



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

## Adjudication Department-I

### Adjudication Division

*Before*

**Shahzad Afzal Khan, Director/Head of Department (Adjudication-I)**

*In the matter of*

**Directors of Habib Insurance Company Limited**

Number and date of Show Cause Notice (SCN)	ID/Enf/Habib/2015-501 Dated December 07, 2023
Date of Hearing:	February 12, 2024
Present at the Hearing:	(i) Mr. Murtaza Hussain, Chief Financial Officer (ii) Mr. Muhammad Maaz Akbar, Company Secretary (Authorized Representatives)

### **ORDER**

#### **UNDER SECTION 106 OF THE SECURITIES ACT, 2015**

This Order shall dispose of the proceedings initiated against Directors of Habib Insurance Company Limited (**the Company**) through Show Cause Notice No. ID/Enf/Habib/2015-501 dated December 07, 2023 (**the SCN**) issued under Section 106 of the Securities Act, 2015 (**the Act**) on account of alleged contravention of Section 101(2) and 103(1) of the Act read with regulation 3(1) and 3(4) of the Reporting and Disclosure (of Shareholding by Directors, Executive Officers and Substantial Shareholders in Listed Companies) Regulations, 2015 (**the Regulations**).

2. Brief facts of the case are that Mr. Aun Muhammad A. Habib, Director and Mr. Qumail R. Habib, Director (Collectively referred hereunder as **the Respondents**) executed trades on August 08, 2023 as revealed by Forms 6 filed by the Company.

3. In terms of Section 101(2) and 103(1) of the Act read with regulation 3(1) and 3(4) of the Regulations, the directors were required to file disclosure of change in beneficial ownership i.e. Form 2 to the company and Form 6 to the Commission within seven (7) days of the change in shareholding. As per the record of this office, it was observed that Forms 6 were submitted by the Respondents/directors **with a delay of 76 days** i.e. on October 30, 2023.

4. The relevant provisions of the law are reproduced as under:

#### **Section 101 of the Act:**

**“101. Duty of directors and others to disclose shareholding in listed company.—**

**(1) Every person who becomes a director, executive officer, or substantial shareholder of a listed company shall give notice in writing to the company**

**(a) of his beneficial ownership in the listed equity securities of the company or any other nature of securities as may be prescribed by the Commission; and**

**(b) of the amount and description of the securities of the company and date of acquisition of beneficial ownership.**

**(2) A director, executive officer or substantial shareholder of a listed company shall give notice in writing to the company of any of the following events, namely:**



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(a) any change in beneficial ownership mentioned in sub-section (1) and the notification shall state the number, amount and description of securities involved.”

### Section 103 of the Act:

#### **“103 - Notification to the Commission of directors and others’ interest**

(1) Every director, executive officer or substantial shareholder of a listed company shall submit to the Commission in the prescribed form -

(a) a statement of beneficial ownership in the listed equity securities of the company or any other nature of securities as may be prescribed by the Commission;

(b) the particulars of any change in the interest aforesaid; and

(c) any change in his position.

(2) The reporting requirement imposed by sub-sections (1) shall be fulfilled before the expiration of a period of seven days beginning with the day on which the requirement first arises.”

### Regulation 3(1) and 3(4) of the Regulations:

#### **“3 – Reporting of Beneficial ownership in listed equity securities under Section 101 to Section 103 of the Act ...**

(1) Any person who becomes a director, executive officer or substantial shareholder of a listed company shall give notice in writing to the company in Form 1 of his beneficial ownership in the securities of the Company and in Form 2 for any subsequent change therein or gain therefrom.

(2) -----

(3) -----

(4) The directors, executive officers and substantial shareholders of the equity securities in a listed company shall in accordance with section 103 of the Act submit statement of Beneficial ownership in Form 5 and report any subsequent change therein or position to the Commission on Form 6.”

### Section 106 of the Act:

#### **106. Directive by the Commission.—(1) ...**

(2) where any person who contravenes or fails to comply with any provision of sections 101, 102, 103, 104, 105 and 107, the Commission may by order in writing direct,—

(a) in the case of an individual, to pay by way of penalty to the Commission such sum which may extend to five hundred thousand rupees and to a further sum which may extend to one thousand rupees per day for every day during which the default continues;”

5. The Commission vide letter dated November 10, 2023 sought explanation from the Respondents with respect to their alleged failure to file Form 6. The Company responded on behalf of the directors vide letter dated November 13, 2023 that Form 2 was filed by the Directors on timely basis. However, the delay in submission of Form 6 was due to an inadvertence on their part. The same was left out to be couriered and immediately sent as soon as this lapse came to their attention. Moreover, they requested to condone the delay and assured to be compliant in future.

6. In view of the above, the stance provided by the Company is not tenable as the requirement of filing of Form 6 is applicable on the directors/individuals. Therefore, the Respondents, *prima facie*, have violated the provision of Section 103 of the Act read with regulation 3(4) of the Regulations, which attracts the applicability of the penal provisions contained in Section 106 (2) of the Act.



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7. In response to the SCN, the Law Firm, Bawaney & Partners vide letter dated December 21, 2023 responded on behalf of the Respondents as under:

*"...At the outset, the Directors and Senior Management of HICL have always believed in conducting their affairs in accordance with the highest legal and ethical standards and to timely fulfill all statutory requirements including the rules and regulations of the regulators and in particular the Hon'ble Commission. Hence, this is not the case of neglect or contravention of the applicable laws.*

*Turning to the contents of SCN, our Clients see no point in dilating on each and every provision of the law and regulation cited in the SCN, on which there can be no cavil and our Clients pledge full co-operation with the Hon'ble Commission in complying with all applicable laws.*

*However, this is the case of genuine inadvertence on part of the Compliance Department of HICL in timely dispatching Form 6 to the Hon'ble Commission as mentioned in HICL's letter dated November 13, 2023. We may add that the position taken by HICL is not by way of lame excuse as it appears to the Hon'ble Commission.*

*In Para 6 of the SCN, it has rightly been mentioned that the requirement of filing Form 6 is applicable on Directors/individuals. In the instant case, both our Clients signed Form 6 on August 10, 2023 and handed over the same to ....., Compliance Officer of HICL for dispatch to the Hon'ble Commission by courier service. Unfortunately, Mr..... genuinely forgot to dispatch Form 6 within time and once it came to his knowledge, he immediately dispatched the same by courier service. An Affidavit signed by Mr....., after our Clients received SCN is annexed hereto, as Annexure "B".*

*Mr..... was reprimanded verbally by the Company Secretary of HICL and he apologized for his inadvertence. Since he has an excellent record at HICL and is always meticulous, the Senior Management of HICL did not take any action for his genuine inadvertence.*

*The Hon'ble Commission's observation in Para 6 of the SCN that Form 6 is applicable on Directors/individuals is correct, but yet it may be appreciated that it is a universal practice in companies and large organizations, not only in Pakistan, but in almost all other countries that Directors and senior officers/managers of the companies and organizations do not personally visit courier service offices or post offices for dispatch of legal communications, which are always handed over to the concerned employees or officers of their respective companies for timely dispatch. Therefore, our Clients have not contravened the provisions of the Securities Act and Regulations cited in Paras 6 and 7 of the SCN due to inadvertence on part of the Compliance Officer of HICL. The term "inadvertence" has been defined in various legal dictionaries, including the following to mean: -*

**Cambridge:**

*The quality of being not intentional*

**Collins:**

*an instance of oversight;*



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**Vocabulary:**

*an unintentional omission resulting from failure to notice something*

**Oxford:**

*the fact of doing something by accident without intending to*

**Britannica:**

*not intended or planned: accidental*

*Regarding para 8 of the SCN, in case any hearing is required our Clients will be represented jointly by any two amongst Mr. Shabbir Gulamali, Mr. Murtaza Hussain and Mr. Muhammad Maaz Akbar of HICL.*

*In view of the position enunciated above, we on behalf of our Clients respectfully request the Hon'ble Commission to take a lenient view in this case of genuine inadvertence oversight and discharge the SCN, in the interest of justice, as our Clients have not violated the provisions of laws and regulations referred to in the SCN."*

8. The Respondents were provided opportunity of personal representation and the hearing was fixed in the matter for February 12, 2024. The hearing was attended by Mr. Murtaza Hussain, Chief Financial Officer and Mr. Muhammad Maaz Akbar, Company Secretary as the Authorized Representatives (**the Representatives**) of the Respondents. The Representatives reiterated the written argument submitted earlier in response to the SCN and admitted the delay in filing of Forms 6, which occurred due to inadvertent mistake, as the forms somehow missed to be couriered. However, the Representatives added that these transactions have already been reported to Pakistan Stock Exchange (PSX) by the Company Secretary in time. Furthermore, Forms 6 have also been couriered/filed to the Commission once came into the knowledge. Moreover, the Respondent requested that a lenient view may be taken in the matter and assured the compliance with the provisions of the law in future.

9. Subsequent to the hearing, the Representatives vide letter dated February 13, 2024 submitted additional response as under:

*"...1. As mentioned during the Hearing, the trades of shares of Directors Mr. Qumail R. Habib and Mr. Aun Mohammad A. Habib did not remain unreported as the same were duly reported to the Pakistan Stock Exchange (PSX) on the same day on which trade occurred. This implies that the Directors had intimated the transactions to the Company and signed Form 6 was also submitted by both Directors on August 10, 2023 but as explained, the Form was left out to be dispatched inadvertently. The evidence of the reporting of the trades of Directors to PSX is attached as "Annexure A" to this letter.*

*2. In the instant case, as mentioned in the Reply dated December 21, 2023 to the Show Cause Notice, as well as at the Hearing, both our Directors signed Form 6 on August 10, 2023 and handed over the same to Mr....., Compliance Officer of HICL for dispatch to the Hon'ble Commission by courier service. Unfortunately, Mr..... genuinely forgot to dispatch Form 6 within time and once it came to his knowledge, he immediately dispatched the same by courier service.*

*The Compliance Officer, Mr..... was reprimanded verbally by the Company Secretary of HICL and he apologized for his inadvertence. He has also submitted a sworn*



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*Affidavit which was annexed to the Reply to the Show Cause Notice. Since Mr..... has an excellent record at HICL and is always meticulous, the Senior Management of HICL did not take any action for his genuine inadvertence.*

*3. We have also developed our internal compliance checklist with a tick mark for dispatch as a mandatory column to ensure that such instance shall not occur in future.*

*As informed during the hearing, the Management has subsequently taken all the corrective measures to ensure that such lapses do not occur in the future and we assure you the same.*

*In view of the position enunciated above, we respectfully request the Hon'ble Commission to take a lenient view in this case of genuine inadvertence oversight and discharge the SCN, in the interest of justice, as our directors have not violated the provisions of laws and regulations referred to in the SCN."*

10. I have gone through the facts of the case and considered the submissions of the Respondents and the Representatives both written and verbal in light of the applicable provisions of the law and observed that:

- (i) The Respondents were required to file disclosure of change in beneficial ownership i.e. Form 6 to the Commission within seven (7) days of the change in shareholding as required under Section 103 of the Act read with regulation 3(4) of the Regulations. However, as per the record, the Respondents filed their Form 6 to report change in shareholding on October 30, 2023 **with a delay of 76 days.**
- (ii) Moreover, the reason provided by the Respondents and the Representatives, stating that Forms 6 were signed by the Respondents in time, but the Compliance Department somehow missed filing them with the Commission, is not tenable. The law clearly depicts that it is the responsibility of each director to timely file the requisite form.
- (iii) Although, the Respondents have stated and provided evidence that they reported the transaction to the PSX in a timely manner, however it is essential to understand that regardless of this reporting, it is still mandatory under the law for them to file the required Form 6 to report the same with the Commission in time. i.e. within seven (7) days of such change in the shareholding.

11. In view of the foregoing and the verbal submissions made by the Respondents and Representatives, non-compliance/ contravention of the provisions Section 103 of the Act read with regulation 3(4) of the Regulations has been established and same has also been admitted by the Representatives. Therefore, in exercise of the powers conferred upon me under Section 106(2)(a) of the Act, I hereby impose a penalty of **Rs.50,000/- (Pak Rupees Fifty Thousand Only)** on the Respondents, in the following manner:

S. No.	Name of Director(s)	Amount of Penalty Imposed (Rs.)
1.	Mr. Aun Muhammad A. Habib	25,000
2.	Mr. Qumail R. Habib	25,000
	<b>Total</b>	<b>50,000</b>

12. The Respondents are hereby directed to deposit the aforesaid fine in the designated bank



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account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and furnish receipted voucher issued in the name of the Commission for information and record

13. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with the law(s) on matter subsequently investigated or otherwise brought to the knowledge of the Commission.

**(Shahzad Afzal Khan)**  
Director/ Head of Department  
(Adjudication Department-I)

**Announced:**  
February 16, 2024  
Islamabad