

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

In the matter of Show Cause Notice issued to Pakistan International Airlines Corporation Limited

Dates of Hearing	February 12, 2019, March 11, 2019, March 27, 2019, April 16, 2019, May 7, 2019, May 29, 2019, October 28, 2019, February 18, 2020, June 29, 2020, August 4, 2020 and August 13, 2020
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Order-Redacted Version

Order dated September 25, 2020 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of Pakistan International Airlines Corporation Limited. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated January 17, 2019
2. Name of Company	Pakistan International Airlines Corporation Limited
3. Name of Individual*	The proceedings were initiated against the chief executive and the Company i.e. Pakistan International Airlines Corporation Limited
4. Nature of Offence	Violation of Rule 25 of the Public Sector Companies (Corporate Governance) Rules, 2013 read with section 508(2) of the Companies Act, 2017
5. Action Taken	<p>Key findings were reported in the following manner:</p> <p>I have examined the submissions made in writing and during the hearing as well as issues highlighted in the SCN and requirements of the PSC Rules and of the Act. At the outset, it is relevant to mention here that auditors of the Company in their review report annexed with annual audited accounts for the year ended December 31, 2016, on the SOC with the PSC Rules, inter alia, also highlighted instances of non-compliances of Rule 3(2), Rule 5(5)(c)(ii), Rule 9, Rule 10, Rule 12(2), Rule 13/14, Rule 5(2), Rule 21(1), and Rule 21(9) of the PSC Rules, which highlights an independent and external evaluation of compliance. However, based on the available record, I have analyzed the matter in the following manner:</p> <p>(i) In terms of Rule 3(2) of the PSC Rules, which requires that the board shall have at least forty percent of its total members as independent directors. In this regard, the Company in its representation has cited that all directors were nominated by Government of Pakistan ("GoP") and entire decision is within domain/control of GoP. I have also reviewed the submissions made and reports annexed with Accounts 2016; it is observed that the Company had 3 independent directors out of 9 directors</p>

including chief executive. The Company in its SOC admitted non-compliance of Rule 3(2). Hence, total number of independent directors were not in compliance of the Rule 3(2) of the PSC Rules. The Authorized Representative informed that subsequently the matter had been taken up with GoP for future compliance. In view of this, the Company has violated the Rule 3(2) of the PSC Rules at the relevant time.

(ii) In terms of Rule 5(2) of the PSC Rules, the board shall recommend at least three candidates to the GoP for its concurrence for appointment of one of them as chief executive. In this context, I have gone through the minutes of the board meeting held on October 28, 2016 wherein board of directors decided to recommend two names for the position of chief executive. Besides this, board also decided to carry out additional market search to broaden the competition and to recommend three names to GoP and thereafter the names were sent subsequent to year end 2016. Additionally, I have noted that while giving the explanation to the noncompliance with the PSC Rules; the Company submitted that subsequent to the year-end, the board recommended three candidates for the consideration of GoP and a CEO has been appointed thereof. Nevertheless, I would also like to mention here that during the hearing proceedings, the Authorized Representative has drawn attention to the fact that in terms of C.P 47 of 2020, infringement of Rule 5(2) of the PSC Rules was also alleged and the matter became subjudice before superior court. The above fact demonstrates that violation of Rule 5(2) of the PSC Rules was done in the year 2016.

(iii) In terms of Rule 5(5)(c)(ii) of the PSC Rules, the board may nominate a committee consisting of one of its members or senior Executives for investigating, where necessary on a confidential basis, any deviation from the company's code of conduct. The Authorized Representative informed that BAC was responsible for implementation of code of conduct. In this regard, two documents have been furnished (a) copy of circular no. 23/2013 dated July 12, 2013 narrating code of conduct and relevant acknowledgement of receipt by employees and (b) and extract of board minutes of its meeting dated October 12, 2017 wherein terms of reference of BAC were approved.

From review of the aforesaid two documents, it cannot be concluded that during the period under review, the Company had a committee to investigate the deviation from code of conduct. The terms of reference of BAC were approved in October 12, 2017, which is also subsequent to year 2016. Moreover, terms of reference of BAC did not explicitly specify role of BAC to investigate the deviation from code of conduct as stipulated in PSC Rules. Authorized Representative during the hearing proceedings submitted that proposal for creation of such specific/special committee was put up for consideration of Board in its upcoming meeting to meet the regulatory requirements.

It is also pertinent to mention here that the Company in its SOC and auditor in its review report on SOC reported that the Company during the year was non-compliant with the provisions of Rule 5(5)(c)(ii) of the PSC Rules. Also, while providing the explanation to the noncompliance with Rule 5(5)(c)(ii) of the PSC Rules; the Company disclosed the instance

of deviation from Company's Code of Conduct for which investigation committee was formed subsequent to the year end. Therefore, I am of the view that the Company violated with Rule 5(5)(c)(ii) of the PSC Rules.

(iv) In terms of Rule 9 of the PSC Rules details of all related party transactions are required to be placed before the audit committee and upon its recommendation the same shall be placed before the board. In reply dated July 29, 2019 the Authorized Representative informed that there were no related party transactions which were required to be placed before board audit committee and if there had been any related party transactions, the same would had been put up to the board audit committee. During the aforementioned hearing, attention of Authorized Representative was drawn to note 42 to the annual audited accounts for the year ended December 31, 2016, in terms of which material related party transactions were disclosed. The Authorized Representative was advised to furnish the evidence of placement of these related party transactions before Board Audit Committee and on committees' recommendation for placement of the same before the board for review and approval. In this regard, it is observed that the Authorized Representative did not furnish any reply and evidence of compliance. The Company, hence, violated the requirements of Rule 9 of the PSC Rules.

(v) As regards to compliance with the requirements of Rule 10 of the PSC Rules, the Authorized Representative submitted that the Commission initiated separate proceedings for non-filing of quarterly accounts for the mentioned periods, and directions under section 147 of the Act to hold overdue AGM. In this context, I am of the view that the Company violated requirements of Rule 10 of the PSC Rules for not preparing its quarterly financial statements and for not placing the same for approval of the board.

(vi) In terms of Rule 12(2) of the PSC Rules, minutes of the meetings of the board committees shall be circulated to board members. The Authorized Representative pursuant to his email dated September 3, 2020 has informed that during the financial year 2016 minutes of board committee meetings were circulated to board members. The Authorized Representative informed that two meetings of board audit committee, one meeting each of IT committee and customer service committee, HR committee and Finance & Risk Management committee were held and minutes were duly circulated. As per explanation to SOC, during the year no meeting of Procurement Committee were held, hence, minutes were not circulated. In view of non-holding of meeting of Procurement Committee, circulation of minutes of the committee are not mandatorily required, hence, the Company's response for this matter is satisfactory.

(vii) In terms of Rule 14(5) of the PSC Rules, no person shall be appointed to the position of company secretary unless he is fit and proper for the position. The Authorized Representative has submitted that subsequent to 2016, change in the position of company secretary was made and criteria was complied. Therefore, I, am of the view that at the relevant time, the Company did not have the company secretary

satisfying fit and proper criteria and thereby violated the requirements of Rule 14(5) of the PSC Rules.

(viii) In terms of Rule 21(1) of the PSC Rules, the members of board audit committee shall be financially literate and majority to be independent non-executive directors. The Authorized Representative submitted that composition of the board of the Company was beyond control as GoP nominated board members. The Authorized Representative further submitted that 2017 onwards the Company was fully compliant of the given requirements and provided the minutes of board audit committee meeting dated October 12, 2017 wherein committee was constituted having five directors. The composition of board audit committee comprising independent directors as stated in the replies of the Company did not pertain to financial year 2016. Therefore, I am of the view that at the relevant time the Company violated the requirements of Rule 21(1) of the PSC Rules.

(ix) In terms of Rule 21(9) minutes of the meetings of audit committee shall be circulated to all the members, directors and the chief financial officer, within fourteen days of the meeting. As per the details provided by the Authorized Representative; during the financial year 2016, two meetings of board audit committee were held. One was dated March 31, 2016 and second was held on September 2, 2016, whereas, minutes were circulated on May 13, 2016 and October 31, 2016. This show that minutes of the meeting of BAC though were circulated, but the same were not circulated within fourteen days period as specified in the PSC Rules. Hence, the Company violated Rule 21(9) of the PSC Rules.

(x) In terms of Rule 22(2) of the PSC Rules, no person shall be appointed to the position of the chief internal auditor unless he is considered and approved as "fit and proper" for the position by the Audit Committee. The Authorized Representative informed that all efforts were made to appoint a new chief internal auditor and advertisement had also been published, however, due to ban imposed by Supreme Court of Pakistan through order dated March 31, 2017, the process was put on hold. The above establishes that during the relevant period the Company violated requirements of Rule 22(2) of the PSC Rules.

2. In view of the foregoing, it is concluded that the lapse was demonstrated by the Company with regard to compliance with the PSC Rules and the Auditor of the Company reported such violations in his review report on the SOC with the PSC Rules. However, I have noticed that the Company subsequent to year ended 2016, put efforts to comply with the respective provisions of the PSC Rules inter alia including appointment of requisite number of independent directors on board and audit committee, recommendation of 3 names for appointment of chief executive, formation of committee to investigate violations of code of conduct and preparation of quarterly accounts. Further, I have also noted that beside serious challenges, the Company is doing efforts to comply with the provisions of PSC Rules. The Authorized Representative ensured that the management was throughout acting in good faith and with the

	<p>best intention to improve the quality of governance for the benefit of the shareholders.</p> <p>Keeping in view, a penalty of Rs.1,000,000/- (Rupees one million) was imposed on the Company.</p> <p>Penalty order dated September 25, 2020 was passed by Executive Director (Adjudication-I).</p>
6. Penalty Imposed	A Penalty of Rs.1,000,000/- (Rupees one million) was imposed only on the Company.
7. Current Status of Order	Penalty was deposited. No Appeal has been filed by the respondents.