



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
Market Supervision and Capital Issues Department

Before the Director/HOD (MSCID)

In the matter of Show Cause Notice issued under Section 224(4) of the Companies Ordinance, 1984 to Etisalat International Pakistan, a beneficial owner of more than ten percent equity security of Pakistan Telecommunication Company Limited

Date of Hearing:

February 07, 2013

Present at Hearing:

Representing the Respondent:

(i) *Mr. Muzzammil Sadiq*

*Company Secretary,
Etisalat International Pakistan*

(ii) *Mr. Waqas Mir*

Advocate

Assisting the Director/HOD (MSCID):

(i) *Mr. Muhammad Farooq*

Joint Director

Order

This order will dispose of the proceedings initiated under Section 224(4) of the Companies Ordinance, 1984 ("**Ordinance**") by the Securities and Exchange Commission of Pakistan through Show Cause Notice No. SMD/BO/13(230)12 dated 30/11/2012 ("**Notice**") issued to Etisalat International Pakistan ("**Respondent**"), a beneficial owner of more than ten percent equity security of Pakistan Telecommunication Company Limited ("**Issuer Company**").

2. The facts of the matter leading up to the aforesaid Notice are that the Issuer Company is a public listed company and the Respondent being a beneficial owner of more than ten percent of its ordinary shares was required to file return of beneficial ownership on Form 31, within the period stipulated under Section 222 of the Ordinance.

3. Section 222(2) (b) of the Ordinance stipulates the period within which the Form 31 is to be submitted as under:-

"in any other case, including a case where the company is listed on the stock exchange after the commencement of this Ordinance or after the person has occupied the position or office specified in sub-section (1) or has acquired interest as beneficial owner of

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securities as aforesaid, within thirty days of occupying the office in the company or acquisition of interest as beneficial owner requiring submission of the return aforesaid or listing of the company on the stock exchange, as the case may be”

4. On scrutiny of record of this office, it was observed that the Respondent has failed to file Form 31 with this Commission as a beneficial owner of more than ten percent ordinary shares of the Issuer Company. The Company Secretary of the Issuer Company was, therefore, requested vide letter dated 08/03/2012 to collect Form-31 from the Respondent and to file the same with this office.

5. In response, the Company Secretary of the Issuer Company vide letter dated 26/03/2012 stated that the Respondent has legal as well as beneficial ownership of class B shares and this ownership is already being regularly reported to the Commission. So filing of separate Form-31 and Form-32 is not required. The legal position of the matter was conveyed to the Company Secretary of the Issuer Company by the Commission vide letter dated 03/04/2012. The Respondent, in response, filed Form 31 with this Commission on 25/04/2012. The said Form 31 showed that the Respondent acquired beneficial ownership in the Issuer Company on 12/04/2006 and 1,326,000,000 ordinary shares of the issuer Company were beneficially owned by it. Thus, the Respondent was required to file the said return with this Commission latest by 11/05/2006, but the same has been filed on 25/04/2012, with delay of 2,175 days, in contravention of Section 222(2)(b) of the Ordinance. The said contravention attracts penal provisions of Section 224(4) of the Ordinance, which provides as under:-

“Whoever knowingly and wilfully contravenes or otherwise fails to comply with any provision of section 222, section 223 or section 224 shall be liable to a fine which may extend to thirty thousand rupees and in the case of a continuing contravention, non-compliance or default to a further fine which may extend to one thousand rupees for every day after the first during which such contravention, non-compliance or default continues”.

6. The Commission took cognizance of the aforesaid default and issued Notice to the Respondent under Section 224(4) of the Ordinance, calling upon it to explain through written reply alongwith documentary evidence, if any as to why action may not be taken against it pursuant to Section 224(4) of the Ordinance, for aforesaid contravention of Section 222(2)(c) of the Ordinance.

7. In order to provide an opportunity of being heard in person, hearing in the matter was fixed on 30/11/2012 at Commission’s Head Office, Islamabad, which on the request of Company Secretary of the Issuer Company was adjourned. The matter was re-fixed for hearing on 07/02/2013. On the said date, Mr. Muzzammil Sadiq, Company Secretary of the Respondent and Mr. Waqas Mir, Advocate (“Authorized Representatives”) appeared on behalf of the



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Respondent. The submissions made by the Advocate in writing as well as verbally by the Authorized Representatives during the course of hearing be summarized as under:-

- a. *The Respondent is a subsidiary of Emirates Telecommunication Corporation (Etisalat) of United Arab Emirates.*
- b. *The Issuer Company was privatized by the Government of Pakistan in 2006. The Respondent was successful bidder. The bid price offered by the Respondent was 84% higher than the second-highest bid of the transaction.*
- c. *By way of this transaction, the Respondent purchased the under reference Class B ordinary shares and invested US dollar 2.598 billion in Pakistan. A notice to this effect was published in the Gazette of Pakistan vide SRO 453(I)2006 dated 09/05/2006.*
- d. *The aforesaid class B ordinary shares were meant for strategic investor, which have never been traded on stock exchanges. Thus, it was only one time transaction. While, the Government of Pakistan transferred about 12% class A ordinary shares to the general public of Pakistan, which are tradable on stock exchanges.*
- e. *The Respondent was entirely relying on legal advice given by the legal counsel appointed by the Government of Pakistan at the time of acquisition of the under reference beneficial ownership by the Respondent. The said legal advice does not speak about the applicability of Section 222 of the ordinance.*
- f. *The Respondent is an overseas entity. It does not have its permanent representative in Pakistan. It came to know about the applicability of Section 222 of the Ordinance, upon the receipt of aforesaid letter from the Commission.*
- g. *The Respondent is both legal and beneficial owner in the instant case, therefore, the provisions of Section 222 of the Ordinance, are not attracted in the matter.*
- h. *The contravention was not committed knowingly and willfully.*
- i. *The delay in filing of the return was inadvertently, thus, the same may be condoned.*
- j. *The Respondent will comply with the requirement of Section 222 of the Ordinance within the prescribed time period in future.*



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8. I have considered the aforesaid submissions made on behalf of the Respondent. The Respondent has admitted the default of late filing of the return of beneficial ownership with the contention that said default was not committed intentionally. The Respondent at the same time has also contended that the provisions of Section 222 of the Ordinance are not attracted in the instant case, as the Respondent is simultaneously legal as well as beneficial owner of the securities held by it.

9. Concerning the plea "*that the provisions of Section 222 of the Ordinance are not attracted in the instant case*" attention is invited to the Explanation given in Section 224(3) of the Ordinance, which provides that "*beneficial ownership of securities of any person shall be deemed to include the securities beneficial owned, held or controlled by him, spouse-----*". The term "beneficial owner" has been elucidated in Circular No. 1 of 1971, which states "*that person will be treated as beneficial owner who is entitled to the benefits accruing from the ownership of the securities*". In view of the foregoing, the viewpoint of the Respondent has no merits, as it undoubtedly falls in the ambit of the provisions of Section 222 of the Ordinance.

10. However, the Respondent has filed the return of beneficial ownership and has admitted the default of late filing of the return with the contention that said default was not committed willfully and knowingly, as it is an overseas entity and does not have any permanent representative in Pakistan. The Respondent has also requested to condone the default in question and assured for timely filing of the returns of beneficial ownership in future. In order to arrive at decision, I have also considered the background, circumstantial and allied constituents of the acquisition of the under reference beneficial ownership by the Respondent. The Respondent has made handsome investment in Pakistan by way of purchasing class B ordinary shares, which have never been traded. it was only one time transaction. Moreover, as per the Authorized Representatives, the legal advice given by the legal counsel appointed by Government of Pakistan was missing the aspect of applicability of the provisions of section 222 of the Ordinance in the matter. Hence, considering the submissions made by the Respondent, I intend to agree with the contention of the Respondent and of the view that the late filing of the under reference return of beneficial ownership may not be willful. Therefore, a lenient view of the matter has been taken and the Respondent is hereby strictly warned to ensure timely compliance of Section 222 of the Ordinance in future.

11. This order is issued without prejudice to any other action that the Commission/Registrar may initiate against the Respondent in accordance with the law on matter subsequently investigated or brought to the Notice of the Commission.



(Imran Inayat Butt)
Director/HQD (MSCID)

Islamabad.

Announced on February 19, 2013

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