



SECP

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
INSURANCE DIVISION
[Karachi]

Before Tariq Hussian, Director (Insurance)

In the matter of

East West Life Assurance Company Limited

Show Cause Notice Issue Date	March 29, 2010
Company Reply Filing Date	April 5, 2010
Hearing Date:	May 18, 2010
Date of Order	June 16, 2010

ORDER

(Under Section 160(1)(b) Read With 476 of the Companies Ordinance, 1984)

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This Order shall dispose of the proceedings initiated against East West Life Assurance Company Limited ("the Company") for not complying with Section 160(1)(b) Read With Section 476 of the Companies Ordinance, 1984 ("the Ordinance").

Background Facts

2. Section 160(1)(b) of the Ordinance states that:

"Where any special business, that is to say business other than consideration of the accounts, balance- sheets and the reports of the directors and auditors, the declaration of a dividend, the appointment and fixation of remuneration of auditors, and the election or appointment of directors, is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected shall be specified in the statement;"

3. The Notice of Annual General Meeting (AGM) of the Company annexed with the Annual Audited Accounts of the Company for the year ended December 31, 2009, which was held on March 31, 2010, included on its agenda, as special business, consideration for passing a Special Resolution to increase the Authorized Capital of the Company from Rs. 500,000,000 (Rupees Five Hundred Million) to Rs. 600,000,000 (Rupees Six Hundred Million) and making the necessary amendments in the respective clause of Memorandum and Articles of Association of the Company in this regard.



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4. In terms of Section 160 (1) (b) of the Ordinance the aforementioned business falls under special business and a statement was required to be annexed to the notice of the said meetings setting out all material facts concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly.
5. The Company had filed its Audited Annual Accounts under Section 233(5) of the Ordinance which contained the Notice for AGM but did not contain the statement setting out all material facts concerning the abovementioned special business as required under Section 160 (1) (b). *Prima Facie*, it appeared that the Company had failed to transmit the said statement to the Commission.
6. The applicable penal provision of the Ordinance for contravention of Section 160 (1) (b) is stated in Section 160 (8) (a), which states:

- “(8) *Every officer of the company who knowingly or willfully fails to comply with any of the provisions of this section shall be liable,-*
- (a) *if the default relates to a listed company, to a fine which may extend to fifty thousand rupees and in the case of a continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues; “*

Show Cause Notice

7. Accordingly, a Show Cause Notice was issued on March 29, 2010 under Section 160(1)(b) Read With 476 of the Ordinance was issued to the Chief Executive and Directors of the Company, calling upon them to show cause as to why the penalty, as provided in Section 160 (8) (a) of the Ordinance, should not be imposed upon them for not complying with provisions of Section 160(1)(b) of the Ordinance.

Company's Response to the Show Cause Notice

8. The Company, vide its letter dated April 5, 2010, in response to the abovementioned Show Cause Notice stated:

- i. *“The notices actually sent to each shareholder did contain the statement of material facts under section 160 (1) (b) as per Companies Ordinance, 1984 regarding the relevant special business incorporating information to be annexed to the notice vide SRO No.865 (1) 2000 dated March 6, 2000, copy of relevant notice sent to the shareholders is enclosed for your ready reference and record. It may be further submitted that the same statement under the above provisions were duly faxed to SECP offices (Enforcement Department) in Quetta and Islamabad on their respective faxed numbers 081-2899139 and 051-9204915 on March 11, 2010.*
- ii. *“However, through an inadvertence and oversight by the company's Corporate Secretariat office, the statements of compliances were not incorporated in the balance sheet and newspaper publications. We would appreciate that inadvertent omission in the attendant circumstances does not constitute material irregularity and merits to be condoned by your honor.”*
- iii. *“It will also be appreciated that no right of any shareholder has been adversely affected and the provisions of Section 160(1)(b) of the Companies Ordinance, 1984*



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shall be deemed to have been complied with by the Company. Under the above circumstances, you are respectfully requested to kindly condone the minor omission and consider the Show Cause Notice to have been satisfactorily replied to with no further action being required in the circumstances. "

9. The Company requested a hearing in case further explanation and clarification is needed.

Hearing of the Case

10. In order to provide an opportunity to the Chief Executive and Directors of the Company or their authorized representative for appearing in person to explain the reasons for not complying with said provisions of the Ordinance, the hearing of the case was fixed for May 18, 2010 before Director (Insurance).

11. On date of hearing, Mr. Sohail Nazeer (CFO & Company Secretary) and Mr. Nadeem Akhtar (DGM) appeared with a Power of Attorney to represent the Company and its Directors.

Consideration of Company's Submissions

12. The Company had stated in its response to the Show Cause Notice, as quoted above, that it had submitted the statement required under Section 160 (1) (b) of the Ordinance to "SECP offices (Enforcement Department) in Quetta and Islamabad on their respective faxed numbers." No such statement or Notice of AGM, containing such statements was received from these offices nor was any subsequent proof provided by the Company in response to the show cause notice or during the hearing.

13. Additionally, the Company admitted, in its response to the show cause notice that "through an inadvertence and oversight by the company's Corporate Secretariat office, the statements of compliances were not incorporated in the balance sheet and newspaper publications".

14. In the hearing, the Representatives of the Company explained that overlooking did occur by the Company on this matter but it's not habitual. They further stated that the Company is committed and they will be more careful in the future to ensure that such a default does not occur in the future. They requested a lenient view in the matter to support a growing Insurance Company.

Conclusion

15. I have carefully examined and given due consideration to the written submissions, to the views aired by the respondents and/or their representatives and have also referred to several provisions of the Ordinance. I am of the view that there has been a default under the relevant provision of the Ordinance.



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16. As the Directors and the Chief Executive are supposed to be well aware of their legal obligation in the aforesaid matter and consequences of the said defaults, therefore, it could legitimately be inferred that the default was committed knowingly and willfully.

Order

17. In view of the foregoing conclusion, I, in exercise of powers conferred on me under Section 160 (8)(a) of the Ordinance, while taking a lenient view, due to the fact that the Company had rectified their mistake by submitting the statement in response to the show cause notice and this delay had not caused a loss to any of its stakeholders, instead of imposing a fine, hereby, condone the default and, hereby, warn the Chief Executive and all the Directors of the Company and advise them to be very careful in the future while complying with the mandatory provision of the law.

Tariq Hussain
Director (Insurance)