



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 45 of 2020

Dubai Islamic Bank Pakistan Limited

...Appellant

versus

Executive Director, Adjudication Department-I, SECP

...Respondent

Date of hearing:

17<sup>th</sup> April, 2025

Present:

For the Appellants:

Mr. Yawar Burki

For the Respondent:

1. Mr. Mubasher Saeed Saddozai, Executive Director, (Adjudication Division, SECP)
2. Mr. Muhammad Akram, Assistant Director, (Adjudication-I, SECP)

## ORDER

1. This Order shall dispose of Appeal No. 45 of 2020 filed by Dubai Islamic Bank Pakistan Limited ("the Appellant") under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated February 19, 2020 (the "Impugned Order") passed by the Executive Director, Adjudication-I ("the Respondent") under Section 159 of the Securities Act ("the Act") for contravention of Regulation 10(2) of the Debt Securities Trustees Regulations, 2017 (the "DST Regulations").
2. Brief facts of the case are that the Appellant was registered as a debt securities trustee under the Debt Securities Trustee Regulations, 2012 (the "Repealed Regulations") by the Securities and Exchange Commission of Pakistan (the "Commission"). In terms of the



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Regulation 10(2) of the DST Regulations, the Appellant was required to submit its application for taking prior approval of the Commission to commence the business as debt securities trustee. However, the Appellant failed to submit the requisite application despite the Commission's reminders vide letters dated June 7, 2017 and September 02, 2019. It was observed from the Appellant's letter dated July 25, 2019 that it had provided services as a debt securities trustee without complying with the requirements stipulated in Regulation 10(2) of the DST Regulations. Accordingly, the Commission took cognizance of the matter and served the show-cause notice dated November 21, 2019 (the "SCN") under Section 159(5)(a) and Section 159(6) of the Act. Thereafter, the Appellant submitted its written response to the SCN vide its letter dated December 11, 2019.

3. The Appellant was accorded an opportunity of personal hearing on February 12, 2020. The hearing was attended by the Head of Legal and the Head of Investment Banking of the Appellant as the Authorized Representatives. During the hearing, the Authorized Representative iterated the arguments as submitted in response to the SCN. The Authorized Representatives were tasked to submit details pertaining to providing services as a debt securities trustee after the expiry of the certificate of registration granted under the Repealed Regulations. The furnished details revealed that the Appellant had been performing the role of trustee for two accounts even after the expiry of their certificate of registration. The Appellant was charging a fee of 600,000 per annum from one of its clients, while the other account was parked under the asset management company without any fee. Subsequently, the Respondent not being satisfied with the response and stance of the Appellant and in exercise of powers conferred under Section 40A of the SECP Act, imposed a penalty of Rs. 1,500,000/- (Rupees One Million and Five Hundred Thousand Only) on the Appellant for the aforementioned contravention.
4. The Appellant has preferred this Appeal, *inter alia*, on several grounds, including the assertion that the Impugned Order lacks proper appreciation of the relevant law and facts of the matter. The Authorized Representative for the Appellant contended before the Appellate Bench (the "Bench") that the proceedings initiated against the Appellant were premised on incorrect application of law and an incomplete evaluation of the record. The Authorized Representative emphasized that the Appellant had made a formal request for exemption from licensing requirements under Regulation 10(2) of the DST Regulations, vide letter dated July 25, 2019. It was submitted that Commission neither rejected nor



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responded to the exemption request and instead, through its letter dated September 2, 2019, sought a board resolution with regard to the Appellant's request. This correspondence was argued to be indicative of the fact that the exemption request was under consideration. It was emphasized that the Respondent's failure to acknowledge this request and its status before issuing the Impugned Order is indicative of the erred adjudication process.

5. The Authorized Representative stated that a crucial letter of correspondence, pertaining to the Commission's response to the Appellant's license renewal request, had been misplaced due to it being erroneously addressed to the Chief Executive Officer rather than the Investment Banking Department which had originally initiated the process for exemption. It was asserted that this *bona fide* administrative oversight, coupled with the Commission's failure to follow up, created a communication lapse which constitutes a mitigating factor, which the Respondent failed to consider before proceeding to issue the Impugned Order in a mechanical and punitive manner. It was further submitted that once the matter was brought to the Appellant's notice, not only did it act promptly to fully cooperate with the Commission but also complied with all directions issued thereafter.
6. Further, the Authorized Representative challenged the penalty imposed under Section 159(5) of the Securities Act, 2015 on the basis that there had been no contravention of Regulation 10(2) of the DST Regulations. It was argued that the Appellant was not initiating new activity but rather continuing its existing operations, and had already complied with the Commission's directions, including submission of the board resolution and license fee. In view thereof, the penalty of Rs. 1,000,000/- (Rupees one million only) was excessive and unjustified.
7. The Authorized Representative further contended the additional penalty of Rs. 500,000/- imposed under Section 159(6) for alleged "*fraud, deceit or deliberate disregard*" of regulatory requirements, asserting that no evidence of fraud, deception, or deliberate disregard was furnished. The record, on the contrary, demonstrated consistent good faith efforts to comply with the regulatory framework.
8. It was also submitted that the penalties were grossly disproportionate given the financial scale of the Appellant's activity. The revenue generated from the business at issue was



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approximately Rs. 600,000 per annum, making the total penalty of Rs. 1,500,000 punitive in nature and disproportionate to the actual gain.

9. The Authorized Representative stated that the Impugned Order has been passed in violation of Section 24-A of the General Clauses Act, 1897, hence violated the requirements of standard of fairness, reasonableness, and application of mind. It was contended that the Impugned Order merely reflects a mechanical application of the law without regard to purpose, proportionality, or procedural equity. In light of the foregoing, the Authorized Representative prayed for the annulment of the Impugned Order and the setting aside of the penalties imposed thereunder, and requested such other reliefs as may be deemed just and equitable by the Bench.
10. In response, the Respondent countered the grounds of the Appeal and proffered arguments by emphasizing that the Impugned Order was not only issued in strict accordance with the law but also after thorough consideration of the facts presented in the matter. The Respondent submitted that the Appellant's license as a Debt Securities Trustee was originally issued under the Repealed Regulations, was valid until February 18, 2017. Pursuant to the enactment of the DST Regulations, the Appellant was under an obligation to seek prior approval from the Commission under Regulation 10(2) to commence or continue business as a Debt Securities Trustee. The Appellant failed to do so despite multiple reminders issued by the Commission, including letters dated June 7, 2017, and September 2, 2019. Consequently, the Appellant was in violation of Regulation 10(2) of the DST Regulations.
11. The Respondent contended that the Appellant's plea that its exemption request was pending or that its earlier correspondence had been misplaced was neither credible nor a valid defence. It was argued that the Commission's letter dated June 7, 2017, was duly addressed to the Chief Executive Officer of the Appellant, an appropriate and responsible officer under the circumstances, and any internal lapse in communication cannot be attributed to the Commission. Moreover, when a subsequent letter, also not addressed to the Investment Banking Department, was received and replied to by the Appellant's Secretary, it confirmed that the Appellant was capable of routing correspondence through appropriate internal channels when due diligence was exercised.



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12. The Respondent submitted that the Appellant continued to act as a debt securities trustee for two accounts without fulfilling the mandatory licensing and registration requirements. In particular, it failed to submit; an application in Form E, the board resolution required under Regulation 10(2)(b) of the DST Regulations, and the applicable non-refundable fee. The Commission viewed this as a clear and continuous breach of regulatory obligations.
13. The Respondent rejected the Appellant's argument that it was entitled to an exemption under Regulation 10 of the DST Regulations, asserting that the Appellant failed to meet the pre-requisites for such exemption. In the absence of a valid and subsisting license or a formal exemption order, the Appellant's continued functioning as a DST was unlawful. With respect to the penalty imposed under Section 159(5) of the Act, the Respondent submitted that the Appellant's failure to obtain prior approval constituted a substantive breach of law. Further, the Respondent asserted that the penalty under Section 159(6) was justified in view of the Appellant's continued non-compliance despite clear regulatory communication. While the Impugned Order did not attribute fraud or deceit to the Appellant, the prolonged and deliberate disregard of regulatory obligations qualified as a "deliberate disregard" under the meaning of Section 159(6). It was further argued that subsequent compliance does not absolve the prior default and instead constitutes an implied admission of default.
14. The Respondent also submitted that the Appellant's argument concerning its limited financial gain or scale of operations was immaterial to the legal question of non-compliance. Regulatory adherence is mandatory regardless of profitability, and any plea that seeks to shift the Appellant's duties onto the Commission reflects an inappropriate attempt to deflect responsibility. Finally, the Respondent emphasized that the Impugned Order was passed with full application of mind, supported by reasoning, and consistent with the requirements of Section 24-A of the General Clauses Act, 1897. It was denied that there was any misuse of authority or arbitrary exercise of discretion. In view of the foregoing, the Respondent prayed for dismissal of the appeal and requested that the Impugned Order be upheld in its entirety.
15. The Bench has examined the record and heard the detailed submissions of both, the Appellant and the Respondent. The the Bench is of the view that the Appellant was indeed under a legal obligation to seek prior approval of the Commission in accordance with

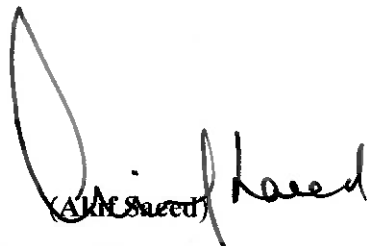


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Regulation 10(2) of the DST Regulations before continuing to act as a Debt Securities Trustee. However, the Bench also finds that the Appellant's conduct, while technically non-compliant, does not reflect a wilful or deliberate disregard of regulatory requirements, particularly in view of the documentary evidence showing that the Appellant had initiated the process of seeking exemption or renewal and had thereafter cooperated with the Commission. The Bench is further of the view that the Respondent has failed to substantiate the imposition of penalty under Section 159(6) of the Act, which necessitates a higher threshold of culpability, and that the overall penalty imposed is disproportionate to the nature and scale of the contravention.

16. In view of the above, while the contravention is not condoned, the Bench is inclined to take a lenient view in light of the mitigating factors and, therefore, we hereby convert the penalty into a stern warning, with a direction to the Appellant to ensure strict compliance with all applicable legal, regulatory, and licensing obligations in the future. The instant Appeal is disposed of with no order as to costs.

  
(Zeeshan Rehman Khattak)  
Commissioner

  
(Ali H. Saeed)  
Chairman/Commissioner

Announced on:

**01 SEP 2025**