

[Islamabad]

**Before Ashfaq Ahmed Khan, Director Enforcement**

Order

*In the matter of*  
**Honda Atlas Cars (Pakistan) Limited**  
**Review Application under Section 484 of the Companies Ordinance, 1984**

This Order shall dispose of the review application filed against the Order dated January 22, 2007 passed by the undersigned whereby a fine amounting to Rs.700,000 (Rupees seven hundred thousand only) was imposed on all the seven directors of Honda Atlas Cars (Pakistan) Limited ( the “Company”) for violating the provisions of Section 208 of the Companies Ordinance, 1984 (the “Ordinance”) for making investment by the Company in its associated undertakings namely Atlas Stock Market Fund, Atlas Income Fund and Atlas Fund of Funds without passing of Special Resolution.

2. The review petition dated February 16, 2007, under Section 484 of the Ordinance, has been filed by the Company Secretary on behalf of all the directors of the Company citing the following grounds:

- i) That it has been our well kept desire not to violate any law of the land and we take due care in this respect;
- ii) That in the subject case the investment in Mutual Funds was made on the basis of legal opinions of a) Bawaney & Partners and b) Mohammad Ali Sayeed. On



the basis of these opinions investment was also made by Eastern Federal Union Insurance Co. Ltd. in UTP-Islamic Fund etc. We were thus very clear in our mind that section 208 was not applicable and thus was not being violated;

- iii) That although we had in our possession the above two legal opinions, the third legal opinion was sought from Cornelius, Lane & Mufti to satisfy our external auditors M/s. A.F. Ferguson who wanted to be sure about non-applicability of Section 208. They were also satisfied with the opinion;
- iv) That the company made a reasonably good return of 12.5% from the investment.

3. In the review application it has been emphasized that it is a law abiding company which never think to violate any provisions of the Ordinance. The Company was of the view that Section 208 of the Ordinance was not applicable to them. This view was based on two legal opinions which they had obtained from M/s. Bawaney & Partners, Advocates and Mohammad Ali Sayeed, Advocates. Another legal opinion was also obtained from M/s. Cornelius, Lane & Mufti, Advocates in the year 2006, which they obtained to satisfy their auditors M/s. A.F. Ferguson & Co., Chartered Accountants. It has further been stated that the Company has made a reasonably good return on the said investment and no loss has been caused to the shareholders of the Company from the said investment.

4. The arguments put forward by the directors of the Company have been considered and it has been observed that the violation do not appear to be intentional. The majority shareholding of the Company is with the foreign and the local sponsors due to which it was not difficult for them to pass "special resolution" required in the matter. It has further been observed that at present the Company has huge foreign investment and even the majority of the directors are foreign nationals.

5. It is worth mentioning that the Mutual Funds Association of Pakistan (MUFAP) has also approached the Commission on the applicability of Section 208 of the



Ordinance on investment in mutual funds by the associated companies stating that in their view investments in mutual funds does not attract the provisions of the Companies Ordinance, 1984.

6. From the foregoing and particularly because of huge foreign investment and keeping in view the commercial aspects of the transaction, I, taking a lenient view in the matter waive the penalty imposed on all the directors through my earlier Order dated January 22, 2007 with the advice that the Company shall comply with the requirements of law in time in future.

7. Further, the Commission is examining the matter raised by MUFAP in regard to applicability of Section 208 of the Ordinance on the investments made in the mutual funds and a final decision in the matter is expected to be announced separately. The decision of the Commission on the representation of MUFAP shall be treated independently and in case it is decided that the provisions of Section 208 are applicable in regard to investment in the mutual fund by the associated companies, the same shall be binding upon the Company for compliance in future.

**Ashfaq Ahmed Khan**  
**Director (Enforcement)**

**Announced**  
**February 21, 2007**  
**Islamabad.**