



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Dawood Family Takaful Limited

Show Cause Notice Issue Date: October 10, 2013

Date of Hearing: February 13, 2014

Attended By: Mr. Fahad Alam
Company Secretary
Mr. Ghazanfar-ul-Islam
Chief Financial Officer
Mr. Atir Aqeel Ansari
Legal Counsel

Date of Order: March 31, 2014

ORDER

(Under Section 227 Read with Section 229 of the Companies Ordinance, 1984)

.....

This Order shall dispose of the proceedings initiated against M/s Dawood Family Takaful Limited and others (herein referred as "the Respondent") for not complying with the provisions of Section 227 of the Companies Ordinance, 1984 (the "Ordinance").

Background Facts

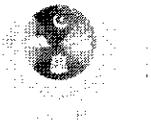
2. The relevant facts for disposal of this case briefly, stated are that the relevant provisions of Section 227 of the Ordinance require each company, registered under the Ordinance, to transfer all money or securities which is deposited by its employees in pursuance of their contracts of service with that company, within fifteen days from the date of such deposit in a special account to be opened in a scheduled bank, and that no portion of such amount may be utilized by that company except in the case of

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breach of employment contract on part of the employee as provided in that contract and after notice to the employee concerned. For the purpose of ready reference, Sub-section (1) and (3) of Section 227 of the Companies Ordinance, 1984 (the "Ordinance") are reproduced below:

"Employees' provident funds and securities.- (1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit in a special account to be opened by the company for the purpose in a scheduled bank or in the National Saving Schemes, and no portion thereof shall be utilized by the company except for the breach of the contract of service on the part of the employee as provided in the contract and after notice to the employee concerned.

...

(3) Where a trust has been created by a company with respect to any provident fund referred to in sub-section (2), the company shall be bound to collect the contributions of the employees concerned and pay such contributions as well as its own contributions, if any, to the trustees within fifteen days from the date of collection, and thereupon, the obligations laid on the company by that sub-section shall devolve on the trustees and shall be discharged by them instead of the company."

4. The Commissioner (Insurance) on February 26, 2013, ordered an onsite inspection of the Company, in exercise of the powers conferred under Section 59A of the Insurance Ordinance, 2000, the Inspection team observed that the Company has established its separate provident fund trust namely Dawood Family Takaful Limited Employees' Provident Fund ("DFTL PF Trust") in August 2010.

5. Inspection team noted that the balance of Dawood Family Takaful Limited ("DFTL") related contribution was not transferred from the First Dawood Islamic Bank Limited Provident Fund Trust ("FDIBL PF Trust") to DFTL PF Trust and settlements to related outgoing employees were made proportionately by the FDIBL PF Trust. Inspection team was of the view that Board of Directors has failed to exercise due care in recovery of balance related to contributions lying with First Dawood Islamic Bank Limited Provident Fund Trust ("FDIBL PF Trust").

6. The balance at the time of formation of DFTL PF Trust was Rs.6.6 million lying with FDIBL PF Trust, out of which a cash amount of Rs.2.8 million was received by DFTL PF Trust and the remaining amount was offered in the form of securities, which was not accepted by DFTL PF Trust. Settlements to related outgoing employees are made proportionately by the FDIBL PF Trust and as at 31 December 2012, the amount receivable from FDIBL PF Trust has reduced to Rs.2.06 million.

7. In view of the above mentioned facts, it appeared that the respondent has contravened the provisions of Section 227 of the Ordinance, for which penal action as provided under Section 229 of the Ordinance.

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Show Cause Notice

8. Accordingly, the Show Cause Notice was issued on October 10, 2013 under Section 227 read with Section 229 of the Ordinance to the Chief Executive and Directors of the Company, calling upon them to show cause as to why the penalty, as provided under Section 229 of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with provisions of Section 227 of the Ordinance.

Company's Response to the Show Cause Notice

8. In response to the said Show Cause Notice, the Respondent, vide their letter of October 22, 2013 requested to allow time till November 1, 2013 for submission of the written reply of the said notice, which was allowed via letter dated October 25, 2013. The Respondent submitted the written reply on October 31, 2013 which as states briefly;

"..... After formation of the DFT PF it's "Board of Trustees" representing employees of the DFT have called up the residual PF balance pertaining to DFT from FDIBL Provident Fund (FDIBL PF). However assets of Group PF also include listed and unlisted securities and shares. When Board of Trustees reviewed these securities they concluded that the valuation and realisability of these shares and securities were a bit doubtful because of adverse stock market situation and corporate bonds restructuring and therefore it is not in the best interest of the employees to accept these assets. Thereafter through negotiation it has been between DFT PF and FDIBL PF that the residual balance shall be called up gradually through withdrawals and settlements of DFT employees as and when due.

Rational of this decision is,

- 1. FDIBL PF is a legal Trust and employees of DFT carry pari-passu rights with other rights with other members of FDIBL PF, so preferential payment in the form of cash could not be demanded.*
- 2. Accepting securities would have resulted imminent loss to the employees.*
- 3. Over the period the decision have proved correct as without incurring any loss DFT has able to withdrawn Rs. 5.3 millions from FDIBL PF out of Rs. 6.7 million i.e. nearly 80% of the residual balance at time of detachment from FDIBL PF. Please note that no employee has any complaint about this arrangement.*
- 4. FDIBL PF duly acknowledges and fulfills its duties toward the members of DFT, demonstrated by the audited and it has declared profits in every year after detachment and credited the due share to employees of DFT who are member of FDIBL PF.*
- 5. Comparison of the returns of FDIBL PF and DFT PF,*

Year	Profit share from FDIBL PF		Profit share from DFTL PF	
	Amount	Rate	Amount	Rate
2010	Rs. 135,406	5.6%	Rs. 108,314	9.9%



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2011	Rs. 271,789	15.4%	Rs. 658,825	11.4%
2012	Rs. 374,147	18.5%	Rs. 1,127,736	10.5%

6. DFTL PF has now grown to around Rs. 21.6 million and residual balance with FDIBL PF now stand at Rs. 1.6 million (excluding profits) i.e. less than 7 % cumulative PF balance and in time balance with FDIBL PF would be completely extinguish without any loss of principal and profits to the employees.
....."

Hearing of the Case & Subsequent Developments

9. The hearing in the matter was scheduled on November 18, 2013 at 10:30 A.M., which was deferred on the Respondent request letter dated November 13, 2013 by this office. Accordingly, another hearing notice was served via letter dated February 4, 2014 and scheduled hearing for February 13, 2014 at 10:30 A.M., the said hearing was attended by Mr. Atir Aqeel Ansari, Legal Counsel, Mr. Fahad Alam, Company Secretary, and Mr. Ghazanfar-ul-Islam, Chief Financial officer through Power of Attorney from the Respondent (they will be referred to as the "Respondent's representative" hereinafter).

10. Brief proceedings of the hearing of February 13, 2014 are as follows:

- a. The Respondent's representative was asked to present their stance of the matter in hand, to which they stated that the Company has not violated the section 227 of the Ordinance, as per the Order dated August 9, 2011 relating to the same matter the Company created the DFTL PF and also made arrangement to transfer the balance from the FDIBL PF. Director Insurance argued that the Company violated the section 227 of the Ordinance as per the provision of the Ordinance the responsibility of the Directors of the Company to deduct the Provident Fund and same will be transferred within 15 days to the created Fund of the Company for this purpose, therefore, the Directors of the Company actually violated the provision of the Ordinance by not taking measures to take back the money from the previous Fund where they were deposited the amount of the DFTL employees deduction in respect of Provident Fund;
- b. The Respondent's representative accepted the contention of the Director Insurance and argued that the Directors took measures to take back the money from FDIBL PF trust but as referred in their response of the notice already submitted to this office, they reinforced that probability of loss of investment is there this is the only reason we did not get the 100% amount from the FDIBL PF, however, no employees of the DFTL has any reservation in this regard and agree with the decision taken by the Directors of the DFTL in this regard;



- c. Deputy Director argued that if any dispute ever arises then who is responsible? And is there any representation by the employee of the DFTL on the FDIBL PF trust, the Respondent's representative replied that no dispute rose till to-date and yes the employee representation is there on the FDIBL PF fund and also presented a letter dated November 6, 2013 wherein Mr. Muhammad Khalid was nominated in the FDIBL PF by the DFTL;
- d. The respondent's representative also expressed that taking the securities as a settlement of the balance may cause of loss to the DFTL employees, therefore we are gradually taking the balance and only 1.6 million excluding profit is left with FDIBL PF;
- e. Director Insurance argued that this remaining amount should be taken back from the FDIBL PF immediately, the Respondent's representative replied that the remaining balance will transferred soon, Deputy Director asked that please provide the NOC from the employees of the DFTL in this regard that they did not have any issue of the remaining amount left with FDIBL PF, in response the Representative sought one month time from the Director Insurance, which was allowed;
- f. Finally, the Company's representative requested the Commission to take a lenient view and condone the Company for contravening the provisions of Section 227 of the Ordinance.
11. The Company vide letter dated March 12, 2014 submitted as;

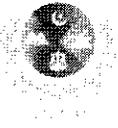
"...After hearing the matter has been discussed by the senior management of the Company, after which CEO has written a letter on February 14, 2014 to call up residual balance of provident fund of DFT employees with the EFIDL PF, which was agreed by the Board of Trustees of the FDIBL PF.

On March 5, 2014 we have received the residual balance amounting to Rs. 2.84 million (inclusive of profits), which was creditd to DFTL PF bank account on March 6, 2014...."

Consideration of Company's Submissions

12. I have carefully examined and given due consideration to the written and verbal submissions of the Company, and have also referred to the provisions of the Ordinance. I am of the view that there has been an established default of Section 227 of the Ordinance, as the Company was required to transfer the amounts collected from the employees in respect of the Provident Fund in the designated bank account maintained for the purpose of the Provident Fund within 15 days, and no amount kept elsewhere.

He;



13. However, before proceeding further, I find it relevant to discuss the duties of the Directors. The Directors, in addition to the day-to-day running of the Company and the management of its business, also have some 'fiduciary' duties i.e. duties held in trust and some wider duties imposed by statute and breach of these statutory duties will usually be a criminal offence, punishable by fine or imprisonment. Hence, the Directors are gauged against a higher standard of accountability which requires them to be vigilant and perform their duties with due care. In the instant case, however, the Company and its Directors have failed to perform their duties with due care and prudence. As the Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Section 227 of the Ordinance, as aforesaid, therefore, it could be legitimately inferred that the default was committed.

Conclusion

14. After carefully examining the arguments and studying the facts and findings of the case as mentioned in the above paras of this Order, the default of Section 227 of the Ordinance is established. Therefore, the penalty as provided under Section 229 of the Ordinance can be imposed onto the Company and/or its Directors.

15. Section 229 of the Ordinance states that:

"Penalty for contravention of section 226, 227 or 228.- Whoever contravenes or authorises or permits the contravention of any of the provisions of section 226 or section 227 or section 228 shall be punished with a fine which may extend to five thousand rupees and shall also be liable to pay the loss suffered by the depositor of security or the employee on account of such contravention."

Order

16. In exercise of the power conferred on me under Section 229 of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, condone the Company due to fact that the Company and its management took measures and take back the residual balance of the DFTL PF from the FDIBL PF and causes no adverse loss instead profit to the employees of the DFTL PF and also has not harmed the interests of the employees of the Company.

Also, the Company is hereby issued a stern warning that in case of similar non-compliance in future a stronger action against the Company will be taken.

17. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the Chief

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Executive Officer of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Tariq Hussain
Director