



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
(NBFC DEPARTMENT)

No. SC/NBFC(1)-R/FDIBL /2008/237

May 30, 2008

1. **Mr. Rafique Dawood,**
Chairman and Chief Executive,
First Dawood Investment Bank Limited,
1500- A Saima Trade Towers,
I.I. Chundrigar Road,
Karachi
2. **Mr. Ayaz Dawood,**
Director,
First Dawood Investment Bank
Limited,
1500- A Saima Trade Towers,
I.I. Chundrigar Road,
Karachi
3. **Mr. Rasheed Y. Chinoy,**
Director,
First Dawood Investment Bank Limited,
1500- A Saima Trade Towers,
I.I. Chundrigar Road,
Karachi
4. **Mr. Ansar Hussain,**
Director,
First Dawood Investment Bank
Limited,
1500- A Saima Trade Towers,
I.I. Chundrigar Road,
Karachi
5. **Mr. Shamshad Ahmed,**
Director,
First Dawood Investment Bank Limited,
1500- A Saima Trade Towers,
I.I. Chundrigar Road,
Karachi
6. **Mr. Safdar Rashid,**
Director,
First Dawood Investment Bank
Limited,
1500- A Saima Trade Towers,
I.I. Chundrigar Road,
Karachi
7. **AVM (R) S J Raza,**
Director,
First Dawood Investment Bank Limited,
1500- A Saima Trade Towers,
I.I. Chundrigar Road,
Karachi

Subject: Order Under Section 282(J) Read With Section 282M(1) of the Companies Ordinance 1984 ("the Ordinance") for violating Rule 7(2)h of the Non-Banking Finance Companies (Establishment and Regulation) Rules 2003 (the "Rules") and Regulation 6(1)(c) of Part II(A) of the Prudential Regulations for Non-Banking Finance Companies, Issued Under Section 282D of the Ordinance (the "Prudential Regulations")

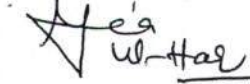
Dear Sir,

This is with reference to our show cause notice dated October 31, 2007 and subsequent hearing held on January 3, 2008 in the above matter.

Enclosed please find herewith the Order dated May 30, 2008 issued by the Commissioner (SCD) under section 282 J (1) read with section 282 M (1) of the Companies Ordinance, 1984 in the matter of show cause notice issued to the Board of Directors of First Dawood Investment Bank Limited.

Please acknowledge receipt.

Yours truly,



(Zia-ul-Haq) 30/5/08
Deputy Director (NBFC - 1)



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION**

BEFORE MR. SALMAN ALI SHAIKH (COMMISSIONER, SCD)

In the Matter of M/s First Dawood Investment Bank Limited

Show Cause under Section 282(J) (1),(2), (3) and (5) read with Section 282M(1) of the Companies Ordinance 1984 (the "Ordinance") for violating Rule 7(2)h of the Non-Banking Finance Companies (Establishment and Regulation) Rules 2003 (the "Rules") and Regulation 6(1)(c) of Part II (A) of the Prudential Regulations for Non-Banking Finance Companies, issued under section 282D of the Ordinance(the "Prudential Regulations")

SCN No: SC/NBFCD/R/FDIBL/2007/543 Dated October 31, 2007	
Hearing	Present on behalf of the Company.
January 3, 2008	Mr. Ayaz Dawood (Director) Mr. Muhammad Shoaib (Group Finance Director) Mr. Naseem Ahmed (GM, BRR Guardian Modaraba) Mr. Ayaz Dawood represented the followings Directors through authority letter: Mr. Rafiq Dawood (Chairman, CEO) Mr. Rasheed Y. Chinoy (Director) Mr. Ansar Hussain (Director) Mr. Shamshad Ahmed (Director) Mr. Safdar Rashid (Director) AVM (R) S. J. Raza (Director)
	Present on behalf of the Commission
	Mr. Umar Hayat Khan (Director, NBFC-I) Mr. Imran Hussain Minhas (Joint Director, NBFC-I) Mr. Syed Asad Haider (Deputy Director, SCD)

ORDER

This order shall dispose of the proceedings initiated against M/s First Dawood Investment Bank Limited (the "Company") and its Directors through show cause notice No.SC/NBFCD/R/FDIBL/2007/543 dated October 31, 2007 (the "SCN")under section 282 (J) (1), (2), (3) and (5) read with section 282M(1) of the Ordinance for

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failure to comply with the requirement of Rule 7(2)h of the Rules and Regulation 6(1)c of Part II (A) of the Prudential Regulations.

2. The Facts leading to this case, briefly stated, are that in terms of section 282I of the Ordinance, the Executive Director, Specialized Companies Division ("SCD") of the Securities and Exchange Commission of Pakistan (the "Commission") through an order dated November 10, 2006 ordered an on site inspection into the affairs of the Company to determine its financial health as on 30 September 2006 and to generally verify the compliance by the Company with the regulatory framework.

3. The Inspectors of the Commission concluded in their inspection report that the Company had made equity investment in the unquoted shares of certain companies without seeking approval of the Commission which was in contravention of Rule 7(2)(h) of the Rules and of Regulation 6(1)(c) of Part II (A) of the Prudential Regulations. Following is the detail of the investments made by the Company in unquoted shares of different Companies.

- (i) Amount of Rupees 50 million invested in Jamshoro Joint Venture Limited ("JJVL")
- (ii) Amount of Rupees 5 million invested in Cybersoft Technologies Limited ("CTL")
- (iii) Amount of Rupees 4.94 million invested in Caldwell New York Limited Partnership II Units.
- (iv) Amount of Rupees 23.96 million invested in World Bridge Connect (Private) Limited.

4. In view of the violations mentioned in the preceding paragraph, the Commission proceeded to issue the SCN requiring the Company and its Directors to show cause as to why proceedings under the aforementioned sections of the Ordinance may not be initiated against them for the noted contraventions.

5. On 17 November 2007 Mr. Ayaz Dawood, Director of the Company submitted a written reply to the SCN on behalf of the Company and its Directors explaining the investments made by the Company in unquoted shares, a summary of which is as follows:

- (a) With regards to the investment of Rupees 50 million made by the Company in JJVL it was explained that initially the Company had made the investment in JJVL as the latter was under the process of listing its securities, however, JJVL decided not to go for listing of the preference shares at that time and provided

an opportunity to the Company to withdraw its investment. In support of this argument a letter from Manager Finance & Corporate affairs of JJVL was also submitted to confirm the facts. Moreover in the same reply the Company also requested the Commission to grant approval under Rule 7(2)h of the Rules to regularize the matter.

(b) As for the investment made by the Company amounting to Rupees 5 million invested in CTL, it was explained that the Company through its letter dated 29 November 2005 had given consent to M/s. Liaquat Zaman, Chartered Accountants, consultant to the CTL to invest to the extent of Rupees 5 million in the preference shares of CTL, subject to approval of the Commission under Rule 7(2)(h) of the Rules. The said consultant reverted to the Company through its letter dated 7 December 2007 stating that they had obtained the relevant approval from the Commission for the Company to make the investment in subscription of preference shares of CTL in place of BRR International Modaraba.

(c) In relation to the investment of Rupees 4.9 million in Caldwell New York Limited Partnership II Units, it was contended that the Company had made the investment with the intention of best return on the stated investment. However, the Company inadvertently did not apply for approval of the Commission as required by law.

(d) Lastly, as for the investment made by the Company to the tune of Rupees 23.96 million in World Bridge Connect (Private) Limited, it was stated that the Company had made the investment with the intention of best return. However, again the Company inadvertently did not seek prior approval of the Commission as required under the Rules. Furthermore, on realizing that the application had not been made for approval under Rule 7(2) h of the Rules, an application to the Executive Director (SCD) for the aforesaid approval was submitted on 15 November 2007 to regularize the matter.

6. The above explanation given by Mr. Ayaz Dawood on behalf of the Company and its Directors were found to be unsatisfactory on the following grounds:

(a) The Company had not provided any concrete evidence in support of its argument that JJVL was under process of listing, as the said company had

never applied to any stock exchange(s) in Pakistan for the same. Merely relying on company's intention for listing is not a valid reason to invest in its unquoted shares.

- (b) Regarding investment in CTL, the approval of the Company Law Division of the Commission was for issuance of preference shares which would have to be subscribed by the Company in place of BRR International Modaraba. The said approval has no relevance with the Investment to be made in the unquoted shares by a Non-Banking Finance Company ("NBFC") as the approval for investment in unquoted shares was required to be obtained from NBFC Department under Rule 7(2)h of the Rules before making such investment.
- (c) The reasoning given by the Company regarding its investments mentioned in para 5(c) and (d) above, is in fact no reasoning at all, it is however, acceptance of the fact that the said investments were made without approval of the Commission, though allegedly inadvertently.

7. Irrespective of the above observations in the preceding paragraphs, the Company and its Directors were provided with an opportunity of personal hearing on 3 January 2008 to explain their view point regarding the SCN.

8. At this juncture it is important to mention here that the SCN was issued by the Executive Director (SCD) since the power under Rule 7(2)(h) of the Rules, was vested in him by virtue of S.R.O.No.1061(I)2005 dated 18 October 2005. However, in partial modification of the S.R.O.No.1061(I)2005 vide S.R.O No.1161 (I) 2007; dated 1 December 2007, the said power under Rule 7(2)(h) vested in the Executive Director (SCD) stood transferred to the Commissioner (SCD).

9. Accordingly, in conjunction with the S.R.O No. 1161 (I) 2007 the hearing of the matter relating to the SCN was conducted before this forum. In the hearing Mr. Ayaz Dawood, Director represented the Company and was assisted by Mr. Muhammad Shoaib, Group Finance Director of the Company. Mr. Ayaz Dawood on behalf of the Company and its Directors, submitted written comments to the Commissioner (SCD) wherein he reiterated the points raised in the reply to the SCN. In support of his earlier arguments given at para 5 above, Mr. Dawood added that although the Company's investment in JJVL was made prior to the amendments made to the Rules when the Commission's approval for such an investment was mandatory, however,

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post amendments to the Rules such a requirement had been done away with. He further submitted that in view of this change in law, the management of the Company had decided to place the matter before the Board of Directors of the Company as per requirement of the amended Rule.

Mr. Umar Hayat, Director (NBFC-I) clarified that it is immaterial here to present the current status of the regularity framework, important fact to look at is; that when the investment was made by the Company in JJVL, Commission's approval was required and non-compliance of such a requirement was a contravention of the existing law at that particular time. This forum is in absolute concurrence with the observation made by the Director (NBFC-I) and finds Mr. Dawood's argument on this point unsustainable.

10. Regarding investment of Rs: 5 million in CTL, Mr. Dawood again emphasized on the argument stated at para 5(b) above. Mr. Dawood was informed at this forum that the approval of Company Law Division discussed at para 5(b) above is not relevant to the approval required under Rule 7(2)h of the Rules therefore the argument is not tenable. In recognition of the Company's misinterpretation of the letter of the Company Law Division, Mr. Dawood conceded to the irregularity committed by the Company and the Directors, however he gave his assurance of future diligence and strict compliance of law by the Directors in managing the affairs of the Company.

11. Regarding investments given at para 5(c) and (d) above Mr. Dawood submitted that the investments were made with the intention of best return on the investment to benefit the shareholders. The argument of Mr. Dawood is not acceptable on the ground that it is beyond the scope and power of the Commission to judge its regulatees upon their 'intentions'. The requirements of law have to be fulfilled irrespective of any intention, *bona fide* or not, of the management of the Company to derive 'best returns' on a particular investment.

12. From the above discussion and after careful examination of all facts and arguments presented by Mr. Ayaz Dawood on behalf of the Company and its Directors; I am of the view that the Directors of the Company have not fulfilled their responsibility which stems from their fiduciary relationship with the Company. The Directors are under a legal obligation to be abreast with the regulatory framework and the general functioning of the Company. The fact that the Directors could not

distinguish between an approval given under Rule 7 (2) (h) of the Rules by the Commission and any other approval by another Division is reflective of their lack of diligence and commitment to conform to the law for effective management of the Company. The aforementioned violations committed by the Company and the Directors stands established and have been conceded to by the Directors which attracts the provisions of Section 282(J) (1) read with 282(M) (1) of the Ordinance which are reproduced below for easy reference:

282J. Penalty for failure, refusal to comply with, or contravention of any provision of this Part.- (1) Notwithstanding anything contained in any other provision of this Ordinance, if a NBFC or a notified entity or its officers (including auditors) fails or refuses to comply with, or contravenes any provision contained in this Part or of any of the provisions of the rules made under section 282 B or regulation, circular or directive or any direction or order passed by the Commission under the provisions contained in this Part or knowingly and wilfully authorizes or permits such failure, refusal or contravention, shall, in addition to any other liability under this Ordinance, be also punishable with fine the amount of which shall not exceed fifty million rupees:

Provided that if the failure, refusal, default, contravention is committed by NBFC or a notified entity, every director, manager, or other officer or person responsible for the conduct of its affairs shall, unless he proves that the failure or contravention or default took place or committed without his knowledge, or that he exercised all diligence to prevent its commission, be deemed to be guilty of the offence. (emphasis added)

282M. Punishment and adjudication of fine or penalty.-(1) Where a penalty or fine other than fine in addition to, or in lieu of, imprisonment is provided for any offence, contravention of, or default in complying with, any provision of this Part or rules made there under or a directive or order of the Commission or other officer or authority empowered to issue a directive under any provision of this Ordinance, the same shall be adjudged and imposed by the Commission or any officer of the Commission empowered, in writing, to exercise the said

powers in respect of any case or class of cases, either to the exclusion of, or concurrently with, any other officer of the Commission:

Provided that the fine or penalty as aforesaid shall be imposed after giving the person concerned an opportunity to show cause why he should not be punished for the alleged offence, contravention, default or non-compliance, and if he so requests, after giving him an opportunity of being heard personally or through such person as may be prescribed in this behalf. (emphasis added)

13. Keeping in view that the Chief Executive officer and the Directors of the Company are primarily responsible for the management of the Company, it is imperative that they only should be held responsible for any liability incurred due to aforesaid violations. Therefore, in exercise of powers conferred upon me in terms of Section 282(J) 1 of the Ordinance, I impose a penalty of Rupees one million (Rs.1,000,000) on the Chief Executive of the Company and each of the following Directors of the Company:

- (i) Mr. Rafiq Dawood (Chairman and CEO)
- (ii) Mr. Ayaz Dawood (Director)
- (iii) Mr. Rasheed Y. Chinoy (Director)
- (iv) Mr. Ansar Hussain (Director)
- (v) Mr. Shamshad Ahmed (Director)
- (vi) Mr. Safdar Rashid (Director)
- (vii) AVM (R) S.J. Raza (Director)

14. It is also pertinent to mention here that Mr. Rafique Dawood is also the Chairman of BRR International Modaraba (Now BRR Guardian Modaraba) and was penalised with a fine amounting to Rupees hundred thousand (Rs.100,000) due to non-compliance with the regulatory framework. Now as the Chairman and Chief Executive of the Company, he is again penalised for the aforesaid contraventions of Law. This reflects very poorly on Mr. Rafique Dawood as the spearhead of the operations of Dawood Group. Accordingly, Mr. Rafique Dawood is particularly advised to ensure that the group companies of Dawood Group adhere to the regulatory framework in letter and spirit in future.

15. The Order is being issued without prejudice to any or all actions that may be required to be taken under the law against the Company its director(s), officers(s) or

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any other person(s) involved in the violation of any other relevant laws which may have been committed.



(Salman Ali Shaikh)
Commissioner (SCD)

May 30, 2008