



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT

Before Commissioner (SCD)

In the matter of Show Cause Notice issued to AWT Investments Limited under Section 282J (1) read with Section 282M (1) of the Companies Ordinance, 1984 for violation of Regulation 38(1)(a), 38(2)(b) and 38(2)(l) of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 and Circular 26 of 2015.

Date of hearing:

January 29, 2019

Present (on behalf of AWT Investments Limited)

- i. Mr. Haroun Sharif, Attorney of AWTIL
- ii. Lt. Col Naeem Yasin

Assisting the Commissioner (SCD)

- i. Mr. Imran Inayat Butt, Executive Director
- ii. Ms. Tanzila Nisar Mirza, Additional Director
- iii. Mr. Murtaza Abbas, Joint Director

ORDER

This Order shall dispose of proceedings initiated against AWT Investments Limited (“AWTIL”), the Respondent, through Show Cause Notice (the “SCN”) bearing No. SCD/AMCW/ADJ/AWTIL/246/2019 dated January 8, 2019 under Section 282J (1) read with Section 282M (1) of the Companies Ordinance, 1984 (the “Ordinance”).

2. The brief facts of the case are that upon receipt of a complaint on August 31, 2018 from Mr. Zahid Oosman (the “Complainant”), an enquiry was ordered under Section 282I of the Ordinance vide Order bearing number SCD/S&EDAWT IL/2018/252 dated November 19, 2018.

3. Based on the findings of the enquiry team, a Show Cause Notice (“SCN”) dated January 8, 2019 was issued to AWTIL to show cause in writing by January 18, 2019 as to why the penal action may not be taken for alleged violations of Regulation 38 (1)(a), 38(2)(b) and 38(2)(l) of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (the “Regulations”) and Circular 26 of 2015. An opportunity of hearing in the matter was provided on January 23, 2019.

4. AWTIL vide letter dated January 17, 2019 submitted its written reply which is summarized as follows:

S. No.	AWTIL Stance
i.	The administration department of AWTIL (then outsourced to PBIC) failed to raise the issue of the lack of an email address on the Complainant’s account opening forms. Regarding missing original account opening form, remedial action was taken at a later date when the Complainant’s email address (actual email addresses and not the allegedly fake ones) were updated on record through a separate communication.

ii.	The previous management, i.e., the Primus Investment Management Limited (PIML) management operated a system of client management where account managers were given full autonomy to manage communication with clients. Although no documentation has been made available to AWTIL by previous management, it may very well be that the account manager communicated the relevant information to the Complainant on account opening in person or otherwise. Either way the Complainant clearly knew of the existence of their accounts.
iii.	AWTIL denies the finding in paragraph 6.iii of the SCN that Mr. Kaimkhani allegedly changed the email ID's of the Complainant's without his authorization. The Complainant's allegation that Mr. Kaimkhani changed the email addresses on record to conceal his alleged fraud, is as of yet unsubstantiated and cannot be taken to be true prima facie. Indeed, the Complainant himself had violated a number of best practices and compliance regulations, as part of a close relationship with Mr. Kaimkhani in which he was given considerable autonomy to move their money around.
iv.	AWTIL denies the findings in paragraph 6.iv of the SCN that Mr. Kaimkhani sent fake account statements to the Complainant.
v.	AWTIL denies the findings in paragraph 6.v of the SCN that Mr. Kaimkhani made unauthorized inter-fund transfers in order to maximize his front end load commission. The enquiry team's finding that the Complainant had pre-signed blank conversion forms clearly indicates that the Complainant authorized Mr. Kaimkhani to exercise discretion in making inter-fund transfers. Further, a number of the purportedly unauthorized transactions were conducted after AWTIL abolished front end load commissions entirely. Therefore, the Complainant's allegation cannot, prima facie, be taken as true, and AWTIL will await the results of the FIA investigation and forensic reports before proceeding against Mr. Kaimkhani for this as of yet unsubstantiated allegation.
vi.	Regarding paragraph 6.vi of the SCN, Mr. Kaimkhani embezzled PKR 5.8 m from the AWTIL accounts of the Complainant. AWTIL has filed criminal proceedings against Mr. Kaimkhani for these particular acts, therefore, the matter is subjudice and its outcome shall be determinative of liability.
vii.	AWTIL denies the findings in paragraph 6.vii of the SCN that AWTIL has to send the sales load notice to the Complainant's registered mailing address and no such requirement is laid out by the sales load circular.
viii.	AWTIL affirms the findings in paragraph 6.viii of the SCN that AWTIL's erstwhile CEO condoned the very practice which allowed Mr. Kaimkhani to carry out his purported act of fraud, and that too despite AWTIL's former Chief Investment Officer's warning of irregular account activity. Further, AWTIL has evidence showing that the forms used in the impugned inter-fund transfers were marked as requiring 'Client verification' by the then head of Compliance Department of the AWTIL. However, the previous CEO (who is now head of treasury at PBIC) exercised override over the head of compliance's concerns, allowing the transaction. Internal audit of AWTIL (then managed by PBIC) also failed to highlight this issue or escalate it as per the appropriate procedure.
ix.	Regarding paragraph 6.ix of the notice that during the period before acquisition of AWTIL the functions of Registrar was left largely unfulfilled. Auditors and the SECP in their annual checks would surely have made such observations at the time. Regardless, AWTIL on taking charge has separated the registrar function from the investor services and operations department of the AMC.
x.	The incumbent management on taking charge implemented a new compliance regime that ensured separation of duties to prevent a conflict of interest.

Along with the said reply, AWTIL submitted the following documents.

- i. PBIC & AWTIL – Shareholder's Agreement dated December 14, 2016
- ii. PBIC & AWTIL – Share Purchase Agreement December 14, 2016

- iii. CEO – (Mr. Salman Haider) appointment
- iv. PBIC Shared services agreement dated October 01, 2014
- v. PBIC & AWTIL – Share Purchase Agreement dated July 24th, 2018
- vi. Customer complaint Mr. Zahid Letter 20-02-2018
- vii. Customer complaint Mr. Zahid Letter 05-03-2018
- viii. 3rd Party Payments – Mr. Asad Ullah Khan
- ix. Extracts 32nd Meeting of the Board of Directors held on 27-04-2018
- x. AWTIL letter to complainant and their responses
- xi. Extracts 33rd Meeting of the Board of Directors of AWTIL held on July 2, 2018
- xii. FIR registration against Mr. Shahzad Kaim Khani
- xiii. Legal notice sent to Mr. Shahzad Kaim Khani & Mr. Asad Ullah Khan
- xiv. Authorization email by Mr. Zahid Oosman to Mr. Shahzad Kaim Khani
- xv. Blank Investment & Redemptions Forms sent through email to Mr. Shahzad Kaim Khani
- xvi. Investment made by Mr. Shahid Oosmani in PIML Islamic Equity Fund
- xvii. Signed Redemptions & Investments made by Mr. Shahid Oosman in High Risk Funds
- xviii. Minutes of 1st MCOM meeting reference dated 15-05-2017
- xix. Extracts 28th Meeting of the Board of Directors of AWTIL held on June 8, 2018
- xx. Sales Commission Policy
- xxi. Minutes 10th MCOM Meeting reference dated 12-12-2017
- xxii. Letter to PBICL – Notice of Demand For Indemnification

5. The hearing in the matter was held on January 23, 2019, which was attended by the following representatives from AWTIL:

- a. Mr. Salman Haider Sheikh – CEO AWTIL
- b. Lt. Col Naeem Yasin
- c. Mr. Amjad Ali
- d. Mr. Rizwan Faiz – Attorney

On the request of the representatives, the said hearing was adjourned till January 29, 2019.

6. Subsequently, the hearing was held on January 29, 2019 and Mr. Haroun Sharif, Attorney of AWTIL along with Lt. Col Naeem Yasin represented AWTIL as the “Respondent”. During the hearing, the representatives of AWTIL rebutted the claims of the Complainant by stating that:

- a) Mr. Khalid Mirza, the present Chairman of the SECP Policy Board, was the erstwhile Chairman of AWTIL at the time the purported fraud occurred. For this reason alone, under the allegations in the Show Cause Notice, he may be liable for violations and it is impossible for the SECP to carry out or be seen to be carrying out an impartial investigation when the current SECP Policy Board Chairman was in fact the former Chairman of AWTIL at the time of alleged fraud.
- b) That SECP's own organization structure shows the SECP Policy Board as having a directly hierarchical relationship with the Commissioners. Hence, this renders the SECP incapable of performing an impartial inquiry. Therefore, the SECP should relinquish jurisdiction to a court of competent jurisdiction.
- c) That, on the 18th January 2018 the Commissioner conducting proceedings made clear that he had already made up his mind as to AWTIL's liability in the allegations made in the Show Cause Notice, and that these hearings were a mere formality.
- d) That, the Complainant in a meeting on 22nd January 2019 have admitted to receiving confidential communications between AWTIL and the SECP, and that this and the above,



is abundant evidence of the malafide with which the SECP issued the Show Cause Notice to AWTIL and is conducting these proceedings.

- e) The SECP has not even sent Show Cause Notices to PBIC (as the operator of the departments which failed to stop the purported fraud) or the employees who were actually in charge of AWTIL when the purported fraud took place.
- f) That, the SECP has yet to issue notices to PBIC and the following ex-employees of AWTIL (as was requested in AWTIL's reply to the Show Cause Notice) who may have been involved in the purported fraud. SECP's failure to implead PBIC and the above-mentioned former employees betrays the ulterior motives driving the SECP investigation; namely to defame AWTIL and prevent senior members of the SECP and PBIC from being investigated.
- g) AWTIL is in any case, and if at all, only a pro-forma party in the Commission's inquiry because liability for the alleged acts of fraud, if any, falls squarely on PBIC (through the indemnity in the SPA, the indemnity in the SSA, and the representation made in the SPA), or the employees in charge of AWTIL when the allegations occurred.
- h) That, the indemnity in the SPA is a general indemnity against any acts of fraud up until PBIC relinquished management control of AWTIL. That, such a representation absolves AWTIL and its present management of any substantive liability because after purchasing AWTIL from PBIC, new management was operating under the assumption of clause 4.1 (ix) of the SPA, that there were no serious violations of SECP laws and regulations.
- i) That, PBIC was in charge of the departments which should have acted to prevent the alleged acts of fraud, and that the indemnity given by PBIC in the SSA explicitly assigns liability for these failures to PBIC. In fact, the SSA indemnity explicitly sets-off AWTI's liability for any penalties or fines imposed by the SFC".
- j) AWTI's present management only took charge of the company on 18 April 2017, the day the SECP approved the appointment of the present CEO and was not even in charge of the company to attract liability when Mr. Kaimkhani changed the email addresses and subverted the AWTIL system on 31 August 2016.
- k) If Mr. Kaimkhani sought to benefit from the front-end load/commissions policy then why did he make these purported unauthorized conversions when the policy came to an end (on 8th June 2017) under new management? If Mr. Kaimkhani was not benefiting from the front-end load commission then he was doing this to benefit the Complainant. And that the allegations brought by the Complainant are only to cover up the losses of his own investment decisions which he enabled Mr. Kaimkhani to carry out by violating AWTIL and SECP policy himself.
- l) That, contrary to the Complainant's narrative that he never had any intention to invest in high risk equity funds, the Complainant himself invested over PKR 54m in high-risk equity funds. The Complainant enjoyed a close relationship with Mr. Kaimkhani. In his email dated 30 January 2017, the Complainant explicitly acknowledged that Mr. Kaimkhani handled all of his investment related matters and that he would submit scanned conversion and investment forms. Therefore, to suggest that Mr. Kaimkhani made conversions from low risk to high risk funds without authorization when he was almost certainly in possession of blank conversion funds by the Complainant's own admission, is completely disingenuous.



- m) The Complainant was making regular redemptions from the equity funds in excess of his investments into those funds, and thereby comprehensively rebutting any claim that he had no knowledge of the conversions.
- n) That, the mere fact that AWTIL has filed a criminal prosecution against Mr. Kaimkhani is no basis for making a conclusive determination as to liability. The case against Mr. Kaimkhani was filed before knowledge of the Complainant's close relationship with him and the transactions in equity funds came to light.
- o) That, AWTIL has invoked the SPA's indemnity against PBIC, and that the modalities of the indemnity are almost certainly to be decided through arbitration. Arbitration would allow a full opportunity for both sides to definitively assign liability, in the most appropriate forum.
- p) Prejudiced proceedings and litigation from the indemnities necessitate the ceding of jurisdiction. The SECP must halt proceedings to allow the appropriate forums to decide on the merits of the allegations, and assign liability conclusively to those parties whether companies or individuals in a setting free of conflicts of interest and other biases. That, the indemnity will be litigated through arbitration and possibly the senior courts, and that this will provide a conclusive determination of liability in a forum not tainted by the conflicts of interest that render these proceedings irreparable. Further, these forums will allow all related parties to be impleaded and their respective liabilities determined. That, AWTIL may pursue criminal cases against those former employees who should have been impleaded in these proceedings anyway and that such proceedings will also lead to a conclusive determination of liability.

7. As per the SCN, prima facie AWTIL was in violation of the following provisions of the regulatory framework.

S. No.	Relevant Provision of Law
i.	38(1) (a) "An Asset Management Company shall act in good faith and in the best interest of its unit/certificate holders without taking advantage for itself or any of its related parties, group companies or employees at the expense of its unit holders".
ii.	38 (2)(b) "An Asset Management Company shall be responsible for the acts and omissions of all persons to whom it may delegate any of its functions as manager as if they were its own acts and omissions"
iii.	38 (2)(I) "An Asset Management Company shall manage the Collective Investment Scheme according to its Constitutive Documents, the rules, regulations, circular or directives issued by the Commission"
iv.	Circular 26 of 2015 an AMC is required to intimate the unit holder about the amount received, sales load charged and net amount invested in the collective investment scheme within 48 hours of the realization of funds on the prescribed format.

8. I have examined the facts of the case, written responses submitted along with documentary evidences, the arguments put forth by the Respondent during the course of hearing and the relevant regulatory requirements. I am of the view that the arguments submitted by AWTIL are not tenable on the following grounds;

- a) The Chairman of any company is primarily responsible for the policy level matters and providing long-term vision and direction to the Company. He is not the administrative/operational head of the company and in no way is responsible for its operational matters. A Chief Executive Officer is appointed for the purposes of



administrative issues, and is responsible for managing the company with respect to its operational matters. Henceforth, the Chairman of any company cannot be held responsible for the negligence of the Chief Executive Officer and his team. The same holds good for Mr. Khalid Mirza who although being the erstwhile Chairman of AWTIL at the time of the purported fraud, cannot be held responsible for the disregard of the company's operational policies by the former CEO and his team. As such, the fact that he was the erstwhile Chairman of AWTIL has no bearing in this particular case. Reference is made to section 181 of the Companies Act 2017, which stipulates that independent and non-executive directors shall be held liable, only in respect of such acts of omission or commission by a listed company or a public sector company which had occurred with his knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently. In this instance, AWTIL is neither listed company nor a public sector company. Henceforth the argument that carrying out an impartial investigation by SECP is impossible when the current SECP Policy Board Chairman was in fact the former Chairman of AWTIL at the time of alleged fraud is not plausible.

- b) The main objective of the Policy Board of the Commission is to provide guidance to the Commission in all matters relating to its function and to formulate its policies in consultation with the Commission. Although SECP's organizational chart shows the Policy Board as having a direct hierarchical relationship with the Commissioners, it is only to the extent of its mandate mentioned above and does not imply the involvement of the Policy Board in day to day operations of the SECP. Henceforth, there is no inherent conflict of interest that can prejudice the proceedings of this case.
- c) The allegation that the Commissioner conducting the proceedings had made it clear that his mind was already made up as to AWTIL's liability in the allegations made in the SCN, and that these hearings were a mere formality, is nothing but a fabrication. The Respondent has not provided any evidence to substantiate this argument. The representatives of AWTIL had requested for adjournment of the hearing to a later date, which was acceded to immediately. There was no argument that could have necessitated such a statement and goes to show what kind of baseless accusations AWTIL can render to divert attention from the issue at hand.
- d) The argument that the Complainant has admitted to receiving confidential communications between AWTIL and the SECP is also baseless and unsubstantiated.
- e) AWTIL was accorded approval of 70% shares of PRIMUS Investment Management Ltd. (PIML) by SECP on February 23, 2017 while approval for the remaining 30% was accorded on March 5, 2018. Henceforth, AWTIL was a major shareholder of PIML having management control as of 23 February 2017. The accounts of the Complainant were opened in August 2016 and the purported fraud was initiated immediately, starting from changing of email IDs and the subsequent events that took place as mentioned in the subject SCN. PBIC was no longer the major sponsor company of AWTIL during the period in which the fraud took place and therefore there is no reason to issue any show cause notice to it. In any case, AWTIL is the descendant company and must bear all consequences of actions taken by PIML irrespective of the time period.
- f) Since AWTIL is at present a licensed Asset Management Company ("AMC") and the complaint was lodged against it directly by the Complainant, therefore proceedings were initiated against AWTIL and later on expanded to its ex-employees.
- g) Being the present management, AWTIL is not a pro-forma party in the instant matter. Any indemnity signed between AWTIL and PBIC is merely a mutual agreement between the

two parties with terms and conditions mutually agreed upon by both the parties and does not absolve AWTIL from the responsibility of the purported fraud.

- h) AWTIL's argument that the new management was working under assumptions of clause 4.1 (ix) of the SPA that there were no serious violations of SECP laws and regulations is not a valid argument. The general indemnity between PBIC and AWTIL is a mutual arrangement for compensating AWTIL for any losses arising out of any fraudulent activities. However, the SPA cannot absolve AWTIL from its responsibilities and obligations as an AMC.
- i) As provided by the AWTIL in its reply of January 17, 2019 through the Shared Services Agreement between PBIC and PIML (currently AWTIL) dated October 1, 2014 certain departments were outsourced to PBIC. The regulation 38 2(b) clearly stipulates that the ultimate responsibility of any acts or omissions of all persons to whom its functions are delegated lies with the AMC and therefore AWTIL was required to adhere to it. Hence, this argument is not tenable.
- j) AWTIL was a major shareholder of PIML having management control as of February 23, 2017.
- k) The matter of alleged fraudulent activities of Mr. Kaimkhani is already under criminal proceedings lodged by AWTIL itself. However, AWTIL needs to substantiate its argument that the allegations made by the Complainant are only to cover up the losses of his own investment decisions.
- l) The complainant's investment in any other high-risk funds or ventures has no direct relevance with the matter under discussion.
- m) The argument that the complainant was aware of the dealings in his account has neither been substantiated with any proof nor has it been established that he was not defrauded owing to weak internal controls and gaps in the management in terms of failure to undertake responsibilities with reasonable due care.
- n) Filing of criminal complaint against Mr.Kaimkhani by AWTIL clearly indicates that AWTIL was also of the opinion that he had been involved in fraudulent activities. Had this not been the case,AWTIL would not have filed the case against Mr. Kaimkhani.
- o) The indemnity signed by PBIC and AWTIL is an internal arrangement between the two for compensating AWTIL for any losses arising out of any fraudulent activities. It does not in any case absolve AWTIL being a licensed AMC, of its responsibility to resolve the subject complaint.
- p) Since the Complainant had approached SECP for the resolution of its complaint, the SECP being the apex regulatory authority and having the statutory mandate of protecting the interests of investors conducted a thorough investigation of the matter. These proceedings are under no circumstances prejudiced and as mentioned in clause "b" above,no conflict of interest exists as far as Mr.Khalid Mirza is concerned. Moreover, the proceedings initiated against Mr. Kaimkhani by the FIA are completely independent of the proceedings initiated by SECP and as such, FIA may take its own independent course to determine the liability without crossing paths with the SECP. Similarly, if the indemnity is to be litigated through arbitration and the senior courts, those proceedings will also be entirely independent of the SECP proceedings as will be the criminal proceedings initiated by AWTIL, if any against its former employees. The SECP shall not, therefore, halt proceedings to wait for the

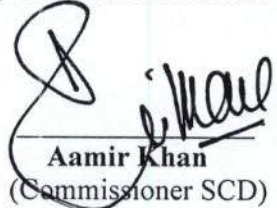


conclusive determination of liability by other forums since all are independent to make their own decisions without them having any binding on each other. It is pertinent to point out here that none of the parallel proceedings underway in this matter restrains SECP from conducting its regulatory responsibilities.

9. It is hence concluded that the arguments provided by AWTIL are not tenable owing to the reasons mentioned above. The arguments are frivolous and tantamount to an attempt by AWTIL to place unnecessary pressure on SECP and prejudice the outcome of the proceedings in the matter.

10. Based on my observation at para 8 above, I am of the view that, leniency on non-compliance towards requirement of NBFC Regulation 38 (1)(a), 38(2)(b), 38(2)(l) and Circular 26 of 2015 is not possible as safeguarding the investors' interest is the paramount and supreme objective of the SECP. Therefore, I hereby conclude the proceedings initiated under section 282J (1) read with section 282M (1) of the Companies Ordinance by imposing an aggregate fine of Rs.1,000,000 (Rupees one million only) on the Respondent. Moreover, in exercise of powers conferred under Section 282 D of the Ordinance, I hereby direct the Respondent to make good the investors' losses since the losses have been caused due to the fraudulent as well as irresponsible conduct of the AMC's employees', and in terms of NBFC Regulation 38(2)(b), the AMC is responsible for the acts and omission of all persons whom it may delegate any of its functions.

11. The aforesaid fine must be deposited in the designated bank account maintained with MCB Bank Limited in the name of SECP within seven days from the receipt of the order and furnish receipted bank challan to SECP. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue will be initiated.


Aamir Khan
(Commissioner SCD)

Announced; 18 April 2019 at Islamabad