



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter or

Appeal No. 93 of 2020

East West Insurance Company Limited Appellant

Versus

Executive Director, Adjudication – I Respondent

Date of Hearing:

January 09, 2025

Present:

For the Appellant:

1. Imran Ali Dodani, Authorized Representative

For the Respondent:

1. Sohail Qadri, HoD, Adjudication-I, SECP
2. Shafiq ur Rehman, Adjudication-I, SECP

ORDER

1. This Order shall dispose of proceedings initiated through Appeal No. 93 of 2020 filed by East West Insurance Company Limited (the “Appellant”), against order dated April 21, 2020 (the “Impugned Order”), passed by the Executive Director (Adjudication-I) (the “Respondent”), under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the “Act”), read with Section 6(A)(2)(h) of the Anti-Money Laundering Act, 2010 (the “AML Act”) and Rule 4(1)(A) and 6(1) of the AML/CFT Sanction Rules, 2020 (the “Rules”).

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2. The brief facts of the case are that an onsite inspection of the Appellant company was conducted in order to assess the compliance of the Company with anti-money laundering (AML) and countering financing of terrorism (CFT) requirements as given in the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the "AML Regulations"). Consequently, a show-cause notice dated November 29, 2019 (the "SCN"), was issued to the Appellant under Section 40A of the Act. The Appellant made its written submission to the SCN vide reply dated December 18, 2019 and after granting an opportunity of hearing to the Appellant, the Respondent, in exercise of powers conferred under Section 40A of the Act, imposed a penalty of Rs. 650,000/- (Rupees Six Hundred Fifty Thousand only) on the Appellant vide the Impugned order.
3. The Appellant has preferred this Appeal, *inter-alia*, on the grounds that in the Impugned Order, a penalty of Rs. 650,000/- has been imposed for alleged non-compliance with various provisions of the AML Regulations despite the Appellant's best efforts to comply with the regulatory framework. The Appellant contended that no deliberate violation of law was committed, and any non-compliance, if observed, was due to human error, which does not warrant the imposition of a penalty. The Appellant submitted that its policies and procedures were in place in draft form at the time of inspection, which were subsequently approved by the Board. The Appellant further argued that the requirements of Regulation 6(3)(a) & (b) of the AML Regulations, concerning the identification of beneficial owners and understanding business relationships, were being fulfilled, as evidenced by the record of documents provided in response to the SCN. It was further submitted by the Appellant that at the time of the issuance of the SCN it was in the process of attaining the NADRA Verisys/Biometric verification system and that meanwhile a substantial portion of its business was being conducted through banks, which perform their own biometric verification procedures in accordance with the National Risk Assessment, 2019. Moreover, the Appellant further submitted that its internal audit function is independent and meets the requirements of Regulation 4(d) of the AML Regulations as the department is headed by a qualified professional with significant experience, and its financial statements are audited by an internationally affiliated audit firm.
4. The Appellant further asserted that it had a system in place for screening transactions against the list of proscribed persons/entities and that although a comprehensive database

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screening software was not available at the time of inspection, individual transactions were being screened, and steps were being taken to enhance compliance mechanisms. The Appellant also contended that while the policy in place at the time of inspection did not explicitly mandate ongoing monitoring of customers, such monitoring was nevertheless being conducted. It was further submitted by the Appellant that it has further strengthened its compliance framework, including the approval of detailed Standard Operating Procedures by its Board and in light of the foregoing, the Appellant submitted that the observations recorded during the inspection do not constitute willful non-compliance and should have been addressed through advisory measures rather than punitive action. The Authorized Representative of the Appellant further stressed that it immediately rectified any lapses pointed out by the Commission, which it believed demonstrated its commitment for compliance and its good faith efforts to meet the regulatory requirements. Finally, the Appellant contended that the penalty imposed by the Respondent was excessive, as there was no intentional or willful violation of the law, therefore the penalty may kindly be set aside.

5. Controverting the arguments of the Appellant, the Respondent, *inter alia*, contended that the instant appeal is devoid of merit, as the imposition of penalty upon the Appellant is based on established and admitted defaults under the AML Regulations. The Respondent stated that the Appellant's purported AML Policy was not duly approved by its Board of Directors at the relevant time and failed to explicitly delineate the requisite documentation for different categories of customers, thereby contravening Regulations 4(a) and 6(3)(a) and (b) of the AML Regulations. Furthermore, the Respondent argued that the Appellant neither obtained the CNICs of its customers nor conducted their verification through NADRA Verisys, which constitutes a violation of Regulations 6(3)(a) and 6(4) read with Annexure I of the AML Regulations. The Respondent stated that the Appellant also failed to maintain an independent audit function to evaluate the effectiveness of its AML/CFT compliance mechanisms, as evidenced by the fact that its internal audit report dated September 2019 did not address AML/CFT-related internal control deficiencies, nor did its internal audit plan for the year 2019-2020 incorporate any framework for AML/CFT compliance, thereby violating Regulation 4(d) of the AML Regulations. The Respondent further argued that the Appellant failed to complete the requisite screening of its existing customers against the list of proscribed persons/entities, and it has admitted that its existing software lacks the requisite capability to conduct such screening, thus evidencing a material



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lapse in compliance. Moreover, the Appellant's AML policy, at the time of inspection, lacked any provision mandating the ongoing monitoring of customers, which fundamentally undermined the efficacy of its compliance framework. The Respondent further asserted that the Appellant's contention that the alleged non-compliance was inadvertent is legally misconceived, as the established legal principle, as enunciated in "*City Equitable Fire Insurance Co. Ltd Re, 1925 Ch. 407 and reaffirmed in 2005 CLD 333 (Shaikh Jalaluddin, FCA vs. Commissioner (Enforcement & Monitoring), SECP*", holds that a default is deemed 'willful' even if it results from reckless negligence, irrespective of intent. The Respondent asserted that the Appellant's reliance on the National Risk Assessment (NRA) 2019 to claim relaxation from compliance obligations is equally misconceived, as the NRA merely assesses the vulnerability level of the non-life insurance sector and does not, in any manner, exempt such entities from strict compliance with the AML Regulations. The Respondent while concluding the arguments further submitted that, the penalty imposed vide the Impugned order is just, fair, and in accordance with law.

6. The Appellate Bench (the 'Bench') has heard the arguments of both the parties and perused the record. The Bench is of the opinion that the Appellant had a responsibility to strictly adhere to the relevant requirements outlined in the Regulations, ensuring full compliance in both letter and spirit. However, the Bench appreciates that the Appellant has endeavored to comply with applicable law by subsequently availing NADRA Verisys. The Bench finds that the Appellant has demonstrated substantial efforts towards ensuring compliance with the Regulations. The Bench has also noted that the Appellant has established a screening mechanism utilizing multiple sources and has proactively addressed technical deficiencies, including data omissions and CNIC discrepancies, in a timely manner. The Bench further observes that these deficiencies were neither systemic nor appalling in nature and did not result in financial loss or the facilitation of services to any proscribed individuals and that the Appellant has taken further steps to prevent risks including screening against the proscribed persons. While the Respondent asserts that the violations were significant and indicative of broader compliance failures, the Bench is of the considered view that the infractions were neither deliberate nor willful and did not give rise to any substantial risk requiring stringent penal action.
7. In light of the foregoing, the Bench holds that the penalty of Rs. 650,000/- imposed upon the Appellant is disproportionate to the nature and extent of the identified non-compliance.



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The Appellant's conduct, including its expeditious remedial actions and commitment to enhancing its regulatory compliance framework, reflects an absence of malafide intent. Given that the deficiencies were rectified without delay and that the Appellant has exhibited good faith in its approach towards compliance, the Bench finds that the penalty imposed should be proportionate to the minor nature of the violations rather than be punitive in excess of what is warranted under the circumstances.

8. Accordingly, the Bench deems it just and appropriate to reduce the penalty to Rs. 325,000/, considering the Appellant's efforts with regard to the compliance measures and the Appellant is also directed to strictly comply with the requirements of the AML regulations in the future. The Appeal is, therefore, disposed of with no order as to costs.

(Abdul Rehman Warraich)
Commissioner

(Mujtaba Ahmad Lodhi)
Commissioner

Announced on:

07 MAR 2025