of income/ funds of an individual client, the Respondent had submitted that the said client is a substantial shareholder &amp; vice president in a public limited company. The Respondent further provided that they have advised and arranged for the listing of the said public limited company and therefore, has acquired information pertaining to management/ directorship of the</p>
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business. Moreover, the Respondent also submitted that the client had only traded in the shares of the said company for which they have arranged for the listing on PSX. In this regard, the Respondent had provided salary certificate and copy of online NTN Verification for the client which was arranged subsequent to the inspection. Although, the Respondent had arranged for the listing of the said company however, it does not absolve its responsibility to acquire information pertaining to the source of income/ funds used in the purchase of shares. The Respondent may therefore, be held accountable for violation of Regulation AML Regulations.

- iv. With regard to the observation regarding the database of beneficial owners, nominees, joint account holders, authorized persons, directors, the Respondent had provided screenshot of related to their screening however, the said documents do not mention date of screening performed. Further, such documentary evidence pertaining to the maintenance of database of beneficial owners/ BoDs/ authorized persons/ nominees/ trustees/ office bearers were not provide during the inspection. The Respondent had provided screen shot of its screening system however, such database was found to be deficient with respect the aforementioned categories of clients and their associated individuals due to which its effectiveness and completeness could not be ensured. Therefore, the Respondent was found to be non-compliant with Regulation 4(a) read with Regulation 13(7) of the AML Regulations. Further, with regard to the maintenance of record in respect of screening of its clients, the Respondent contended that Regulation 15(3) of the AML Regulations does not require the regulated person to maintain a record of actual screening. However, it may be noted here that the Regulation 15(3) of the AML Regulations requires to maintain records of identification data obtained through CDD process like copies of identification documents, account opening forms, KYC forms, verification documents and results of any analysis along with records of account files and business correspondence for a minimum period of 5 years after the termination of business relationship. Therefore, the results of the screening process may be maintained as a result of analysis of the said accounts. The Respondent is advised to retain evidence of its periodic screening process even if its "Nil"
- v. With regard to the observation regarding NADRA Verisys of its clients, joint account holders, authorized persons, nominees, trustees and BoDs in case of 17 client accounts, the Respondent had submitted that they verify the client's identity through NADRA E-sahulat portal for which specimen was provided in response to the SCN. The Respondent had provided copies of E-sahulat verification documents in respect of 5 clients which was arranged subsequent to the findings of the inspection team. In this regard, the Respondent had failed to



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produce verification documents for the remaining 12 client accounts. The observation thus reveal that the Respondent had not carried out the Verisys or E-sahulat verification of all its client accounts and their associated individuals in absence of which it was found to be non-compliant with Regulation 6(4) read with Annexure I (Note i) of the AML Regulations.

- vi. With regard to the observation regarding the non-categorization of risk to three of its clients, the Respondent provided that the name of one client was appearing in the list which was already shared with the inspection team. Moreover, the risk category of the remaining clients was also provided. The Respondent provided that they have duly assigned risk category of all of its clients and evidence of which was also shared with the inspection team. The Respondent may not be held accountable in the matter however, it is advised to be careful with respect to the risk categorization of all its clients at the time of account opening and maintain complete database. Further, the Respondent is also advised to be vigilant with respect to any change in risk categorization and updating its records accordingly.
- vii. With regard to the senior management approval of its high-risk clients, the Respondent had submitted that it is obtained through compliance officer's approval on the account opening forms. The Respondent further contended that the definition of Senior Management also includes Chief Compliance Officer as per the AML Regulations. The argument of the Respondent holds ground however, the Respondent may note that Regulation 9(4)(a) of the AML Regulations requires *Senior management approval to establish or continue business relationship with high risk clients*. Therefore, senior management approval is required for continuity of business relationship with high risk clients as per their trading profile and data in coordination with the operations department which may provide valuable input on the same. Further, in case of change in risk category from "low to high" or "medium to high", the requirement for senior management approval is invoked which cannot be absolved through signatures on the account opening form. Therefore, the Respondent's argument in this regard is not tenable as the signatures of the compliance officer is a requisite for the account opening rather than business relationship particular to the high-risk clients. Therefore, the Respondent is found in contravention of Regulation 9(4)(a) of the AML Regulations.

In view of the foregoing and admission made by the Representatives, contraventions of the provisions of AML Regulations have been established. Therefore, in terms of powers conferred under section 40A of the Act, a penalty of Rs. 875 000/- (Rupees Eight Hundred and Seventy-Five Thousand Only) is hereby imposed on the Respondent.



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	Penalty Order dated September 15, 2020 was passed by Executive Director (Adjudication-I).
6. Penalty Imposed	A penalty of Rs. 875, 000/- (Rupees eight hundred and seventy-fifty thousand only) was imposed on the Company.
7. Current Status of Order	An appeal has been filed against this Order.

**Redacted version issued for placement on the website of the Commission.**