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SECP  
INSURANCE DIVISION  
Islamabad

Before Hasnat Ahmad, Director/HoD (Enforcement)

In the matter of

M/s. TPL Insurance Limited

Show Cause Notice No. and Date: ID/Enf/TPL/2019/496 dated April 19, 2019

Date of Hearing: August 29, 2019

Attended By: Syed Kazim Hassan  
Chief Operating Officer/CFO  
M/s. TPL Insurance Limited

Mr. Danish Qazi  
Group General Counsel & Company Secretary  
M/s. TPL Insurance Limited

Mr. Muhammad Junaid  
Financial Controller  
M/s. TPL Insurance Limited

Date of Order: October 4, 2019

ORDER

Under Section 183(3)(a) read with Section 183(6) and Section 479 of the Companies Act, 2017

.....

This Order shall dispose of the proceedings initiated against M/s. TPL Insurance Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Section 183(3)(a) read with Section 183(6) of the Companies Act, 2017 (the "Act"). The Company and its Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Insurance Ordinance, 2000 (the "Ordinance") to carry on the business of non-life insurance and general Takaful/window Takaful in Pakistan.

3. During offsite examination of Annual Audited Accounts for the year ended December 31, 2017, it was observed that the Company did not obtain shareholders' approval / consent in terms of Section 183(3)(a) of the Act, for 'sale, lease or disposal of sizeable part of fixed assets amounting to Rs.273.492 million (76.5 % of total fixed assets as on December 31, 2016) to its associated company i.e. TPL Trakker Limited.

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4. The Commission vide letter dated July 18, 2018 bearing no. ID/OSM/TPLDIRECT/2018/15713 advised the Company to provide evidence of compliance with Section 183 of the Act along with a copy of the agreement between the Company and TPL Trakker Ltd. (refer to Note # 5.1 of the financial statements FTY ended December 31, 2017).

5. The Company submitted its response vide letter dated September 25, 2018 and provided extracts of minutes of the Board meeting and EOGM. The Company thereby stated that:

*"the Company changed the model from acquisition of tracking devices as fixed assets to renting of these devices from its associated company. Under the arrangement, the company returned back tracking devices purchased earlier and reacquired the same under rental model without any gain or loss. The sales of tracking devices were duly approved by Board in BOD meeting dated August 15, 2017".*

6. The Commission vide letter dated February 21, 2019 bearing no. ID/OSM/TPLDIRECT/2019/578 further advised the Company to provide a copy of the minutes of the general meeting evidencing its compliance with the requirement of Section 183(3)(a) of the Act on sale or disposal of the tracking devices to its associated company.

7. The Company submitted its reply vide letter dated April 5, 2019 and stated that:

*"please note that on the plain reading of Section 183(3)(a) of the Companies Act, 2017 ("2017 Act"), it is our view that the Company does not fall under the purview of Section 183(3)(a) of the 2017 Act, which specifically refers to selling and disposing of the "undertakings" or a "sizeable part thereof" whereas the transaction of disposal of tracking devices amounting to Rs. 273.49 million related to the disposal of fixed assets. We believe that the said transaction falls under Section 183(2)(i) of 2017 Act, which allows the Company to dispose of its fixed assets once approved by the Board of Directors of the Company and as such the approval of the shareholders was not required to be taken for the transaction".*

8. Contrary to the Company's stance that the subject transaction fell under the ambit of Section 183(2)(i) and no approval/ consent of the shareholders was required under Section 183(3)(a) of the Act, the Commission was of the considered view that as per the provisions of Section 183(3)(a)(ii) of the Act, sizeable part in any financial year shall mean twenty five percent or more of the value of the assets in that class as per the audited financial statements of the preceding financial year, and since the value of tracking devices disposed of was more than 25%, the transaction was required to be effected only after obtaining the consent of the shareholders in general meeting.

9. In view of the above, it appeared that the Company failed to comply with the provisions of Section 183(3)(a) of the Act.





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10. Section 183(3)<sup>1</sup> of the Act states that:

*“(3) The board of a company shall not except with the consent of the general meeting either specifically or by way of an authorisation, do any of the following things, namely. –*

- (a) sell, lease or otherwise dispose of the undertakings or a sizeable part thereof unless the main business of the company comprises of such selling or leasing; and.*

**Explanation:** *For the purpose of this clause -*

- (i) .....*  
*(ii) the expression –“sizeable part” in any financial year shall mean twenty five percent or more of the value of the assets in that class as per the audited financial statements of the preceding financial year;”*

11. Accordingly, a Show Cause Notice (SCN) No ID/Enf/TPL/2019/496 dated April 19, 2019 was issued to the Respondents, calling upon them to show cause as to why the penalty as provided under Section 183(6) and Section 479 of the Act should not be imposed on them for the aforementioned alleged contraventions of the law.

12. Thereafter, the Respondents submitted their reply vide letter dated July 8, 2019, as under:-

*“ ... ..*

*We write with reference to the show cause notice issued by the Securities and Exchange Commission of Pakistan (the “Commission”) under Section 183(3)(a) read with Section 183(6) and Section 479 of the Companies Act, 2017 (the “Act”), dated April 19, 2019 and bearing reference no ID/Enfi\TPL/2019/496 (the “Notice”), and would like to submit as below:*

- 1. As a preliminary matter, it is submitted that TPL Insurance Limited (the “Company”) and its directors strictly ensure compliance with the applicable provisions of law and carry out the Company’s business, operations and transactions in a legal, fair and transparent manner for the benefit of the Company and its shareholders.*
- 2. With respect to the matter under notice i.e. the sale of tracking devices by the Company to TPL Trakker Limited (“Trakker”), it is respectfully submitted that the Company obtained the requisite approval from its Board of Directors under Section 183(2)(i) of the Act to carry out the same. It is further submitted that approval was not required from the Company’s shareholders with respect to such sale as the transaction did not fall within the ambit of Section 183(3)(a) of the Act.*
- 3. Based on a plain reading of the provisions of Section 183(3)(a) of the Act, it is evident that the approval of the shareholders of Company is only required in the event of a sale, lease or disposal of an undertaking of the Company or a sizeable part thereof*

<sup>1</sup> Section 196(3)(a) of the Companies Ordinance, 1984

*[Handwritten signature]*



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[Emphasis Added]. The sale of tracking devices, forming part of the fixed assets of the Company, would not and cannot constitute an "undertaking" of the Company; consequently, the aspect of a sizeable part of the undertaking of the Company does not arise. In light of the above, the transaction falls outside the ambit of the provisions of Section 183(3)(a)

4. The term "undertaking", as defined in Explanation (i) to Section 183(3)(a) of the Act, itself uses the phrase 'undertaking', for which purpose the general / ordinary meaning of undertaking would need to be applied. The general / ordinary definition of the phrase 'undertaking' means a business.

Resultantly, for the purposes of the definition of "undertaking", as stipulated in Section 183(3)(a), the same would mean the business in which the investment of the Company exceeds 20% of its net worth or a business of the Company which generates 20% of the total income of the Company.

5. Keeping in mind the above, it is abundantly clear that the Company's fixed assets (including the tracking devices) cannot be construed to be an 'undertaking' of the Company as the same would not be deemed to be a business. With respect to the tracking devices in particular, the same do not generate any revenue by themselves; in fact, the devices are provided, in conjunction with vehicular insurance policies taken by a customer (which protect the Company's interests); accordingly, the same are not meant to generate revenue per se, and thus do not meet the test prescribed to constitute an "undertaking" of the Company

Adopting an interpretation to the contrary, i.e. whereby the assets, or a class of assets, of a company would automatically be deemed to be an 'undertaking' simply due to their quantum / value would be completely impractical and lead to an absurdity. By way of example, based on the interpretation being suggested by the Commission, the current assets of a company would also be deemed to be an 'undertaking'; resultantly, the sale / disposal thereof would also require the approval from the shareholders of a company. This would be completely illogical, impractical and absurd as the same would stifle a company's operations and business.

It is submitted that the interpretation suggested by the Commission cannot be the intention of the legislature while drafting and approving the provisions of Section 183(3)(a) of the Act. Instead, it is obvious that the intention of the legislature was that companies are required to seek shareholder approval if the Company's business or a sizeable part thereof would be sold as the same may potentially have a significant impact on the Company's business / operations and to act as a going concern.

Based on the this alone, it is clear that the Company's fixed assets (including the tracking devices) would not constitute an undertaking.

6. At this point it is also emphasized that the Commission has, in para 8 of the Notice, incorrectly applied the phrase "sizeable part" while reaching its conclusion, by only considering the definition appearing in Explanation (ii) to Section 183(3)(a) of Act. It is submitted that the Explanation is required to be read in consonance with Section





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183(3)(a), which categorically states "sell, lease or otherwise dispose of the undertakings or a sizeable part thereof..." [Emphasis Added].

The ambit of Section 183(3)(a) of the Act is thus linked to the undertaking of the Company or a sizeable part of such undertaking, and not merely a sizeable part of the Company. In other words, the provision would only be applicable (in the first instance) if the arrangement involves the sale, lease or disposal of an undertaking. Resultantly, the matter being sold, leased or disposed of must first qualify to be an "undertaking", after which the Company would then be required to determine if it comprises a sizeable part of such undertaking.

As concluded in paragraph 5 above, the fixed assets of the Company do not constitute an "undertaking" of the Company; consequently, the Company's tracking devices cannot fall within the definition of "sizeable part" of an undertaking.

Furthermore, based on the same logic as detailed above, including with reference to a company's current assets, it cannot be the intention of the legislature to separately interpret the phrase "sizeable part", which would thus require shareholder approval, as the same would be completely illogical and lead to absurdity.

7. In light of the above, it is submitted that sale of the tracking devices by the Company to Trakker did not attract the provisions of Section 183(3)(a) of the Act and accordingly, the consent of the shareholders of the Company was not required to effectuate the same.
8. Without prejudice to the above, as communicated earlier to the Commission, the Company has changed its business model for which purpose it had carried out the sale of the tracking devices to Trakker. While previously the Company had been acquiring tracking devices from Trakker and, inter alia, installing the same in vehicles with respect to which it was providing insurance, the management decided to sell the tracking devices to Trakker and take the same on lease, thus freeing up the fixed assets of the Company. As such, even from a practical perspective, while the transaction involved a sale of the tracking devices, there was no outright disposal as the devices have been leased back to the Company. Furthermore, from an operational and business perspective there has been no impairment or disadvantage to the Company, in fact the Company has benefitted from the revised structure.
9. In view of the above, it would be incorrect to state that the Company and / or its directors have contravened the provisions of Section 183(3)(a) of the Act in the facts and circumstances. It is reiterated that the Company and its directors have complied with the applicable provisions of law and thereby sought Board approval for the said transaction. Resultantly, the provisions of Section 183(6) read with Section 479 of the Act are not attracted or applicable to the Company and / or its directors.
10. Given the above facts, circumstances and deliberation, we request the Commission to consider the Notice to have been satisfactorily responded and the Notice may be withdrawn as neither the Company nor its directors have violated the provisions of Section 183(3)(a) of the Act.





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Accordingly, no actions or penalties under the respective provisions of the Act are applicable or warranted in the circumstances.

11. We trust that the above adequately responds to the contents of the Notice; however, should you require any further information or clarification we would be pleased to provide the same. Furthermore, in the event that further clarification is required by the Commission, the Company would like an opportunity of hearing (including through legal counsel), once the Commission has reviewed the contents of this response."

13. Hearing in the matter was scheduled on August 29, 2019 at the Head Office of the Commission, which was attended by the Authorized Representatives of the Respondents namely Mr. Syed Kazmi Hasan, Mr. Danish Qazi and Mr. Muhammad Junaid, connected through video link from the Commission's Karachi Office.

14. During the hearing, the Authorized Representatives reiterated their written comments and stated that the sale/disposal of the tracking devices to its associated company does not fall under the ambit of Section 183(3)(a) of the Act, which specifically refers to selling and disposing of the "undertakings" or a "sizeable part thereof". They were of the view that the said transaction pertains to disposal of the fixed assets. The Authorized Representatives stated that the Company as per Section 183(2)(i) of the Act, could dispose of its fixed assets with approval of the Board of Directors without requiring approval of the shareholders. The Authorized Representatives claimed that there was no detrimental effect of the transaction on the business and none of the shareholders has suffered because of this decision.

15. It is pertinent to note that Section 183 of the Act primarily provides the power of the Board of Directors as under:-

**183. Powers of board.** — (1) *The business of a company shall be managed by the board, who may exercise all such powers of the company as are not by this Act, or by the articles, or by a special resolution, required to be exercised by the company in general meeting.*

(2) *The board shall exercise the following powers on behalf of the company, and shall do so by means of a resolution passed at their meeting, namely: —*

*(i) to incur capital expenditure on any single item or dispose of a fixed asset in accordance with the limits as may be specified:*

*Provided that the acceptance by a banking company in the ordinary course of its business of deposit of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or placing of moneys on deposit by a banking company with another banking company such conditions as the board may prescribe, shall not be deemed to be a borrowing of money or, as the case may be, a making of loan by a banking company with the meaning of this section;*

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(3) The board of a company shall not except with the consent of the general meeting either specifically or by way of an authorisation, do any of the following things, namely. –

(a) sell, lease or otherwise dispose of the undertakings or a sizeable part thereof unless the main business of the company comprises of such selling or leasing; and

*Explanation. – For the purposes of this clause-*

(i) *—undertaking shall mean an undertaking in which the investment of the company exceeds twenty percent of its net worth as per the audited financial statements of the preceding financial year or an undertaking which generates twenty percent of the total income of the company during the previous financial year;*

(ii) *the expression —sizeable part in any financial year shall mean twenty five percent or more of the value of the assets in that class as per the audited financial statements of the preceding financial year;*

16. It must be noted that power of the Board of Directors conferred upon it vide Section 183(2)(i) is linked with the “limit” as may be specified and the term “specified” is defined under Section 2 of the Companies Act, 2017 as under:

*“(67) —specified means specified through regulations made under this Act;”*

17. It is inferred that until the said threshold is not specified; the same cannot not be exercised through passing resolution of the Board. Having said that Section 182(2)(i) cannot be implemented until regulations in this behalf specify the threshold. Thus, Company’s contention that it has disposed of the fixed asset under Section 182(2)(i) of the Act is not tenable.

18. Regarding interpretation of Section 183(3)(a) of the Act, it is important to note that the matters covered under this provision have escalated the approving authority from the Board of Directors to general meeting. These items among others include: (a) sell, (b) lease (c) or otherwise disposal of (A) the undertakings (B) or a sizeable part thereof.

19. It is clarified that that the term undertaking has been explained under sub-clause (a) as well as “associated undertaking” is defined under Section 2 of the Act. The selling, leasing out or disposing of sizable part will also be construed accordingly.

20. As the Company disposed of a sizeable part of the fixed assets amounting to 273.492 million rupees that too to its associated company (TPL Trakker Limited) therefore, the Company was required to take approval of the general meeting as required under Section 183(3)(a) of the Act.

21. I have carefully examined and given due consideration to the written and verbal submissions of the Respondents, and have also referred to the provisions of the Act and

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other legal references. I am of the view that violation of Section 183(3)(a) of the Act, is clearly established, for which the Respondents may be penalized in terms of Section 183(6) and Section 479 of the Act.

22. Section 183(6) of the Act states that:

*“(6) Any contravention or default in complying with requirement of this section shall be an offence liable to a penalty of level 2 on the standard scale and shall be individually and severally liable for losses or damages arising out of such action.”*

23. Penalty of level 2 is provided under Section 479 of the Act provides that:

*“479. Adjudication of offences and standard scale of penalty. – (1) There shall be a standard scale of penalty for offences under this Act, which shall be known as “the standard scale”.*

*(2) The standard scale consists of –*

<i>Level</i>	<i>Limit of penalty</i>	<i>Per day penalty during which the default continues</i>
1	Upto Rs.25,000	Upto Rs.500
2	Upto Rs.500,000	Upto Rs.1,000
3	Upto Rs.100 million	Upto Rs.500,000

.....”

24. In exercise of the power conferred on me under Section 183(6) and 479 of the Act read with S.R.O. 1346 (I)/2018 dated November 5, 2018, I, instead of imposing a penalty take a lenient view and warn the Respondents to ensure full compliance with Section 183(3)(a) of the Act in future. However, in case of similar non-compliance in future, a strict action against the Respondents will be taken.

25. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the CEO of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

**Hasnat Ahmad**  
Director/ HoD (Enforcement)

