



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
NON-BANKING FINANCE COMPANIES DEPARTMENT

BEFORE, MR. ASIF JALAL BHATTI, DIRECTOR (NBFCD)

IN THE MATTER OF M/S TRG PAKISTAN LIMITED

IN RESPECT OF SHOW CAUSE NOTICE DATED MAY 20, 2009 UNDER SECTION 158 (4), SECTION 160 (8) (a), SECTION 492 READ WITH SECTION 476 OF THE COMPANIES ORDINANCE 1984 AND RULE 5(8) AND 7(1)(db) OF THE NON-BANKING FINANCE COMPANIES (ESTABLISHMENT AND REGULATION) RULES, 2003 READ WITH SECTION 282 J (1), (2) AND SECTION 282M OF THE COMPANIES ORDINANCE. 1984

No. and date of show cause notice: No. NBFC/MF-RS/TRGP/RS/2008/551
May 20, 2009

Date of Hearing: July 02, 2009

Present:

On behalf of the Company:

Barrister, Bilal Shaukat and Mr. Qasim Wadud, Advocate, of
M/s Rizvi, Isa, Afridi and Angell, Legal Consultants.

Mr. Muhammad Ziaullah Khan Chishti (Chief Executive
Officer, and Chairman)

Mr. Muhammad Ali Jameel (Director)

Mr. Muhammad Khaishgi (Director)

Mr. Asghar Husain (Company Secretary)

On behalf of the Commission:

Mr. Muhammad Rashid Safdar Piracha (Director, MFD)

Mr. Muhammad Imran Sajid (Deputy Director, NBFC II)

Mr. Syed Asad Haider (Joint Director, Enforcement NBFCD)

ORDER

This order shall dispose of the proceedings initiated through the SCN against the Company its Chief Executive Officer (the "CEO") and its Board of Directors (the "Directors") for default made in complying with the provisions of Section 158(1), Section 160(1) (b), Section 492 of the Companies Ordinance (the "Ordinance") and Rule 5(8) and 7(1) (db) of the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 (the "NBFC Rules").

2. The facts leading up to this order are briefly stated as follows:

- (i) The Company is a Non-Banking Finance Company licensed by the Securities & Exchange Commission of Pakistan (the “Commission”) under the provisions of the Ordinance and the NBFC Rules to carry out the business of Venture Capital Investment.
- (ii) The Notice was issued encompassing the following main issues:
 - (a) In accordance with the provisions of Section 158 (1) of the Ordinance, the Company was required to hold the Annual General Meeting (“AGM”) for the year ended June 30, 2008 latest by November 30, 2008 as extended by the Commission vide letter No. SEC/JD I/TRG/899/2008 dated November 06, 2008. However, the Company defaulted in complying with the statutory requirement and failed to hold the AGM within the extended time i.e. on or before November 30, 2008.
 - (b) The Company failed to furnish a copy of its annual report together with copies of the balance sheet, income statement, cash flow statement and statement of changes in equity along with the auditors report to the Commission within the stipulated time after the close of the accounting period i.e. June 30, 2008.
 - (c) The Commission, under Section 282 I of the Ordinance carried out an on-site inspection of the Company on November 01, 2007 (the “Inspection”) to assess financial condition of the Company and to gauge its compliance with the regulatory framework.

The inspectors of the Commission (the “Inspectors”) discovered that the Company had stated in its prospectus published on April 29, 2003 (the “Prospectus”) that M/S Alert Communication, the first acquisition of the Company, had earned profit of United States Dollars Two hundred thousand and forty seven only (USD 200,047) during the financial year ending October 31, 2002. However, the review of audited accounts of the M/S Alert Communication

revealed a net loss of United States Dollars one hundred and fifty eight thousand and forty two only (USD 158,042) in that year.

The Inspection further revealed that for convening the third AGM of the Company to be held on February 28th, 2006, the notice to the share holders of the Company, did not contain material information relating to the rights of AIG Capital partners in case of failure by TRG International to consummate a qualified public offering within the time as stipulated in the Stock Purchase Agreement. This was in violation of the provisions of clause (b) of sub-section (1) of section 160 of the Ordinance. The said Section requires that where any special business is to be transacted at general meeting, all material facts concerning such business should be annexed to the notice of the meeting.

- (d) In addition to the finding of the Inspectors, this office noted that the Company's licence to carry out the business of Venture Capital Investment expired in May 2007. The Company applied for renewal of licence on 13th February 2008, however, the Company failed to fulfill the statutory requirements for renewal of licence.
- (iii) The issues mentioned in the above paragraphs (a) to (d), led to the *prima facie* impression that the CEO and the Directors of the company failed to manage the Company in accordance with the applicable laws and had failed to protect the interest of shareholders appropriately.
- (iv) On June 25, 2009, a response to the SCN (the "Response") was furnished by M/s Rizvi, Isa, Afridi and Angell, Legal Counsel for the Company, the CEO and the Directors (the "Legal Counsel"). The relevant extracts of the Response are replicated below for convenience:
 - (a) With regard to the issues stated at Para 2 and 3 of the SCN regarding non-holding of the AGM for the year ended June 30, 2008 and non-submission of annual accounts etcetera to the Commission within the stipulated time as summarized at para 2(ii)(a) and (b) above, the Response states as follows:

ASB

“TRG Pakistan is a NBFC incorporated under the laws of Pakistan. It has several indirect subsidiaries, held through The Resource Group International Limited located all over the world. Given the spread and intricacy of TRG structure, its annual consolidated audit has been a complex exercise requiring careful and time-consuming coordination and without precedent as far as any other company in Pakistan is concerned. Any delay in completion of the accounts on the part of any subsidiary of TRG has a consequent adverse impact upon the timely completion of the consolidated accounts that are required to be presented at the AGM. TRG and its directors have made consistent and concerted efforts in prior years to expedite the audit of the subsidiaries, including increasing the available resources as well as replacing audit firms for its subsidiaries in order to procure better responsiveness. Unfortunately, despite best efforts in the past, the audits were not completed within the stipulated time due to the diverse legacy accounting systems, staffing constraints on the part of prior auditors and the inherent and technical complexities of myriad GAAP and multi-currency formats in which the constituent accounts were created. In order to expedite the audit process and resolve the issues identified above, TRG and its directors decided to undertake a major accounting system overhaul process starting July 1, 2008. However, any process improvements from this exercise were obviously not going to apply to the audit for the prior period ending June 30, 2008; nevertheless they attempted to expedite the 2008 audit by identifying specific coordination bottlenecks and addressing these up front. Despite the improved coordination, the year 2008 was also the first year of engagement for AF Fergusons and Price Waterhouse Coopers (PWC) who were appointed as the single group responsible for our global audit, with AF Fergusons responsible for the audit of TRG Pakistan Limited, and PWC (and its relevant member firms) responsible for the consolidated audit of TRG International Limited (the principal subsidiary of TRG Pakistan Limited) and its subsidiaries around the world. With the complexities of a diverse and multi-jurisdiction group such as TRG,

PWC required extra time to learn about the group and understand its financial systems. Also, PWC required extra time to complete their reporting of results to AF Fergusons as required by Schedule 4 to the Companies Ordinance, 1984 (the "Ordinance"). The auditors also required extra time to review the post year end results of TRG to perform their going concern testing and carrying out their impairment analysis. Furthermore, the year 2008 was also the first year that a consolidated audit of TRG International was completed (as opposed to stand-alone audits of several subsidiaries). Despite the earlier submission of audited results to AF Fergusons, the TRG Pakistan consolidation did not eventually get completed until March 22, 2009. AF Fergusons raised several technical issues at a very late stage instead of clearing these with TRG in advance. AF Fergusons referred these matters to their UK office as well as TRG's former auditors, which unnecessarily delayed the process."

- (b) With regards to the issues stated at Para 5 and 6 of the SCN regarding misstatement in the Prospectus with respect to Alert Communication and non-dissemination of material information to the shareholders of the Company relating to the rights of AIG Capital partners stipulated in the Stock Purchase Agreement entered into between AIG Capital partners and TRG International etc. as summarized at para 2(ii)(c) above, the Response asserts as under:

"The SECP's contention that TRG had made an 'intentional false statement' is unfounded and untenable. It is submitted that at the time the prospectus was issued, the sponsors did represent that Blasair Inc (Alert) earned a profit of \$200,047 which was based on management accounts prepared by Alert which were then submitted to Alert's auditors. These were the latest available accounts as of the time of preparation of the prospectus and the management of TRG relied therefore on the most recently available information when preparing the prospectus. Once the audit was completed, the final financial statements included an additional item consisting of a write-down of a class of intangible assets (customer lists) based

on certain conservative judgements made by the auditors. This item was a non-cash item and amounted to a total of US\$266,390. Primarily, as a result of this adjustment, the management accounts that previously indicated a profit of US\$200,047_ now reflected a slight loss of US\$_158,042 for the year ended October 31, 2002. The management of TRG Pakistan became aware of this additional entry only after the prospectus was issued, and as a result, it is entirely incorrect to state that the management intentionally made any false statements. It should be added that it is highly customary for auditors to exercise additional conservatism by writing off intangible assets, thereby adding non-cash costs. It is also important to reiterate the context and materiality of the difference between the management accounts and final audited statements. The core message communicated by the management in the prospectus was that while Alert had made significant losses in prior years (US\$ 1,323,131 and US\$ 598,649 in 2000 and 2001 respectively), its 2002 results had improved significantly. It may be noted that none of the investors have raised any claims against the directors for having made misleading statements regarding Alert communications.

As far as the AIG agreement is concerned, it is very important to mention that it is an agreement between AIG Capital Partners and TRG International for an investment by AIG in TRG International. Any general shareholder-related approval required for this agreement would be by the shareholders of TRG International (and not of TRG Pakistan) who are represented by the Board of Directors of TRG Pakistan. Hence the Board of Directors of TRG Pakistan represented the relevant body with the authority to approve the agreement in general. That approval was provided and the SECP has been apprised of that approval on multiple occasions. TRG Pakistan is also a signatory to this agreement - however, nearly all the decisions pertaining to the specific terms of this agreement fall within the purview of the Board of Directors of TRG Pakistan. There are some specific provisions of the agreement

where the approval of the shareholders of TRG Pakistan is required and these were sought at TRG's AGM held in early 2006. These approvals are for specifically identified provisions of the agreement and are completely different from an approval of the overall AIG agreement for which the assent of the shareholders of TRG Pakistan is not required. The show cause notice does not highlight any specific provisions of the Ordinance whereby shareholder approval by the shareholders of TRG Pakistan for the aforementioned AIG agreement executed by TRG International would be required, and as such, the management of TRG Pakistan acted in accordance with the law and did not conceal anything from the shareholders."

- (c) With regard to the issue stated at Para 8 of the Notice regarding failure to fulfill conditions for renewal of licence as summarized at para 2(ii)(d), the Response contained the following statement:

"As regards the renewal of licence, Rule 5(8) of the NBFC Rules provides, inter alia, that a license granted to a NBFC shall be valid for one year from the date of its issuance and shall be renewable upon expiry of the said period by making an application at least one month prior to the expiry in the prescribed manner. It is submitted that TRG had applied for a renewal of our license in May 2006 for the period ending May 2007. It was subsequently not until November 13, 2007 that TRG received a retro-active communication from the SECP informing us that its license had been renewed for the period from May 14, 2006 up to May 14, 2007. For the 2008 year, TRG was shocked to receive the renewal from the SECP in November 2007 that it had been provided retroactively instead of being valid for a year from issuance (i.e. valid until November 2008) as per sub-rule 8 of rule 5 of the NBFC rules. Following discussions with the SECP, TRG applied in February 2008 for a license for the period ending May 2008 even though we believed that we should have received a license until November 2008. We were informed in August 2008 that the license fee had increased, and duly paid that fee. Given that TRG's licence should have been granted until November 2008 as per the SECP rules,

TRG went ahead and applied in November 2008 for a renewal of its license for another year. Strangely, TRG has not received any response from the SECP as of yet on their last renewal application. The contents of paragraph 8 of the show cause notice that alleges that TRG has failed to fulfil its statutory requirements for renewal of license stipulated in Sub-rule (8) of Rule 5 of the NBFC Rules therefore denied is being incorrect. In the case of TRG, as mentioned above, the license granted in November 2007 should have been valid until November 2008, and an application for the renewal of license for the year 2008-2009 was made along with the fees on November 14, 2008. Unfortunately, instead of issuing a license, the SECP has served an unwarranted show cause notice on TRG. In addition, Rule 5(9) of the NBFC Rules provides: "until such time that the license is renewed, the existing license shall be deemed valid for the purposes of the NBFC Rules unless the company fails to apply as specified in Rules 5(8) of the NBFC Rules and fulfills all the requirements to the satisfaction of the SECP for the grant of a license". Given that we had applied In November 2008 for a renewal of the license (that should have been granted in November 2007 until November 2008), we consider the license issued in November 2007 to continue to be valid. In fact, we consider the application made in February 2008 as simply evidence of our going the extra mile, as well as our payment of increased annual fees for the renewal of our license."

3. In order to provide an opportunity of hearing, the Company, the CEO and the Directors were advised by the undersigned to appear and defend the SCN. Accordingly, the matter finally came up for hearing on July 02, 2009.

4. At the outset of the hearing the representative of the Legal Counsel Barrister, Bilal Shaukat (hereafter referred to as the "Learned Counsel") was requested to submit any document in addition to the Response, however, no additional document or information was submitted before the undersigned.

5. The Learned Counsel opened the argument explaining the position of the Company, the CEO and the Directors with regards to non compliance to the statutory

requirements regarding holding of AGM for the year ended June 30, 2008 and non submission of annual accounts to the Commission within the stipulated time period.

6. The argument of the Learned Counsel revolved around one basic point that due to the complexities of a diverse and multi-jurisdiction group, it has been very difficult for the Company to meet timelines in compliance with the provisions of the Ordinance for holding AGM and timely submission of annual accounts. The Learned Counsel expanded on the written submissions made by the Company, stating that due to the intricacy of TRG corporate structure, the annual consolidated audit is a complex exercise which is immensely time-consuming. The Learned Counsel further argued that if there is a delay in completion of the accounts of any subsidiary of the Company, it has a direct adverse impact upon the timely completion of the consolidated accounts. The Learned Counsel further stated that the Directors of the Company had taken the matter very seriously and they remain committed to rectifying the situation by allocating best available resources to comply with the legal framework.

7. I have perused the written submissions and have considered the arguments made by the Learned Counsel on this point. Accordingly, I am of the view that the contentions of the Learned Counsel do not carry any substance to justify the default. The Company bears the responsibility to take appropriate steps and hold the AGM within prescribed time as this is the only forum available to the shareholders where they can review, discuss and approve significant matters relating to the affairs of the Company. By no less measure, this responsibility rests on the shoulders of the CEO and the Directors to ensure that the AGM is held on time.

8. It is noteworthy that the company delayed the holding of its AGMs during the last four consecutive years and the CEO and the Directors of the Company were penalized on this account last year also. The repetition of the delay and default shows that the management of the Company does not take the provisions of the law seriously and that the default is committed knowingly and willfully.

9. This office has taken strict notice of the situation and holds that the management of the Company has failed to discharge its statutory obligation towards its shareholders and committed default under Section 158 of the Ordinance. Despite the fact that they had done the same previously, it was imperative that the CEO and Directors should have exercised

caution and diligence this time. However, in spite being given an extension in time to hold the AGM the default was committed.

10. Therefore, in exercise of the powers of Section 158(4) read with Section 476 of the Ordinance, conferred upon me, I hereby impose a fine of Rs. 50,000/- on the CEO and every Director of the Company and further fine of Rs. 2,000 for every day after the first during which the default continued (135 days) on the CEO and every Director of the Company. Additionally, the CEO and the Directors are strictly warned against failure to hold AGM on time this year.

11. As far as non-furnishing of copy of the annual report of the Company and other information within the prescribed time limit as required under Rule 7(1) (db) of the NBFC Rules is concerned, it has been noted that the arguments of the Learned Counsel on this point are feeble and in fact take the direction of making an implied admission of inability of the Company to ensure compliance with prevalent regulatory framework. In addition, since the Company has contravened the provisions of the NBFC Rules, the arguments of the Learned Counsel, have not been able to dislodge the onus to disprove the guilt of the CEO and the Directors, as is required under the proviso to Section 282 J (1) of the Ordinance, in relation to the contravention of Rule 7(1) (db) of the NBFC Rules. Therefore, the CEO and the Directors are deemed guilty of the offence.

12. Accordingly, in exercise of the powers of the Commission under Section 282 J (1) of the Ordinance, I hereby impose a fine of Rs. 100,000/- on the Company, the CEO and every Director of the Company for contravention of Rule 7(1) (db) of the NBFC Rules. It may be noted that a lenient view has been taken in imposition of fine for this contravention, considering the efforts being made by the Company to avoid similar delays in future. However the CEO and the Directors are strictly warned against repetition of the same failure this year.

13. As regards the point concerning the misstatement in the Prospectus with respect to Alert Communication which attracts the penal provisions of Section 492 of the Ordinance, it is noted that the Learned Counsel had stated that at the time of initial public offering, several of the existing Directors, namely Javed Hassan, Saeed Iqbal, Patrick McGinnis, John Leone, Rafiq Dossani and Ali Jameel were not represented on the Board of the Company. This point of the Learned Counsel is accordingly accepted to the extent of all

the said persons except Mr. Ali Jameel, as the record available with this office evidences that Mr. Ali Jameel was a Director of the Company when the Prospectus was issued.

14. During the course of hearing, the Learned Counsel while arguing on the point whether there had been a misstatement in the Prospectus of the Company, vehemently denied that any such misstatement had been made by the CEO or any of the Directors. The Learned Counsel clarified that at the time when the Prospectus was issued the accounts relied on by the management of the Company were prepared by management of Alert. Furthermore, it was contended that at the time of completion of the audited accounts, an additional item entry of intangible assets was added that eventually reflected the differential of figures i.e. from a profit of US\$200,047 to a loss of US\$158,042 for the year ended October 31, 2002. According to the Learned Counsel, the management of TRG only became aware of this fact after the Prospectus had been issued and there was nothing deliberate by the management of the Company which would be considered 'misstatement' in terms of Section 492 of the Ordinance.

15. Additionally, the Learned Counsel added that the information mentioned in the Prospectus was not 'material' in terms of Section 492 of the Ordinance. He based his argument on the claim that no investment was made on the basis of this information. Further to this, the Learned Counsel contended that in any case the Prospectus contained disclaimers which were approved by the Commission.

16. In my view, the Learned Counsel has misconstrued the position of fact and law on this point. Firstly, the approval of the Commission of the Prospectus is not a blanket approval which would absolve the CEO and the Directors from any liability that would arise from the publication of the Prospectus. This is precisely the reason law has made provision for situations like this in Section 492 of the Ordinance which has been replicated below for convenience:

492. Penalty for false statement. - Whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any

material fact knowing it to be material, shall be punishable with fine not exceeding five hundred thousand rupees. (emphasis added)

The accentuated language of Section 492 of the Ordinance above is categorical that the penal provisions of the Section would apply to 'whoever' *inter alia*, makes a statement which is 'false' or 'incorrect' in 'any material particular'. The CEO added to the arguments made by the Learned Counsel and stated that the information given in the Prospectus was not a 'misstatement' as it is not the business model of the Company to invest into a profit making entity, in fact quite to the contrary, he added, the Company's acquisitions are based on the idea of financial turn around of loss making entities. Accordingly, it cannot be said that the statement made in the Prospectus about the profitability of Alert Communications was a measure to lure investors into making investment based on this information.

17. In my view, this statement of the CEO is contradicted by the contents of the Response and the text of the Prospectus. The relevant language of the Response concerning this point is replicated below for convenience:

"It is also important to reiterate the context and materiality of the difference between the management accounts and final audited statements. The core message communicated by the management in the prospectus was that while Alert had made significant losses in prior years (US\$ 1,323,131 and US\$ 598,649 in 2000 and 2001 respectively), its 2002 results had improved significantly." (emphasis added)

The emphasized language of the above is a clear admission of the fact that the information provided in the prospectus was with an intention to show that the acquired company was financially viable when it was not.

Similarly, the text of the prospectus is also replicated below which substantiates the assertion made in the Response as noted above and nullifies the assertions made by the Learned Counsel and the CEO:

"The stake of TRG International in Alert Communications is 49% which was acquired on October 25, 2002. The total paid up capital of Alert Communications is US\$ 3,780,127. Alert made losses of US\$ 1,323,131 and US\$ 598,649 in 2000 and 2001 respectively, whereas it made a profit of US\$ 200,047 during the financial year ending on October 31, 2002." (emphasis added)

18. At this juncture it is also important to discuss how the Learned Counsel has misconstrued the interpretation of the word 'materiality' as engrained in above stated Section. It is observed that the argument of the Learned Counsel purports the view that the information was not material as no one invested into the Company based on the information contained in the Prospectus. In fact, in my view, 'materiality' of information depends upon the nexus such information has with the invitation for investment in a financial product and not the chance of someone investing into the Company relying on such information. In this particular case, since the invitation through the Prospectus was made for investment in the Company and the promise it holds for a profitable return on investment through acquisitions of companies like Alert Communications etc., it is only natural to deduce that information regarding the accounts and performance of Alert Communications contained in the prospectus was 'material' for the purposes of Section 492 of the Ordinance.

Further, that the management of the Company despite having the knowledge of the fact that the latest figures related to Alert Communications that were available to it were not audited, it did not disclose this information in the Prospectus and clubbed the said figures with audited figures. This gave an impression that the profit as disclosed in the Prospectus had also been reviewed by the auditors, thus fortifying the fact that the said information was a 'misstatement'.

19. Although, the CEO and the Director of the Company, who were then on the Board and are presently served the SCN, are found to be in contravention of Section 492 of the Ordinance, I am constrained to take a lenient view considering the time lapsed since the publication of the Prospectus and the cognizance taken by the Commission of the offence. Accordingly, I do not consider it equitable to impose a fine for this contravention.


20. As regards non-dissemination of information to the shareholders of the Company relating to the rights of AIG Capital partners in case of failure by TRG International to consummate a qualified public offering within the time as stipulated in the Stock Purchase Agreement, the Learned Counsel argued that there was no law that required them to disclose the agreement to the shareholders of TRG Pakistan. Although, where necessitated by the terms of the agreement they have obtained the approval of shareholders of the Company. He further stated that AIG could not exercise its right to sell the assets of TRG International and its subsidiaries without obtaining approval of shareholders of the

Company and therefore there was no need as such to disclose to the shareholders of the Company that AIG could exercise such a right. Accordingly this argument of the Learned Counsel is accepted and no penalty is imposed on the Company or its management.

21. Lastly, with regards the renewal of licence, the Learned Counsel stated that the law did not warrant the rating of the Company as a condition precedent for renewal of licence. He further contended that the application of the Company for renewal of licence is pending with this office which may be entertained at the earliest in accordance with law. I have reviewed the matter and accordingly accept the argument of the Learned Counsel. The applications submitted by the Company for renewal of licence shall be dealt with expeditiously.

22. In view of the facts, written submissions, arguments made before me and my decisions thereon, the Company, CEO, and the Directors of the Company are hereby directed to deposit the fines in terms of the imposition thereof as contained in the preceding paragraphs, within thirty (30) days from the date of this order in the designated bank account of the Commission maintained with Muslim Commercial Bank Ltd and submit the original paid bank challan to this office for record. It may also be noted that the fines imposed on the CEO and Directors of the Company shall be paid from their personal resources.

23. This order is issued without prejudice to any action, which may be taken or warranted for the above said defaults under any other provision of law.


(Asif Jalal Bhatti)
Director (NBFC D) 10/9/2009

**Announced: September 10, 2009
Islamabad.**