



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 28 of 2021

The United Insurance Company of Pakistan

...Appellant

Versus

Executive Director, Adjudication-I, SECP

...Respondent

Date of Hearing:

July 21, 2025

### Present:

For the Appellant:

1. Mr. Ali Ibrahim (Authorized Counsel through Zoom)

For the Respondent:

1. Mr. Mubasher Saeed Saddozai, Executive Director, Adjudication Division, SECP
2. Mr. Sohail Qadri, Director, Adjudication-I Department, SECP
3. Mr. Shafiq Ur Rehman, Additional Joint Director, Adjudication-I Department, SECP

## ORDER

1. This Order shall dispose of Appeal No. 28 of 2021 filed by the United Insurance Company of Pakistan (the "Appellant") under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act") against the order dated December 30, 2020 (the "Impugned Order") passed by the Executive Director/Head of Department, Adjudication



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Department-I, SECP, (the “Respondent”) under Regulation 8 of the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2017 (the “Regulations”).

2. The brief facts of the case are that the Appellant is a company incorporated under the Companies Ordinance, 1984 (the “Companies Ordinance”) to undertake the business of non-life insurance in Pakistan in accordance with the provisions of the Insurance Ordinance, 2000 (the “Ordinance”). During the offsite examination of the annual audited accounts and regulatory returns of the Appellant for the year ended December 31, 2018, it had been observed that “Share Deposit Money” amounting to Rs. 651 million (2017: Rs. 350 million) and “Advance for Purchase of Shares” of Apna Microfinance Bank Limited (the “AMBL”) amounting to Rs. 262.15 million (2017: Rs. 128.75 million) had neither been transferred to equity investment in respect of purchase of shares of AMBL within 90 days, nor any markup had been charged thereof, *prima facie*, in contravention of Regulation 5(3) of the Regulations. The Appellant was advised vide letter dated December 02, 2019, to submit proof of compliance with Regulations 5(3) and 5(4) of the Regulations along with supporting documents as evidence. The Appellant submitted its response vide letter dated December 24, 2019, however, the response of the Appellant was not found to be cogent as it failed to give any plausible explanation for the alleged non-compliance with Regulations 5(3) and 5(4) of the Regulations.
3. In light of the above-mentioned violations, the Respondent issued a Show-Cause Notice dated June 12, 2020 (the “SCN”) to the Appellant. A written response in reply to the SCN was submitted by the Appellant vide letter dated July 24, 2020. A hearing in the matter was held on December 02, 2020, which was attended by the authorized representatives of the Appellant. The Respondent concluded the SCN proceedings, and not being satisfied with the stance taken by the Appellant, and in exercise of powers conferred under Regulation 8 of the Regulations, imposed a penalty of Rs. 1,600,000/- (Rupees One Million Six Hundred Thousand only) on the Appellant for the established default of Regulations 5(3) and 5(4) of the Regulations.

For reference, Regulations 5(3) and 5(4) of the Regulations are reproduced below:



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***Regulation 5. Restrictions and conditions applicable to a company making investment.***

*(3) Share deposit money shall be transferred for equity investment only after announcement of the offer for issue of shares by the associated company or associated undertaking and if shares are not issued within ninety days or within the time prescribed by the relevant legal and regulatory framework, whichever is later, such share deposit money shall be treated as loan, which shall be subject to interest, mark-up or return from the date of transfer of funds in accordance with the provisions of section 199 of the Act.*

*(4) The rate of return on loans, advances and debt securities etc. shall not be less than Karachi Inter Bank Offered Rate (KIBOR) for the relevant period or the borrowing cost of the investing company, whichever is higher.*

4. The Appellant has preferred this appeal *inter alia* on the grounds that the Impugned Order has been passed on the basis of misapplication and non-reading of facts as submitted by the Appellant vide its response dated July 24, 2020 and the verbal submissions made at the time of the hearing were not considered. With regard to the facts of the matter, the Appellant submitted that in the year 2016, AMBL suffered a huge loss of approximately Rs. 735 Million, on account of non-performing loans and AMBL therefore failed to meet the Minimum Capital Requirement (MCR) and Capital Adequacy Ratio (CAR) as per the regulatory requirements of the Prudential Regulations for Microfinance Banks issued by the State Bank of Pakistan (the "SBP"). The Appellant submitted that the capital injection plan for AMBL, entailed that the sponsors (*with the Appellant Company being a major shareholder*), were to inject fresh equity into the Bank on a quarterly and half-yearly basis and thereafter, the paid-up capital of AMBL had increased from Rs. 1.1 Billion to Rs. 3.44 Billion.



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5. The Appellant asserted that, in relation to the requirements set forth under Regulations 5(3) and 5(4) of the applicable regulatory framework, it had duly communicated and brought to the attention of the Securities and Exchange Commission of Pakistan (“SECP”) that, in view of the capital injection plan, the issuance of right shares within a strict timeline of ninety (90) days following each instance of quarterly or half-yearly deposit of share money was not only legally untenable under the prevailing corporate and regulatory laws but also practically and operationally unviable. The Appellant emphasized that the implementation of such a recurring and rigid timeline for the issuance of shares imposes substantial administrative, logistical, and procedural burdens that hindered compliance in a timely manner and, therefore, the non-compliance was a consequence of these genuine operational constraints and regulatory complications, rather than any wilful default or negligence on the part of the Appellant.
  
6. The Appellant contended that the SCN is without lawful jurisdiction and that the Respondent has acted in contravention of the law and powers of delegation provided under Section 10 of the SECP Act. The Appellant asserted that Section 10 of the SECP Act only empowers delegation of functions and powers under the SECP Act and the administered legislations mentioned in *Schedule I* of the SECP Act. In this regard, it was submitted that powers of Section 199 of the Companies Act, 2017 (the “Companies Act”) had not been delegated to the Head of Department, Adjudication-I through S.R.O No. 1546(I)/2019 dated December 06, 2019 (the “SRO-1”). Furthermore, the Appellant stated that the Regulations do not fall under the definition of administered legislation mentioned in *Schedule I* of the SECP Act and the SRO-1 mentions that powers under Regulation 8 of the Regulations are to be delegated to the Head of Department, Adjudication-II, wherein the Impugned Order has been passed by the Head of Department, Adjudication-I, thus, asserting that the Respondent was not empowered under the SRO-1 to pass an order against the Appellant, while deeming the entire proceedings conducted by the Respondent as *non est* and *coram non iudice*. The Appellant further asserted that such delegation of powers under the S.R.O No 1545(1)/2019 dated December 06, 2019 (the “SRO-2) constitutes a sub-delegation of power that is not within the ambit of Section 10 of the SECP Act.



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7. The Appellant further argued that the Respondent has failed to fulfil the mandatory requirements of the General Clauses Act, 1897, by passing a non-speaking order, by merely laying out the facts and correspondence that transpired with the Appellant and without providing any analysis to the matter. The Appellant submitted that in view of this ground alone, the order merits dismissal.
8. It was further submitted by the Appellant that in terms of Regulation 1 of the Prudential Regulations (the "PRs") as issued vide the Banking Policy & Regulations Department (the "BPRD") of SBP, Circular No. 10 dated June 3, 2015 read with Annexures 2, 3 and 5 of BPRD Circular No. 6 dated August 15, 2013, fully explains the requirements of MCR and CAR, and as per Regulation 1 of the PRs, for CAR, total eligible capital included 1) *Tier 1 (Core Capital)* and 2) *Tier 2 (Supplementary Capital)* which includes 'subordinated debt' and 'Term Finance Certificates'. It was submitted that *Tier 1* is equity-based capital from which only profits are paid to shareholders, whereas, *Tier 2* is interest-based capital. The Appellant highlighted clause (xii) of *Annexure 3* of the BPRD Circular no. 6 dated Aug 15, 2013, submitting that the clause clearly states that neither interest nor principal is required to be paid (even at maturity) if such payment results in a shortfall or increases any existing shortfall in the bank's MCR or CAR. The Appellant further submitted that at the time, the Appellant being the major sponsor and shareholder of AMBL, was injecting *Tier 1* capital (fully paid-up capital) as per the SBP injection plan. Therefore, procuring any interest due to delay in issuance of shares was not a requirement as per the PRs.
9. The Respondent, in rebuttal to the grounds of appeal advanced by the Appellant, contended that the Appellant's failure to comply with the mandatory requirements prescribed under the relevant Regulations constituted a material and substantial default. It was further argued by the Respondent that the core basis of the Appellant's submissions appears to be centered predominantly around the purported inability of AMBL to ensure timely issuance of shares, rather than demonstrating *bona fide* and diligent efforts made to achieve compliance with the



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applicable legal and regulatory framework. The Respondent emphasized that the Appellant has failed to furnish any concrete or corroborative documentary evidence to substantiate its claim that reasonable steps or remedial measures were undertaken to fulfil the obligations mandated by the Regulations. The Respondent asserted that, in the absence of such proof, the Appellant cannot shift the focus of its non-compliance to supposed practical difficulties or procedural constraints, and must be held accountable for the regulatory breach as no exemption was ever accorded by SECP to the Appellant.

10. With respect to the issue of jurisdiction exercised by the Respondent in the issuance of the Impugned Order, the Respondent categorically submitted that the delegation of authority, in this regard, has been lawfully and validly exercised in accordance with the SRO-2. The said statutory regulatory order expressly vests the requisite authority and jurisdiction with the Head of the Adjudication-I Department to adjudicate and pass orders under Regulation 8 of the relevant Regulations. The Respondent further contended that the assertions made by the Appellant, whereby it is alleged that the officer passing the Impugned Order lacked the necessary authorization or competence to do so, are misconceived, factually incorrect, and legally untenable. It was emphasized by the Respondent that the Appellant is attempting, albeit erroneously, to challenge the jurisdiction of the competent authority in order to undermine the validity of the proceedings and the order passed thereunder, despite the clear and unambiguous delegation of powers as provided under the applicable regulatory framework.

11. The Respondent further submitted that Regulation 5(3) of the Regulations unambiguously stipulate that the issuance of right shares must be completed within a period of ninety (90) days. In the event of failure to comply with this requirement, the unpaid amount should automatically be reclassified as a loan extended to the company, upon which mark-up or interest would accrue in accordance with the terms prescribed under the Regulations.

12. The Respondent further submitted that, with regard to *Tier 2* financing, Clause (ix) of *Annexure 3* of the BPRD Circular No. 06 of 2013 clearly provides that "*the rate of return can be fixed*



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or floating (with reference to any benchmark rupee rate), however, spread/margin cannot be changed during the life of the instrument.” On the basis of this provision, the Respondent argued that mark-up or interest is permissible on capital instruments under *Tier 2*. However, the Respondent also asserted that the Appellant, in its submissions, has unequivocally admitted that the funds injected into AMBL were in the form of *Tier 1* capital, which does not warrant any return. The Respondent submitted that this factual admission is not relevant to the facts of the matter at hand, as Regulations 5(3) and 5(4) of the Regulations place a direct and independent obligation upon the Appellant to get shares issued within ninety (90) days of payment of share deposit money or, alternatively, reclassify such funds as a loan and charge mark-up thereon. Therefore, regardless of the nature or classification of capital from a banking regulatory perspective, the Appellant remained under a mandatory obligation to comply with the said Regulations, which it failed to do.

13. The Appellate Bench (the “Bench”) has duly examined the record of the Appellant in relation to its compliance with the provisions of Section 199 of the Companies Act. Upon such examination, it is apparent that the Appellant failed to make adequate and material disclosures to its shareholders at the time of convening both the Extraordinary General Meeting (“EOGM”) as well as the Annual General Meeting (“AGM”). In particular, the record reveals that the Appellant neither disclosed a capital injection plan nor any advance for purchase of shares that was paid to United Track System (Pvt.) Limited (the “UTS”) in connection with the equity investment in AMBL.

14. The Bench further observes that, although the Appellant has contended that a capital injection plan existed in relation to the said investment, no documentary evidence has been placed on record to substantiate the existence of such a plan, nor is there any indication that the same was presented or disclosed to the shareholders during the EOGM or AGM. Details of the investments are highlighted below:



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Years ended	A Share Deposit Money paid/(adjusted) during the year (Rs. in Million)	B Share Deposit as at period ended paid to AMBL (Rs. in Million)	C Advance against purchase of Shares during the year (Rs. in Million)	D Advance against purchase of Shares as at period ended paid to UTS (Rs. in Million)	E Total Share deposit and advance against purchase of share. (B+D) (Rs. in Million)	Status of approval through resolution
Dec-16	300.0	300.0	162.2	162.2	<b>462.2</b>	Amount approved Rs. 200 Million
Dec-17	50.0	350.0	(33.5)	128.8	<b>478.8</b>	No resolution
Dec-18	301.0	651.0	133.4	262.2	<b>913.2</b>	Amount approved Rs. 400 Million

15. The Bench holds that the provisions of the PRs relied upon by the Appellant, particularly in relation to *Tier 1* and *Tier 2* capital requirements under the SBP's regulatory framework, do not in any manner override or exempt the Appellant from its obligations under the Regulations issued by SECP. The two sets of regulations operate in distinct domains, and the Bench finds no conflict that would justify non-compliance with the Regulations issued by SECP. Even if certain limitations are applied to AMBL in terms of capital recognition, no requirement debarred the Appellant from fulfilling its obligation to treat the funds appropriately in its financial records in accordance with Regulations 5(3) and 5(4) of the Regulations. Moreover, the Appellant has also failed to establish that any exemption was provided to the Appellant by SECP with regard to the compliance of the Regulations 5(3) and 5(4) of the Regulations. The Bench considers it pertinent to observe that the record is devoid of any correspondence with SECP evidencing that the Appellant had sought any exemption or relaxation from the regulatory requirement pertaining to the issuance of shares beyond the prescribed period of 90



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days. Accordingly, the Appellant's stance regarding such correspondence with SECP is found to be without merit and unsupported by the record.

16. The Bench observes that the Appellant has primarily relied on 'operational and regulatory challenges' associated with the capital injection plan into AMLB and the purported delay in obtaining approvals from regulatory authorities, however, these grounds are not tenable. The Appellant, by not taking any timely action, has failed to satisfy the Bench that efforts were made to comply with the Regulations. The Bench is of the firm view that compliance with the said Regulations remained the responsibility of the Appellant regardless of the internal arrangements or regulatory approvals pending in relation to AMLB.
17. With respect to the jurisdictional objection raised by the Appellant, the Bench finds that the powers exercised by the Head of Department, Adjudication-I, were validly conferred under SRO-2, which authorized the Respondent to pass orders under Regulation 8 of the Regulations. The Appellant's argument with regard to sub-delegation is misplaced and misconceived as SRO-1 and SRO-2 pertain to separate departments of the Commission. The Bench finds it necessary to make it clear that the SECP has delegated its powers through the SRO-2 to various officers, therefore, it is not sub-delegation, rather it is a direct delegation of power. The Bench also finds it appropriate to mention here that the preamble of the SRO-2 is self-explanatory, as the Commission has delegated its powers through the SRO to different officers, therefore, the question of sub-delegation does not arise. A plain reading of the SRO-2 also makes it evident that the Head of Department, Adjudication-I, was duly authorized to adjudicate and dispose of matters under the Regulations. Accordingly, the objection with respect to lack of jurisdiction is hereby rejected as being devoid of merit. Moreover, the Appellant's reliance on the SRO-1 is irrelevant to this case, therefore, the Appellant's argument in this regard is also without any merit.
18. In view of the foregoing discussion and upon careful and considered examination of the factual matrix, the respective submissions advanced by the parties, and the applicable provisions of



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law, the Bench is of the considered view that the Appellant has committed a clear and unequivocal violation of Regulation 5(3), read in conjunction with Regulation 5(4) of the Regulations. The Appellant failed to classify or treat the “Share Deposit Money” amounting to Rs. 651 Million paid to AMBL and the “Advance for Purchase of Shares” amounting to Rs. 262 Million paid to UTS, as a loan after the lapse of ninety (90) days from the date of payment, during which period the shares were not issued and accordingly the Appellant was under an obligation to charge interest or mark-up on the said funds extended to AMBL and UTS, which it admittedly failed to do, as required under the express provisions of the aforementioned Regulations.

19. In view of the foregoing, we find no reason to interfere with the merits of the Impugned Order, therefore, by maintaining the Impugned Order, we hereby **dismiss** this Appeal without any order as to cost.

(Abdul Rehman Warraich)  
Commissioner

(Akif Saeed)  
Chairman/Commissioner

Announced on:

08 OCT 2025