



**TRANSPARENCY  
INTERNATIONAL-PAKISTAN**

3<sup>rd</sup> June 2016

5-C, 2nd Floor, Khayaban-e-Ittehad, Phase VII,  
Defence Housing Authority, Karachi.  
Tel: (92-21)-35390408, 35390409, Fax: 35390410  
E-mail: ti.pakistan@gmail.com  
Website: www.transparency.org.pk

Honorable Justice Anwar Zaheer Jamali ,  
Chief Justice,  
Supreme Court of Pakistan,  
Constitutional Avenue, Islamabad.

**Attn: Human Rights Cell**

**Sub: Progress on the HRC 14249/S of 2013**

May it please your Lordship,

My Lord, Transparency International Pakistan refers to the HRC 14249/S of 2013 and the last letter sent to the DG HRC on 25.5 2013.

TI Pakistan letter to SECP dated 2 June 2016 is enclosed. **Annex-A**

A complaint received was sent to the Honourable Court on 13 May 2013 with following in the first paragraph..

*Transparency International Pakistan received a serious complaint on the allegations of Inside Trading [ which is against SECP Ordinance 1969 Section 15 A, i(1) No person shall indulge in insider trading]. in Azgard Nine limited shares trade, by JS Global Capital Ltd in 2007/2008 in which 38 companies and individuals were proved to be involved, and in JSCL by awarding Fee of US \$ 4.2 million to a Director in 2013.*

On 3<sup>rd</sup> Page of same letter following additional issues were reported.

*That JS Growth Fund and JS Large Cap. Fund, have sold 1,606,688 PICT shares at Rs. 101.59 to Bank Julius Baer & Co. Ltd Switzerland, on 24 February 2012, and it is alleged that Bank Julius Baer & Co. Ltd in fact bought it for JS Group, as JSGL has commercial relationship with them*

On 22 May 2016, following additional issues were reported to the Honourable Court.

*On the complaint sent to SECP that JS Growth Fund and JS Large Cap Fund, have sold 1,606,688 PICT shares at Rs. 101.59 to Bank Julius Baer & Co. Ltd, SECP vide its letters dated 21 May 1 2013 has informed TIP that the matter is under investigate at SECP*

*It appears that like Azgard Inquiry Report was completed in April 2009 and SECP was protecting the 38 companies and individuals for 4 years, till TIP took up the issues with SECP in April 2013, SECP is exactly doing same, and protecting companies and individuals involved in PICT Insider Trading deal. SECP is reported to have conducted an inquiry ( conclusion quoted below) and found that JS Group might have the material insider information regarding the acquisition of shares of PICT*



Conclusion -:

After examination of the trading data of PICT for the period, two major buyers were identified who bought most of the shares. The examination of trading data revealed that in Ready Market and Off Market the Bank bought most the shares from JS group. Following is the chart which clearly shows the percentage of the transactions of the Bank which was matched with the funds of the JS Group.

Market	Buying	Shares Sold by the Funds of JS Group	% age of matching
Ready Market	1,790,983	1,597,088	89%
Off Market	444,000	260,000	59%
Total	2,234,983	1,857,088	83%

In Country MS and SG bought most of the shares from different counter clients. Above mentioned trading of the clients showed that they might have the material insider information regarding the acquisition of shares of PICT but with out establishing a link it is quite difficult to proceed further in the matter. It is recommended that the Bank may be asked to provide the rational of heavy investment in the scrip of PICT and on whose behalf the Bank bought shares of PICT.

**Note; Bank mentioned above is Bank Julius Baer & Co. Ltd.**

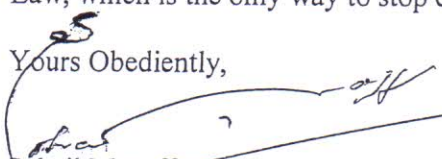
Another information is received with regards to SECP records of inquiry into Bank Julius Baer & Co. Ltd, which indicates that Bank Julius Baer & Co. Ltd clients dealing in share purchases of MCB Bank Limited, Nishat (Chunian) Limited and Nishat Power Limited and PICT in **Pakistan are two offshore companies**, Nottely Corporation Fund based in **Panama** and Hiroshi Capital fund **B.Va** fund based in Curacao 'Island. **Annex-B.**

According to the new information, on 28.1.2013 ERROL COVA of Central Bank of Curacao was contacted telephonically by SECP and they informed that client has objected to disclosure of information to SECP. And on 16.6.2013 SMV Panama responded the SECP request under IOSCO MMoU SMV Panama provided the selective information and informed that M/s Nottely Corporation is not registered at the SMV nor have been authorized to participate in securities market in or from Panama SMV Panama failed to provide the material information.

An indulgence of the Honorable Court in this matter is also prayed.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption

Yours Obediently,

  
Sohail Muzaffar  
Chairman

Enclosed: SECP PICT Inspection Report of 2<sup>nd</sup> January, 2014, TIP Letter to SECP dated 2 June 2016, Annexes A and B.





**TRANSPARENCY  
INTERNATIONAL-PAKISTAN**  
2<sup>nd</sup> June 2016

The Chairman,  
Securities and Exchange Commission of Pakistan,  
Jinnah Avenue, Blue Area,  
Islamabad.

ANNEX A  
5-C, 2nd Floor, Khayaban-e-Ittehad, Phase VII,  
Defence Housing Authority, Karachi.  
Tel: (92-21)-35390408, 35390409, Fax: 35390410  
E-mail: ti.pakistan@gmail.com  
Website: www.transparency.org.pk

Subject: Complaint against SECP for not acting on SBP instructions against JS Bank  
Limited-Ref SECP DD letter No. EMD/233/685/02/2140 dated April 27, 2016

Dear Sir,

Kindly refer to SECP DD letter No. EMD/233/685/02/2140 dated April 27, 2016 whereby the Transparency International Pakistan letter dated April 15, 2016 has been rebutted instead of providing verbatim response to the serious observations of the State Bank of Pakistan vide their letter to SECP NO BPRD/CSMRP/15930/14 dated 29.8.2014 on handling of JS Bank affairs. **Annex-A.**

The TIP letter dated April 15 2016 was to hark-back the SECP that the wobbly ground taken by SECP in its letter No. SMD/SSED/OSW/MISC/05/2015 dated March 29, 2016 communicating to TIP that "the CCG has specifically used the term "encouraged" in regard to the representation of minority shareholders on the board of directors which cannot be considered as mandatory requirement" are totally misconceived, without grounds and contrary to the spirit of the Code of Corporate Governance 2012. **Annex-B.**

The report of SECP inspection team dated January 2, 2014 is cited on the factual position and TIP adhere to its position that the SECP report contained the admission reported by Jahangir Siddiqui & Company Limited (JSCL) to SECP to justify Ali Jahangir's role as adviser.

"to enhancing the paid up capital of the JS Bank Limited through transfer of shares of JS Global Capital Limited and JS Investments Limited to JS Bank Limited valued at Rs. 1,686 million, a subsidiary of JSCL to meet the JS Balance minimum capital requirement of Rs 10 Billion".

IN TIP letter, it was stated that the complainant has reported to TIP about this admission by JS Bank in the SEWCP Report, and therefore the paragraphs was qualified with coma, and complainant statement " which is against the SBP Rules". SECP must read the Inspection Report of JSCL prepared by two SERCP officers Shazad Afzal Khan Joint Director and Amir Saleem Dy Director submitted on January 2, 2014 to Ali Azeem Ikram, Head of Enforcement Department SECP .

**Note:** The Supreme Court of Pakistan on an application of Syed Adil Gilani which included the allegation of illegal payment of Advisory fee of \$ 4.3 million to Ali Jehangir, approved Human Right Case, HRC No 14240-S/2013, and informed the Chairman vide letter dated 12.8.2014 of the Director HRC Supreme Court of Pakistan that the HCJP has ordered to submit progress report by 30.8.2014. **Annex-C** due to SECP act of hiding the PICT Inspection Report of 2<sup>nd</sup> January, 2014 from NAB.





NAB submitted a wrong progress report on 26.8.2014 to the Supreme Court of Pakistan, stating that according to SECP, "As regard to payment of Advisory Fee to one director of JSCL, the matter is under probe. However, 7 months ago PICT Inspection Report of 2<sup>nd</sup> January, 2014 had recommended that directions may be issued to unwind the transaction in respect of payment of Advisory fee of Rs 430.944 million and initiation of legal proceedings against the company and its directors. SECP has deceived NAB by concealing the relevant Inspection Report of 2<sup>nd</sup> January 2014, and tried to distract the NAB as well as the Supreme Court of Pakistan.

With regards to the allegation illegal act of the complainant on enhancing the paid up capital of the JS Bank Limited through transfer of shares of JS Global Capital Limited and JS Investments Limited to JS Bank Limited valued at Rs. 1,686 million, a subsidiary of JSCL to meet the JS Balance minimum capital requirement of Rs 10 Billion, SECP in its clarification to TIP dated 4.3.2016, has stated that "**This falls within the ambit of State Bank of Pakistan, ( copy of your letter is endorsed to Governor SBP).**

But in SBP subsequent letter of 27.4.2016, SECP has stated that "It is clarified that the matter of allowing increase in capital of Bank to meet Minimum Capital requirement as prescribed by State Bank of Pakistan was approved on the basis of NOC from the SBP".

The two contradictory statements on JS Balance minimum capital requirement of SECP raises doubts about SECP as well as SBP role on this issue.

SBP has not even bothered to clarify its position on this issue, not on the SBP failure to pursue the SBP objection sent to SECP for 2 years.

TIP in the said letter wrote that "The SBP categorically stated that in the case of bank (JS Bank) did not appear to have any representation of **minority shareholders or institutional investors on its board** rather in arrangement AGM provided sufficient reasons to believe that bank has discouraged the participation of minority shareholders even in the AGM.

The SBP also informed SECP that during the SBP regular inspection, it was observed that in the 7th AGM of JS bank held on March 29, 2013, total 196 (including 23 proxies) shareholders attended the AGM and 162 participants (94%) who attended the AGM in person were employees of the bank who hold one share. Similarly 11 shareholders holding 1 share each had the same address which was not a normal situation. Further the SBP team meeting with the 4 bank employees who were shareholders informed to SBP Team that they have no idea any share was purchased on behalf of them.

**These are the findings of the SBP vide its letter to SECP dated 29.8.2014, and merely not observations.** As the s SBP deemed their findings to be serious issues, it the SECP to look into and initiate proceedings. But SECP even after lapse of more than two years not only sat on SBP observations, but also did not take any action against the JS Bank.

By its observations SBP has conveyed its views to SECP that when the 94% of share holders in AGM are employees of JS Bank, the decision making at the AGM would be protecting the interest of the sponsors and not the general public, investors and the depositors.

The SECP should have initiated the investigations to find out whether these 94% AGM attendants purchased shares by themselves or not, and how, where placed, who are the





brokers, who paid on their behalf, and where these shares were parked (in their own CDC account or lease) etc.

TIP is of the opinion that such investigations would have led the SECP to a logical conclusion and to address the concerns of the State Bank of Pakistan

SECP response apprises about the legal position in case general meeting proceedings have to be declared invalid, whereas SBP is raising objections with respect to the intent and malafide intention of the sponsors to manipulate the situation, which could only be achieved once investigations are conducted by SECP.

Investigations into the observations of the SBP would have made the whole situation crystal clear. Therefore, we once again request SECP to conduct investigations on the basis of observations of SBP.

The assertions made by SECP with regard to CCG are not at all convincing and one feels flabbergasted while regulator is denying the requirements of CCG especially relating representation of **minority shareholders or institutional investors on its board** on the Boards.

It seems very odd to let regulator understand that Board is constituted (in addition to other directors appointed under the Companies Ordinance 1984) through the process and proceedings of general meeting, and if the meeting participants and voting is manipulated by the sponsors than the whole purpose of having legislation and codes for good governance by the regulator is self-defeated by the regulator itself.

However, since the SECP in its letter dated March 29, 2016 stated that the CCG has specifically used the term "encouraged" in regard to the representation of minority shareholders on the board of directors which cannot be considered as mandatory requirement" TIP specifically stated in its letter dated April 15, 2016 that " your attention is drawn to Part XI of the Listing Regulations of Pakistan Stock Exchange (previously Karachi Stock Exchange) clause 35 that stipulates that all listed companies shall ensure compliance with the following Code of Corporate Governance (CCG) and all provisions except where explicitly stated otherwise are mandatory. So at the first instance the provisions of the CCG are mandatorily need to be complied with by all the listed companies (TIP understands SECP subjects JS Bank to these listing regulations.

The legislature used the term "shall" to emphasis the mandatory requirement. Further clause 35(i) provides that the board of directors is encouraged to have a balance of executive and non-executive directors, including independent directors ..... The clause further states that "For this purpose listed companies shall take the following steps" and again use the word "shall" to lay stress being mandatory and then the next clauses stipulates the procedure for appointment of non-executive/independent director. TI likes refer to your attention to Frequently Asked Questions (FAQs) annexed to CCG to augment its view point. FAQ is reproduced here as under:

FAQ -7: What are the implications if a listed company fails to nominate an independent director on its board? (FAQ 7)



Clause (i)(b) of the Code 2012 requires at least one independent director on the board. This is now a mandatory provision and any non-compliance will be penalized under listing regulations.

FAQ-13: In a board of seven, what will be the composition as per the criteria laid down in the Code 2012?

If there are seven directors on the board of a listed company, the composition as per the Code 2012 will be: **one independent director**, two executive directors (including the CEO) and four non-executive directors. This clearly shows requirement is not to encourage but it is mandatory and also that when the process that leads to election of directors is manipulated the whole process is abused. And SBP in its letter to SECP dated 29.8.2014 has specially pointed out this violation of JS Bank.

In view of the above, SECP is once again requested that based on SBP letter dated 29.8.2014 investigations be initiated to find out whether these 94% AGM attendants purchased shares for themselves and how, where placed, who are the brokers, who paid on their behalf, and where these shares were parked (in their own CDC account or lease) etc. and non viability of Independent Directors on Board of JS Bank so that SECP and SBP may take action accordingly.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption, and achieve the ongoing Zero tolerance against Corruption policy of the Prime Minister,

With Regards,

  
Sohail Muzaffar  
Chairman

Copies forwarded for the information with request to take action under their mandate to:

1. Secretary to Prime Minister, Islamabad.
2. Chairman, NAB, Islamabad.
3. Chairman, PMIC, PM Secreraytite, Islamand
4. Registrar, Supreme Court of Pakistan, Islamabad. With refrence to HRC No 14240-S/2013, specially of concealment of the SECP Inspection Report of JSCL from Honorable Court and NAB of US \$ 4.3 million advisory fee paid for sale of PICT Shares.



Fact Sheet of the Case of PICT Share Traded by BANK JULIUS BAER & CO. LTD

Sr. No	Date	Events
1	7-Dec-11	BANK JULIUS BAER & CO. LTD. opened its trading account with JS Global Capital Limited ("JSGCI").
2	December 30, 2011 to February 24, 2012	Bank bought 2,234,983 shares of Pakistan International Container Terminal Limited ("PICT") at the average rate of Rs. 100.82 through Karachi Stock Exchange Limited.
3	February 01, 2012 to March 13, 2012	Share Price almost increased 100% from Rs. 77.05 to Rs. 155.35
4	7-Feb-12	The financial results for half year ended December 31, 2011 showed Rs. 699.699 million after tax profit with earning per share of Rs. 6.33 and PICT recommended Cash Dividend of 125% (i.e. Rs. 12.5 per share).
5	6-Mar-12	KSE made the public announcement of intention to acquire 35% to 55 of the voting shares of Pier by ICTSI Mauritius Limited, a ' <i>wholly – owned indirect subsidiary of International Container Terminal Services Inc., a company organized under the laws of Mauritius</i> ' under the Listed Companies (Substantial Acquisition of voting Shares and Take Over's) Ordinance, 2002.
6	9-Mar-12	Preliminary Analysis Report prepared by SECP.
7	13-Mar-12	Appointment of Enquiry Officer in the matter
8	15-Mar-12	CEO of JSGCL was asked to provide the information i.e. Account opening form, ledger statements, trading statements of the BANK.
9	21-Mar-12	JSGCL requested for extension of time for submission of reply
10	27 Mar-12	Additional time granted to JSGCL for submission of reply.
11	2-Apr-12	PICT disclosed the material information wherein it was stated

		that on March 30, 2012 ICTSI entered into share purchase agreement with the majority shareholders of PICT together ("Seller's Group") pursuant to which the Seller's group will sell up to 35% of the shares of Pier at Rs. 150 per share.
12	4-Apr-12	Reply of JSGCL was received to the Commission.
13	6-Apr-12	CEO of SGCL was again asked to provide detail of confirmation of amount received and paid to BANK and copies of the correspondence for placement of trading orders.
14	6-Apr-12	CDC was asked to provide the CDC account opening form and CDC activity report of the BANK from December 01, 2011 to March 31, 2012.
15	9-Apr-12	Reply of JSGCL was received to the Commission
16	9-Apr-12	CDC provided the requisite information to the Commission.
17	9-Apr-12	The Executive Director of the BANK at Switzerland was asked to provide the details of the Client who bought the shares from PICT before the disclose of the material information.
18	9-Apr-12	Standard Chartered Bank, a Custodian of the BANK ("SCB") was asked to provide the information regarding the BANK
19	10-Apr-12	CDC was again asked to provide the further information regarding the BANK
20	17-Apr-12	SCB provided the requisite information regarding the BANK. According to the information the BANK bought and sold shares of MCB Bank Limited, Nishat (Chunian) Limited and Nishat Power Limited on behalf of Nottely Corporation Fund based in Panama and PICT shares on behalf of Hiroshi Capital fund B.Va fund based in Curacao Island.
21	17-Apr-12	CDC provided the requisite information to the Commission
22	17-Apr-12	The Executive Director of the BANK refused to provide the



		requisite " information and asked the Commission to provide background and legal basis of the case
23	2-May-12	The financial results of PICT for 'the nine months ended March 31, 2012 showed 1,102.186 million after tax profit with earning per share of Rs. 9.93.
24	15-May-12	The Executive Director of the BANK was again asked to provide the requisite information and all relevant background and legal basis were quoted to him
25	18-May-12	SCB was asked to provide the information regarding the two funds who bought Shares through the Bank.
26	30-May-12	Reminder was sent to the SCB to provide the information sought through letter: dated May 18,2012.
27	31-May-12	The Executive Director of the BANK asked the Commission to contact the Swiss Financial Market Supervisory Authority ("FINMA") for getting the requisite information.
28	4-Jun-12	SCB provided the requisite information.
29	11-Jun-12	The Director / HOD MSCID through email contacted Mr. Ayoub, Senior Financial Research Officer of Trinidad and Tobago SEC and requested him to provide the name of the Regulatory Authority who regulates the Curacao Island situated near South America West Indies.
30	11-Jun-12	The Director HOD / MSCID through email also contacted Mr . Vernon Director of Panama SEC and requested him to provide the name of the Directors of the Nottely Corporation Fund
31	11-Jun-12	Mr. Ayoub suggested that ERROL COVA Head, Investment institutions & Trust Supervision On-Site of Central Bank of Curacao can assist in the subject matter.
32	16-Jun-12	Mr. Vemon vide email suggested the letter signed by the maximum authority of SECP addressed to Superintendent of the Securities Market Superintendancy of Panama along with the precise requisite information will be required to get information.

33	25-Jun-12	ERROL COVA of Central Bank of Curacao vide email was requested to provide the names of beneficial owners of Horoshi Capital Fund B.V.
34	30-Jun-12	Confirmation from ERROL COVA of Central Bank of Curacao was received regarding the SECP mail.
35	11-Jul-12	Official request for information under IOSCO MMoU from SECP was sent to FINMA
36	19-Jul-12	Official request for information under IOSCO MMoU from SECP was sent to Chairman Netherlands Authority for Financial Markets. It is pertinent to mention here that Central Bank of Curacao forms part of the kingdom of the Netherlands.
37	20-Jul-12	Official request for information under IOSCO MMoU from SECP was sent to Chairman Financial Authority of Panama.
38	13-Aug-12	Proposed offer letter issued to shareholders other than those party to the share purchase agreement regarding the Public offer by ICTSI to purchase the shares of PICT.
39	17-Aug-12	FINMA informed regarding the confidentiality clause of IOSCO MMoU.
40	5-Sep-12	Central Bank Cuacao vid letter informed that Amicorp a local representative of Hiroshi fund was advised to provide the SECP the requisite information. If Amicorp falls to provide the requisite information then SECP should contact Central Bank Cuacao within one month of this letter.
41	11- Sep-12	The financial results of PICT for the year ended June 30, 2012 showed 1,410.040 million after tax profit with earning per share of Rs. 12.75
42	13- Sep-12	PICT announced the Book closure date from September 28, 2012 to October 04, 2012 for the purpose of acquiring 15.845% of



		ordinary shares of PICT by ICTSI Rs 150
43	19- Sep-12	FINMA informed that the client of BANK objected to transmission of his data to SECP and now Court will decide the matter.
44	8-Oct-12	ERROL COVA of Central Bank of Curacao was informed that Amicorp did not provide any requisite information to SECP yet.
45	19-Oct-12	JSCL informed that they received Rs, 2,364,992,950 for the sale 15,766,153 ordinary shares of PICT at Rs. 150 per share from ICTSI on deal signed by them.
46	22-Oct-12	The financial results of PICT for the first quarter ended September 30, 2012 showed 390.840 million after tax profit with earning per share of Rs, 3.58.
47	05-Nov-12	CDC was asked to provide the CDC Balance Report of the Bank.
48	07-Nov-12	Requisite information was received from the CDC.
49	08-Nov-12	Requisite information was received from the CDC.
50	12-Nov-12	CDC informed that 2,235,083 shares of PICT lying in the CDC account of the Bank were frozen
51	5-Dec-12	Reminder was sent to FINMA regarding the request for information.
52	17-Dec-12	The Share Price of PICT touched the highest level of Rs. 283.99 during the day and at the day end closed at 275.53.
53	16-Jan-13	FINMA informed that he has face strong opposition from BANK's client to the transmission of this data and documents, The matter is in court and will take some time,

54	24-Jan-13	The PICT in its EOGM announced cash dividend of 125%.
55	28-Jan-13	ERROL COVA of Central Bank of Curacao was contacted telephonically and they informed that client has objected to disclosure of information to SECP.
56	26-Feb-13	The financial results of Pier for the six month ended December 30, 2012 showed 667.653 million after tax profit with earning per share of Rs. 6.12.
57	13-May-13	FINMA has regretfully informed that as of yet there is no update in the matter FINMA assured that SECP case remains on priority; however, due to the procedure prescribed by Swiss law, it is still difficult to communicate the final date of respond to SECP request
58	16-Jun-13	SMV Panama responded the SECP request under IOSCO MMoU SMV Panama provided the selective information and informed that Nottely Corporation is not registered at the SMV nor have been authorized to participate in securities market in or from Panama SMV Panama failed to provide the material information.
59	29-Aug-13	The .financial results of PICT for the half year ended June 30,2013 showed 1144.731 million after tax profit with earning per share of Rs. 10.49. PICT announced dividend of 140%.
60	30-Aug-13	Share price was closed at Rs. 210.94.



Adil Gillani

(10)

**IN THE SUPREME COURT OF PAKISTAN, ISLAMABAD**  
(Original Jurisdiction) Regd. A.D.

HRC No. 14249-S/2013

Application: Syed Adil Gillani  
5-C, 2nd Floor, Khyaban-e-Ittehad, Defence Housing  
Authority, Karachi

To

The Chairman,  
National Accountability Bureau (NAB),  
Islamabad.

Take notice that in pursuance of the orders of HCJP on the above noted HR case, you are directed to furnish progress report. You are, therefore, required to do the needful on/or before August 30, 2014 .

Islamabad: August 12, 2014

  
Director  
Human Rights Cell  
Phone # 051-9220581/319  
Fax # 051-9219516

U  
IN THE HON'ABLE SUPREME COURT OF PAKISTAN, ISLAMABAD


(Original Jurisdiction)

HRC NO. 14249-S/2013

Syed Adil Gillani R/o 5-C, 2<sup>nd</sup> Floor, Khaban-e- Ittehad, DHA, Karachi.

Respectfully Sheweth:

1. In compliance with directions of this court order dated 12.08.2014 comments from Securities and Exchange Commission of Pakistan (SECP) <sup>were</sup> filed on 04.06.2013. The same are reproduced as under:
  - a. Public has suffered losses of billions of Rupees due to inside trading, and favoritism worth \$ 4.3 Million in one case to the son of Jehangir Siddiqui, Chief of brokerage house Mr. Ali Jehangir. As regard to payment of Advisory Fee to one of the director of JSCL, the matter is under probe by the Commission.
  - b. Illegalities in the trading of Azgard Nine Ltd. Shares. The commission has filed a criminal complaint under section 17 read with Section 29 of the Securities & Exchange Ordinance, 1969 against those who were found responsible for violation of Section 17 of the Ordinance.
  - c. Sale of 100 million Shares of Agritech by Azgard Nine Ltd. To the National Bank of Pakistan (NBP). This matter pertains to NBP and State Bank of Pakistan (SBP) in not in a position to offer any comments in the matter.
2. Legal opinion for authorization of inquiry has been obtained. The matter is pending before Chairman NAB. The case would be forwarded to regional NAB concerned for conducting inquiry subject to approval of Competent Authority.
3. Report is submitted, please.

  
(Muhammad Raza Khan)  
ADPGA (SC)

Dated: 26-08-2014



No: EMD/233/644/02 - 152 P

Mr. Rashid Sadiq,  
Chief Executive Officer,  
RS Corporate Advisory (Pvt) Limited,  
First Floor, Plot No. 62, Central Commercial Area,  
Block-T, Phase -2, Defense Housing Authority,  
Lahore Cantt, Lahore.  
Fax : 042-35747905

Dear Sir,

Subject: Inspection under Section 231 of the Companies Ordinance, 1984

Dear Sir,

Please refer to the Inspection Order under Section 231 of the Companies Ordinance, 1984 (the "Ordinance") dated April 08, 2013 (the "Order") of the Commission.

2 In this regard, please find enclosed the Inspection Report for your comments.

Please furnish your reply within 14 days from the date of this letter.

Shahzaf Afzal Khan  
Joint Director (Enforcement)

SECURITIES & EXCHANGE  
COMMISSION OF PAKISTAN  
NIC Building, 63, Jinnah Avenue,  
Islamabad, Pakistan

PAGE: +92-51-9207091-4, Fax: +92-51-9210592; 9204915, Email: webmaster@secp.gov.pk, Website: www.secp.gov.pk





# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Enforcement Department  
Company Law Division

Name of Company Jahangir Siddiqui & Company Limited (JSCL)

Registered Address 6<sup>th</sup> Floor Fayal House, Shakra-e-Faisal, Karachi

Period of Inspection July 1, 2004 to date

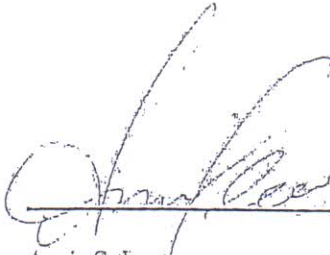
Scope of Inspection The scope was to inspect the books of accounts and books and papers of JSCL related to the matters raised in Inspection Order dated April 8, 2013

Date of Inspection Report January 2, 2014

Inspectors Mr. Shahzad Afzal Khan, Joint Director  
Mr. Amir Saleem, Deputy Director  
Mr. Zulfiqar Ali-Mehr, Assistant Director

Report Submitted to Mr. Ali Azeem Tkrani, Head of Department Enforcement,

## Signatures

  
\_\_\_\_\_  
Amir Saleem  
Deputy Director  
\_\_\_\_\_  
Shahzad Afzal Khan  
Joint Director



(1875)

INSPECTION REPORT  
OF  
JAHANGIR SIDDIQUI & COMPANY LIMITED

UNDER SECTION 231 OF THE COMPANIES  
ORDINANCE, 1984

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1. Background of the case
2. Action taken by the Commission and reply of the Company
3. Inspection Order under Section 231 of the Ordinance issued
4. Inspection Memo dated April 09, 2013
5. Inspection Memo dated April 10, 2013
6. Inspection letter dated July 23, 2013
7. Observations
8. Potential Violation
9. Conclusion



Background:

Annual Audited Accounts of Jahangir Siddiqui & Company Limited (the "Company" or "JSCL") for the eighteen months ended December 31, 2012 ("Accounts 2012") filed with the Securities and Exchange Commission of Pakistan (the "Commission") in pursuance of Section 233 of the Companies Ordinance, 1984 (the "Ordinance") shows an increase of Rs. 430.944 million, i.e. 3591% on account of Advisory Fee. Advisory Fee has been increased from Rs 12.00 million (2011) to Rs 442.944 million (2012). Furthermore, Note 26.4 to the Accounts 2012 states "Represents amount paid/payable to an individual and a director for advisory services rendered in term of their respective advisory agreements duly approved by Board of Directors". The said advisory fee includes Rs 430,944 million, which is paid to a Director of the Company.

Furthermore, the Commission has received number of complaint filed by various stakeholders/shareholder of the Company, wherein massive concerns have been raised by these shareholders regarding payment of Rs 430,944 million to a director of the Company. Brief of the complaint is as follows

- a. M/s Siddiqui & Raza on behalf of shareholders of the Company filed the complaint on the matter of payment of bonus of Rs 430,944 million to Mr. Ali Jahangir Siddiqui ("AJS"). In the said complaint, the complainant alleged that
  - That JSCL sold its entire shareholding in Pakistan International Container Terminal Limited ("PICTL") to a company named ICTSI Mauritius Limited ("ICTSI") (Page 58, Note 10.4.1 - Annual Report of JSCL).
  - That this decision does not make a lot of commercial sense since in the last financial year, PICTL had declared a cash dividend of Rs. 12.5/- per share. A back of the envelope valuation indicates that the PICTL share has a fair value of Rs. 200 per share.
  - That our clients have serious doubts on the veracity of this transaction. They believe that the PICTL shares were sold at below the market price as is evident from the sale of said shares by Bank Julius Baer to ICTSI which is already under investigation by your authority. Our clients seriously question whether the said sale was for the good of the company or for someone else.
  - That on Page 65, Note 26 - Annual Report of JSCL, it is stated that the company paid an amount of Rs. 442,944,000/- as Advisory Fee. That on Page 66, Note 26.4 of the same report, it is clearly stated that the said amount was paid to an individual and a director for advisory services rendered to the company. We are not aware of the services provided by the Director to clinch the deal with ICTSI, the amount of work done, and the linkage between the Bank Julius Baer deal and the JSCL deal. The shareholders are not aware if the transaction was actually approved by the BOD and whether the decision was a unanimous decision or who dissented or did not attend. Lot of relevant questions remains answered in the said transaction.
  - That on Page 69, Note 33 - Annual Report of JSCL, the shareholders are informed that an amount of Rs. 430,944,000/- was paid by the company to one of its directors.

The Copy of the said complaint is enclosed as Annex - A.

- b. Secondly, another complaint has been received from the shareholder of the Company namely Haji Ghani Usman, which contains the new item of Pakistan Today, captioned "Rs 430m for son, 0.75 paisa for shareholders". In the said news item, it was mentioned that the Board of directors of the Company awarded over Rs 430 million to a blue eyed non-executive director of the Company. (Copy of complaint and the news item is enclosed as Annex - B.

It was also highlighted in the Media especially the news item published in the daily "Pakistan Today" dated March 29, 2013, the reference of which is also placed at the website of Cable News Network (CNN) at <http://ireport.cnn.com/docs/Doc-948883> that Rs 430.944 million has been paid to Mr. Ali Jahangir Siddiqui, Son of Mr. Jahangir Siddiqui. The said fee is paid to Mr. Ali as an advisory fee for signing the Share Purchase Agreement ("SPA") with ICTSI Mauritius Limited, under which the Company had in March 2012 sold about 13 million of its voting shares in Pakistan International Container Limited ("PICT") at a rate of Rs 150 per share.

#### Action taken by the Commission and reply of the Company

Based on the above said observations, the Commission vide letter dated April 1, 2013 (Annex - C) directed the Company to clarify the following and provide the information sought herein;

- a. Substantiate the advisory services given by Mr. Ali Jahangir Siddiqui.
- b. Furnish the certified copy of Advisory Agreement entered into with Mr. Ali Jahangir Siddiqui.
- c. Furnish the minutes of board meeting in which said Advisory Agreement was approved along with attendance sheet.
- d. Furnish the evidence of compliance of Section 214, 216 and 218 of the Ordinance.
- e. Evidence that the transaction, carried out in respect of advisory fee agreements with the Director, is on the basis of arm's length.
- f. Complete detail of transactions against which advisory services has been provided, along with the evidence of receipt of funds by the Company arising from such transactions.

Moreover, the Company was also advised to explain the transaction in respect of payment of advisory fees to the Director of the Company before the shareholders of the Company in the upcoming Annual General Meeting to be held on April 5, 2013.

The Company was directed to furnish the requisite explanation/information to this office by Close of Business on April 2, 2013, being urgent in nature.

The Company in reply vide its letter dated April 02, 2013, (Annex - D) instead of providing requisite documents/ information, sought a time of two weeks from the Commission. The Company also called for the copies of the complaints filed by the complainants.



The Commission in response to the aforesaid letter dated April 05, 2013, asked the Company to provide the requisite information/ documents by Close of Business on April 5, 2013(Annex - E), as the matter related to past transaction and should be readily available with the Company. The Commission also forwarded the copies of the required Complaints to the Company as desired.

Inspection Order under Section 231 of the Ordinance issued

It was observed that the Commission has not received the requisite response from the Company, within the stipulated time period. Therefore, considering the nature of transaction the Commission by invoking the provisions of Section 231 of the Ordinance issued Inspection Order on April 08, 2013 (Annex - F) for inspection of books, book of accounts and books and papers of the Company, wherein, without limiting the scope of inspection, the inspectors were directed to conduct inspection on all aspects of the Company and shall, after scrutiny of all the records and books of accounts, books and papers including but not limited to the matter relating to substance and legality of the above aforementioned matter transaction and furnish a report, inter alia, on material and unusual transactions/occurrences relating to affairs of Company.

Inspection Memo dated April 09, 2013

In this connection, Inspection Team asked the Company to furnish the certain information vide Inspection memo dated April 09, 2013(Annex - G). The Company in reply to the Inspection Order and the Inspection Memo submitted the reply (Annex - H) to the queries of the Inspection Team, detail of which is as follows:

Sr. No.	Query	Reply
a.	Substantiate the advisory services given by Mr. Ali Jehangir Siddiqui (AJS).	<p>Advisory fee was paid to AJS, a Non-Executive Director of the Company in terms of Advisory Agreement executed on May 02, 2005 between the Company and AJS.</p> <p>AJS has been instrumental in earning total gain of Rs. 2,948 million from the sale of investment in Pakistan International Container Terminal Limited (PICT). In view of the above, the Board of Directors of the Company approved a bonus of Rs. 424.944 million other than his normal advisory fee of Rs. 9 million during the eighteen month period ended December 31, 2012.</p> <p>AJS was also instrumental in the development, growth and diversification of the Company's business thereby greatly benefitting the Company and its shareholders. The adviser has identified, negotiated and finalized the strategic investments and have planned, motivated and implemented</p>

		<p>new projects. These investments and projects have enhanced the profitability of the Company besides strengthening and enhancing the size of the company. AJS has also advised the Company on enhancing the paid up capital of the JS Bank Limited through transfer of shares of JS Global Capital Limited and JS Investments Limited to JS Bank Limited, a subsidiary of JSCL to meet the JS Bank's minimum capital requirement. As a result of these share swaps, the Company managed to save cash outflow of Rs. 1,686 million.</p> <p>To conclude, because of the services and extra efforts of AJS, the Company entered into Share Purchase Agreements with the buyer to sell 23,000,000 shares of PICT for a sum of Rs. 3,630.85 million which resulted in capital gain aggregating to Rs. 2,453.50 million.</p> <p>The Advisory services of AJS in respect of sale of PICT shares can be elucidated from his briefings to the Board of Directors in the Meetings held on March 5, 2012, and March 30, 2012. Relevant extracts of the minutes are attached herewith.</p> <p>The above clearly demonstrate how Mr. Ali Jehangir Siddiqui, in his capacity under the advisory agreement, has been instrumental in advising the Board on the matter of sale transaction of PICT and negotiated the most beneficial deal with the buyer for the maximum financial benefit to the Company and its shareholders.</p> <p>It would not be out of place to mention here that prior to the sale of PICT shares, the Company also received from PICT one-off cash dividend of Rs. 287.50 million in addition to a cash dividend of Rs. 92 million and an in specie dividend of Rs. 115 million in the form of 11,500,000 ordinary voting shares of Pakistan International Bulk Terminal Limited. As a result, the Company earned total gain of Rs. 2,948 million from its investment in PICT during the period.</p>
b.	Furnish the certified copy of Advisory Agreement entered into with AJS.	A copy of Advisory Agreement entered into with AJS is enclosed



c.	Furnish the minutes of the Board Meeting in which the said Advisory Agreement was approved along with attendance Sheet.	The extracts of minutes of the Board Meeting in which the said Advisory Agreement of AJS was approved along with attendance sheet are enclosed.
d.	Furnish the evidence of compliance with section 214, 216 and 218 of the Ordinance.	It may be noted that AJS and other interested directors disclosed their interest in terms of Section 214 of the Companies Ordinance, 1984 and did not participate in the discussion of or vote as required under Section 216 of the Companies Ordinance, 1984. Section 218 in our view is not relevant in the context of this matter.
e.	Evidence that the transaction, carried out in respect of advisory fee agreements with the Director, is on the basis of arm's length.	The bonus paid to AJS is in line with the international standards and any person other than AJS providing similar services would have received the same compensation for his efforts and services.
f.	Complete details of transaction against which advisory services has been provided, along with evidence of receipt of Funds by the Company arising from such transaction.	<p>Advisory fee and bonus was paid to AJS in terms of Advisory Agreement for being instrumental in identifying the buyer, negotiating and finalizing the deal resulting into sale proceeds of 3,630,405,633.85 (net of transaction cost) for 23,000,000 shares. AJS was also instrumental in advising the Company on transfer of shares of JS Global Capital Limited and JS Investments Limited to JS Bank Limited to meet the Bank's Minimum Capital Requirement. As a result of these share swaps the Company managed to save cash outflow of Rs. 1,686 million. Copies of bank statement reflecting the amounts credited against the sale proceeds are attached.</p> <p>The transaction against which the advisory service has been provided is already explained in detail through our letter Ref: CL-103/13 dated April 04, 2013.</p> <p>Further, we would like to inform you that we have adequately explained the transaction in respect of payment of advisory fees to AJS to the shareholders of the Company in the Annual General Meeting held on April 05, 2013 as advised by you.</p>
g.	Criteria adopted for valuation of shares of PICT, which have	The Company in this regard furnished the copy of Offer letter, copy of public announcement of offer,

	been sold by the Company, along with supporting documents	which are related to public offer made under the provisions of the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance 2002. The Company has not furnished any relevant information and documents in this regard.
h.	Complete Profile of the buyer namely ICTSI Mauritius Limited including but not limited to the List of shareholders, board of directors, management and beneficial owner, if any, since January 2010.	The Company again furnished the copy of public announcement of offer as profile of ICTSI. The Company Secretary states that they do not have such profile of the buyer of ICTSI.
i.	Approvals granted by State Bank of Pakistan in respect of buying and selling of the PICT shares, if any.	The Company informed that no such approval is required from the state Bank of Pakistan for the said transaction.
j.	Copy of the Ledgers of relevant accounting heads involving transactions relating to purchase and sale of shares of PICT.	The Company has furnished the ledger accounts of JS Bank Ltd, other Long Term Investment, and Gain on Sale of Available for Sale Equity Instruments, Brokerage on shares.
k.	Detail in respect of directors of the Company, who are representing Mr. Jahangir Siddiqui and M/s Jahangir Siddiqui & Sons on the board of the Company.	The Company has not furnished any detail in this regard.

Inspection Memo dated April 10, 2013.

The reply of the Company was analyzed which warranted further inquiry. Therefore, following additional information was sought from the Company; vide inspection Memo dated April 10, 2013 (Annex - I). The Company submitted the reply (Annex - J), Para wise query and respective reply is as follows:

Sr. No.	Query	Reply
a.	Please provide certified copies of minute book, attendance sheet and notices of meeting pertaining to the Advisory Fee and Bonus, including minutes of meeting dated	Certified copies of the attendance sheets and notices of the board meetings held on December 03, 2004, February 26, 2005; April 23, 2005, September 13, 2006, August 11, 2007, August 16, 2008, and August 30, 2012 are enclosed as Annexure 'A'. These documents have also been



	February 26, 2005, September 13, 2006, August 11, 2007, August 16, 2008 and August 30, 2012, along with attendance sheets.	emailed to you today. Certified copies of the minutes were provided to the Inspection Team during inspection.
b.	Please furnish the supporting documents in compliance of Clause 3.02 of the Advisory Agreement entered into with AJS, especially as mentioned in Para (i) & (ii), in conjunction with stages defined in board meeting dated February 26, 2005.	The advisory services provided by Mr. Ali Jehangir Siddiqui (AJS) have been discussed in our earlier submission dated April 08, 2013. Further, these have also been covered under the minutes of the meeting of Board of Directors of the Company held on August 30, 2012 read with the minutes of Board meetings held on March 05, 2012 and March 30, 2012. Certified copies of the minutes and/or extracts of the above Meetings have been furnished to SECP Inspection Team. The sale transaction of PICT shares resulted in capital gain of Rs. 2.45 billion and cash sale proceeds of Rs. 3.63 billion.
c.	Process of conducting the board meeting especially process of conference call.	All the board members are furnished with the notice of the meeting of the board of directors along with all working papers at least 7 days before the scheduled date of the meeting. The board members who are physically present gather in the board room for the meeting. However, the directors who are not able to attend the meeting physically, attend the meeting through teleconferencing system in the board room.
d.	Criteria of setting the price of Rs. 150 per share, including contribution of Mr. Ali Jahangir Siddiqui ("AJS") in the said matter.	The price was the final offer from ICTSI Mauritius Limited based on ICTSI's study of Pakistan International Container Terminal Limited (PICT) Accounts. The price came with a number of terms that significantly reduced value for JSCL such as giving significant representations and warranties. AJS was instrumental in negotiating terms that allowed JSCL to realize this value rather than have terms that could allow the buyer to recoup some of the price against warranty breaches or performances. AJS was also instrumental in soliciting rival bids which resulted in early execution of the Share Purchase Agreement with ICTSI.
e.	Please specify the role of Investment Committee in the	The investment committee is a management committee chaired by the CEO and comprises three

	<p>sale of shares of PICT along with functions of the Investment Committee.</p>	<p>members i.e. the Chief Executive Officer, Chief Financial Officer and the Head of Investment. The investment committee is mandated to:</p> <ol style="list-style-type: none"> <li>1. act with due care, skill and diligence in carrying out its duties and responsibilities;</li> <li>2. ensure that investment decisions are consistent with the objectives and investment policy of the company;</li> <li>3. ensure that investments do not deviate from applicable laws, rules and regulations;</li> <li>4. develop and follow internal investment restrictions and policies;</li> <li>5. review the performance of the investment portfolio on a regular and regular and timely basis;</li> <li>6. ensure that proper record of meetings and investment decisions is maintained;</li> <li>7. record and sign its decisions along with rationale and objective for buying or selling each security; and</li> <li>8. Develop criteria for appointing a diverse panel of brokers.</li> <li>9. As far as the role of investment committee in the sale of PICT is concerned, since the proposal for the said transaction was initiated by AJS, it did not entail involvement of the investment committee.</li> </ol>
<p>f.</p>	<p>Functions of Investment department along with its relevant reporting lineup.</p>	<p>The head of investments reports to the CEO, Investment Committee and Board of Directors (if required). The functions of investment department are as follows:</p> <ul style="list-style-type: none"> <li>• Fundamental Analysis</li> <li>• Annual and quarterly results analysis; detailed financial statement analysis</li> <li>• Meetings with investee management</li> <li>• Record keeping and analysis of KSE notices, external research and newspaper reports</li> <li>• Industry and competitor analysis</li> </ul> <ol style="list-style-type: none"> <li>1. Legal/ Decision making <ul style="list-style-type: none"> <li>• Attendance of shareholder meetings</li> <li>• Record of correspondence with and from the investees</li> <li>• Keeping track of investment decisions, board decisions, nominees of investee</li> </ul> </li> </ol>



		<p>boards</p> <ol style="list-style-type: none"> <li>2. Portfolio Performance Analysis <ul style="list-style-type: none"> <li>• Monitor investment status and returns, report to IC and board</li> </ul> </li> <li>3. Investment Management <ul style="list-style-type: none"> <li>• Investment Policy and strategy formulation and updates</li> <li>• Secretary to Investment Committee</li> <li>• Record keeping of IC decisions</li> <li>• Recommend investment ideas for IC approval</li> <li>• Execution of investment trades</li> <li>• Deal with panel brokers, evaluate and enlist new brokers</li> </ul> </li> <li>4. Risk Management <ul style="list-style-type: none"> <li>• Set limits on investment actions and monitor compliance</li> </ul> </li> <li>5. Settlement <ul style="list-style-type: none"> <li>• Oversee settlement and operations of portfolio trades</li> </ul> </li> <li>6. Company rating review <ul style="list-style-type: none"> <li>• Act as liaison between rating agency and company for annual rating review of entity and outstanding TFC issues</li> </ul> </li> <li>7. MIS <ul style="list-style-type: none"> <li>• Direct business logic of MIS implementation for portfolio and risk management</li> </ul> </li> <li>8. Perform any other work assigned by the CEO, Investment Committee and Board of Directors</li> </ol>								
g.	Compensation committee minutes, notice of meeting and attendance sheet with respect to payments of Bonus made to AJS and Mr. Jahangir Siddiqui ("JS").	The Compensation Committee usually meets before the board meeting and looks into the matters for any compensation and submits its recommendations in the board meetings. No separate minutes are maintained with us for the Board Compensation Committee.								
h.	Detail of payment evidence of Rs 442 million - 424 million (in case of PICT), including break up/reconciliation Rs 442 million along with description.	<p>The advisory fee is paid as follows</p> <table border="0"> <tr> <td>Mr. Jahangir Siddiqui</td> <td>9 million</td> </tr> <tr> <td>AJS</td> <td>9 million</td> </tr> <tr> <td>Bonus/Additional Ad. Fee</td> <td><u>424.944 million</u></td> </tr> <tr> <td>Total</td> <td><u>442.944 million</u></td> </tr> </table>	Mr. Jahangir Siddiqui	9 million	AJS	9 million	Bonus/Additional Ad. Fee	<u>424.944 million</u>	Total	<u>442.944 million</u>
Mr. Jahangir Siddiqui	9 million									
AJS	9 million									
Bonus/Additional Ad. Fee	<u>424.944 million</u>									
Total	<u>442.944 million</u>									

i.	Certified copies of Share Purchase Agreements and Shareholders Agreement in respect of sale of 23 million shares of PICT, along with meeting of board of directors and attendance sheets, since the shares are sold in two legs to ICTSI.	Certified copies of Share Purchase Agreements and Shareholders Agreement in respect of sale of 23 million shares of PICT, along with minutes of the meeting of the board of directors and respected attendance sheets in which the said agreements are enclosed as Annexure 'B' and already emailed to you today.
j.	Please substantiate the international standards and bench marks adopted for payment of bonus to AJS as mentioned in your letter dated April 08, 2013. Moreover, any study or research conducted by the Compensation Committee in this regard.	The bonus / additional advisory fee of Rs. 424.944 million paid to AJS is 14.4% of total gain of Rs. 2,948 million on PICT transaction and 11.7% of sale proceeds of Rs. 3,630 million of PICT shares. The additional advisory fee is as per the international benchmarks as can be seen in the articles at the below mentioned <a href="http://wiki.fool.com/HedgeFundCompensationStructure">http://wiki.fool.com/Hedge Fund Compensation Structure</a> <a href="http://www.askivy.net/content/private-equity-compensation-structure">http://www.askivy.net/content/private-equity-compensation-structure</a>
k.	Certified copy of minutes of general meeting in which election of director is conducted during 2004, 2007 and 2010 along with the voting details. Also furnish the name of shareholders whom are represented by directors on board in each of the above elections.	Certified copy of the ballot summary for election of directors held on November 24, 2004 is enclosed as Annexure 'C' and already emailed to you today. Certified copies of the minutes of general meeting in which the election of directors is conducted during 2004, 2007 and 2010 is already provided during inspection.
l.	Evidence of receipt of funds on sale of 23 million PICT shares.	Evidence of receipt of funds on sale of 23 million shares is already provided to the Inspection Team during your inspection.
m.	Any correspondence with ICTSI of AJS, as evidence of his efforts for sale of said shares, to substantiate his efforts for the sale of shares of PICT.	The negotiations were done mostly over conference calls. Such types of negotiations are usually done over calls and meeting rather than emails as extensive discussions are required. Further, two emails from AJS to the Chief Executive officer of JSCL are enclosed as Annexure 'D'.
n.	Whether identification of ICTSI as buyer, done by AJS or other major shareholders of	Three buyers exhibited interest, two of which were serious. Of those two buyers, AJS solicited the interest of the one that did not close. For



	PICT.	confidentiality reasons, we cannot disclose the other buyer without their consent. However, the other buyer was a major foreign company. ICTSI was not solicited by AJS but in the end it was ICTSI's offer that was accepted.
o.	As mentioned in your letter dated April 08, 2013, that AJS is instrumental in development and growth of Company which include his advice on enhancing the paid up capital of JS Bank. However, the payments mentioned in your correspondence reflects that no bonus is given to him in the regard. Please clarify.	The Human Resource and Remuneration Committee (formerly Compensation Committee) did not consider any bonus on advising the Company on transfer of shares of JS Global Capital Limited and JS Investments Limited to JS Bank Limited by way of swapping to meet the Bank's Minimum Capital Requirement. These transactions saved cash out flow of Rs. 1.69 billion which would otherwise require cash investments and would have resulted in interest expense for the Company.
p.	Ledger of Advisory fee along with payment evidence.	The ledger of advisory fee paid is already made available to the Inspection Team. Payment details are attached as Annexure 'E'.
q.	Copy of the Management Letter issued by the Statutory Auditors for the financial year ended December 31, 2012.	The audit report was signed on March 04, 2013. As per the revised Code of Corporate Governance, the auditors are required to issue Management Letter within 45 days of signing the audit report which will end on April 18, 2013. We will be mailing you Management Letter once it is finalized by our auditors.
r.	List of member as on date of last three elections of directors.	List of member of last three elections of directors has already been emailed to you.
s.	Copy of material information disseminated to the stock exchanges in respect of sale of 7.2 million shares thorough JS Global Limited.	The sale transaction of 7.2 million shares of PICT was reported to the Karachi Stock Exchange Limited on November 08, 2012 under the Member to Member transactions section of notices (copy of notice attached as Annexure 'F').

Later on, the Inspection team vide its letter dated July 23, 2013 sought the certain deficient information from the Company. The Company in response vide its letter furnish the basis of calculation of bonus paid to AJS, which is as follows:

Basis of calculation of Bonus paid to Mr. Ali Jahangir Siddiqui, along with working.  
The additional fee was paid to AJS at the rate of 20% of the appreciation in the value of shares of PICT due to announcement at KSE regarding the MoU by the Company along with other majority shareholders of PICT with ICTSI Mauritius Limited to sell to ICTSI between 35% and 55% of the issued and outstanding shares of PICT at a price of Rs 150 per share.

Average share price of PICT (March 10 to March 12) - A	Rs 77.57
Price Jumped after announcement - B	Rs 150.71
Value appreciation per share - C = B-A	Rs 73.14
Number of Shares - D	23,000,000
Value appreciation per share (E = D * C)	Rs 1,683.220 million
Cash dividend @ Rs.12.50 per share - F	Rs 287.50 million
Specie Dividend (G)	Rs 155 million
+Total value accretion (H= E+F+G)	Rs 2,214.72 million
Bonus Rate (I)	20%
Amount of Bonus	Rs 424.944 million

The Company further states that the above calculation is based on Rs 150.71 per share however, it is worth mentioning that we have sold 15,766,153 shares @ Rs 150 per shares and 7,233,847 shares @ 175 per share resulting in significant higher gain.

#### Observations

The information provided by the Company has been analyzed and followings have been observed in this regard

a. No documents to substantiate efforts of AJS furnished.

Company has not furnished any document, to suffice that AJS had made any effort in respect of finding the potential buyer for the sale of shares of PICT, except few emails with ICTSI for executing the said transaction. It is worth mentioning that ICTSI jointly signed the SPA with Haleem Siddiqui Group and JS Group, wherein Haleem Siddiqui Group was leading the transaction holding 47.24% shares of PICT. Review of SPA does not substantiate role of AJS for executing the said transaction. This prima facie shows that sale of shares of PICT cannot be treated as credit of AJS, which afterward was used as justification for payment of huge bonus to AJS.

Minutes of board meeting dated March 05, 2012 and March 30, 2012, neither provides evidence of extra efforts/services nor technical opinion/advice of AJS for sale of PICT shares.

Mr. Ali Raza Siddiqui, brother of AJS, was on board of PICT, immediately before the transaction, which shows that he was well in picture of the sale of PICT shares by major shareholders of PICT.



Moreover, no evidence substantiating role of AJS for selling 7.233 million shares of PICT has been produced by the JSCL. A resolution was circulated on October 17, 2012 for board approval for sale of 7.233 million remaining shares of PICT, at price of Rs 175 per share. This agenda item was discussed in Board meeting dated October 30, 2012. The said resolution does not in any way define the role AJS in this regard.

- b. Overlapping Roles for executing same function- AJS Vs Investment Department/Committee  
JSCL has an Investment Committee, which shows that Mr. Ali Jahangir Siddiqui *prima facie* appears to defunct advisor. Beside this Investment Department is also functional in JSCL.  
Functions of the Investment Department, provided by the Company include Fundamental Analysis, Legal/Decision Making, Portfolio Performance Analysis, Investment Management, Settlement, Risk Management, Company Rating Review, MIS etc.  
Therefore, considering the role of investment committee and function of investment department, role of AJS in execution of said transaction *prima facie* appears to be superfluous.
- c. Market price as on date of signing the SPA i.e. Rs 135 per share.  
It is observed that share price of PICT as on March 30 2012 was Rs 135 per share. Therefore, argument of AJS negotiated a better price with ICTSI *prima facie* cannot be substantiated. Moreover, the basis of calculation of bonus is the price differential of the average market price from March 2010 to March 2012 and price jump after the announcement of takeover, which is not the relevant price for such calculation. The price before the announcement was Rs 135 per share.
- d. Fair Value of Shares to be recorded in Books of Accounts in absence of any SPA  
Market price of PICT share as on March 30, 2012 was Rs 135 per share. This fact reveals the unrealized gain had to be accrued on the shares of PICT according to the aforementioned price as on March 31, 2012 even without any SPA. Therefore, the actual gain by virtue of the two SPA dated March 30, 2012 and November 2, 2012 is the differential of the market price of the share before and after the announcement. Hence the basis of calculation of bonus, in terms of price differential between the average market price from March 2010 to March 2012 and price after the adjustment has no relevance and is completely unjustified.
- e. Noncompliance with Company's own decisions for payment of bonus  
Minutes of the meeting dated February 26, 2005 states that bonus will be determined by the Board at the end of financial year on recommendation of Compensation Committee. However, it is observed that the Board in its meeting dated August 30, 2013 approved the bonus to AJS at the tune of 20% of the value appreciation of Rs 2.124 billion accrued to JSCL due to propose sale of 13 million shares of PICT.

In this regard, following are important to be noted

- Bonus is not paid at the end of financial year of the Company, which is December.
- There is no formal meeting of Compensation Committee for recommendation of bonus, rather member of Compensation Committee, during board meeting proposed the bonus.
- The bonus is paid before completion of the sale process, i.e. shares of PICT were sold in October 2012, which is contradiction of the board resolution and clause 3 of the Agreement.
- Bonus is paid on accrued profit not the realized profit.

f. Inconsistent decisions

It was argued that AJS also advised Company to meet the MCR of JS Bank Limited, which is considered as milestone achievement. In this regard, it is observed and told to Inspection Team that no bonus on this transaction was paid to AJS. This shows contradiction of the JSCL stance that at one end the transaction of JS Bank which is regarded as the milestone achievement for saving cash outflow of Rs 1.686 billion, but no bonus is paid to AJS, but in case of PICT, where no document as evidence for his efforts to sale shares of PICT, is furnished; a huge bonus is paid to AJS. The aforesaid also reflects that neither the remuneration committee nor Board of Directors adopted consistent policy for awarding bonus to AJS.

g. Approved criteria not followed for payment of Bonus

The Company in its board meeting dated February 26, 2005, wherein two step criteria was approved by the board for payment of bonus to AJS. It is stated that advisors shall be awarded bonuses at the end of each financial year in two stages

Stage - 1 to introduce and bring to the company any product/project/business which may be accepted by the Company.

Stage - 2 on accomplishment of the project/product/business, of the benefit of the Company resulting in profitability to the group and favorable impact on the balance sheet.

Moreover Clause 3.02 of the Advisory Agreement requires that

- Any business brought to JSCL which is attributable to the initiative and efforts of the advisor and is accepted by the board of directors of JSCL; and
- The task completed through advisor endeavor and resultant profitability to JSCL or other JS group companies and favorable impact on the financial statements thereof.

In this regard, it is observed that no substantive evidence of board meeting has been furnished in which introduction and bringing business/project/product to the Company for acceptance was presented by AJS. This shows that payment of bonus was



not in spirit of the Advisory Agreement and Board Approval wherein criteria was specified for payment of bonus.

- h. Advisory Agreement not approved by the shareholders  
Advisory Agreement has not been approved by the shareholder.
- i. Noncompliance with the provisions of Section 214 and 216 in several meeting of board of directors  
Board in its meeting dated
- o September 13, 2006 approved the bonus of Rs 20 million to Mr. Jahangir Siddiqui and Rs 70 million to Mr. Ali Jahangir Siddiqui.
    - No project/business has been discussed in the meeting which brought profit to the Company and that causes to be the basis of bonus.
    - No compliance of 214 & 216 is observed in the said meeting.
  - o August 11, 2007 approved the Commission/advisory fee of Rs 80 million and Rs 25 million to Mr. Ali Jahangir Siddiqui and Mr. Jahangir Siddiqui.
    - No compliance of 214 & 216 is observed in the said meeting
  - o August 16, 2008 approved the bonus of Rs 100 million each for Munaf Ibrahim, and Ali Jahangir Siddiqui.
    - No compliance of 214 & 216 is observed in the said meeting
  - o Mr. Mazhar Ul Haq Siddiqui, uncle of AJS, explained the agenda item to members regarding the payment of bonus to AJS which ultimately landed into payment of bonus of Rs 424 million to AJS. This prima facie violates provisions of Section 214 and 216 of the Companies Ordinance 1984. Moreover, it is also observed that minutes of the said meeting were also signed by Mr. Mazhar Ul Haq Siddiqui as chairman of the Board.
- j. Section 173 of the Ordinance - Non compliance  
Minutes of meetings of the board meeting and shareholder meeting were placed in a folder which was not even numbered. Properly maintained books of the minutes were not kept by the Company and this was inconsistent with the provisions of Section 173 of the Ordinance.
- k. Circular No. 30 - Reference No. CLD/ENF/D(A/C)/17/2003, Attendance of Directors in the Board Meetings through Video Conferencing, dated December 31, 2003  
Advisory Agreement of AJS was approved in the board meeting held on February 26, 2005. Attendance sheet of the said meeting shows that there were 9 members of the board; Out of nine, Mr. Mazhar Ul Haq Siddiqui, Mr. Ali Raza Siddiqui and Mr. Ali Jahangir Siddiqui were the interested director, being uncle of AJS, being brother of AJS and AJS himself respectively. Moreover, three directors namely, Mr. Siraj Ahmad

Dadahboy, Mr. Kahlid Bhainia and Mr. Nauzer Dinshaw were on teleconference call. In this regard, attention is invited to Circular No. 30 - Reference No. CLD/ENF/D(A/C)/17/2003, Attendance of Directors in the Board Meetings through Video Conferencing, dated December 31, 2003, wherein, listed companies were allowed to hold their Board's meetings through video conferencing where it is not possible for the directors to be physical present at the venue of the meeting. It would also be the responsibility of the company's secretary to secure the video recording of the proceedings of the meetings and keep it in his custody along with the other relevant record.

It is observed that the said meeting, in the said meeting there was not any arrangement of video conference, rather it was on teleconference call. This shows that this meeting was held in contravention with the provision of the said circular.

So considering above, 3 directors were the interest parties and 3 directors were on teleconference, which does not fulfill the requirement of meeting, only 3 directors remained eligible who can attend the meeting. In this regard, attention is invited to the provision of Sub section 1 of Section 194 of the Ordinance, which states that "The quorum for a meeting of directors of a listed company shall not be less than one-third of their number or four, whichever is greater".

In view of the above, it is evident the said meeting was quorum judge. So the proceedings of the said meetings stands invalid and all the business transacted in the said meeting remained unapproved and un-accorded.

It is observed and confirmed by the Company Secretary that no video conferencing facility is available with the Company.

L. Noncompliance with Circular 18 of 2005 dated October 17, 2005

Proceedings of board meeting dated September 13, 2006, August 11, 2007 and August 16, 2008 are *prima facie* invalid because minutes of these meeting were not signed by the entire directors since three board members were on conference call. This is in noncompliance of Circular 18, of 2005, dated October 17, 2005, which requires that meeting held through tele/video conference shall be valid if minutes of such meeting has been approved and signed subsequently by all the directors of the Board who participated in such meeting.

m. Independence of directors

EOGM dated November 24, 2004 is the meeting wherein votes were casted in election of directors, In the said meeting, following directors were elected detail of which is as follows:

Name of Director	Shareholding	Votes casted
Syed Nizam Ahmed Shah	61,763	35,156,170
Chief Justice @ Mehboob Ahmed	9,648	33,658,082
Mr. Mazhar ul Haq Siddiqui	1,286	33,332,435



Mr. Ali Jahangir Siddiqui	14,366,296	33,330,946
Mr. Ali Raza Siddiqui	700	33,330,937
Mr. Siraj Ahmad Dadabhoy	0	32,656,624
Mr. Khalid M Bhainia	1	22,540,715
Mr. Nauzer Aspi Dinshaw	1	18,845,691
Mr. Shezi Nackvi	0	18,845,715

Out of 9, first 8 persons were elected as board member.

It is apprehended that prima facie directors elected by the shareholders also represent the interest of Jahangir Siddiqui group.

- n. No justification for setting price at Rs 150 per shares  
 No justification for setting the price at Rs. 150 per share of PICT, to substantiate contribution of AJS, has been furnished. Moreover, 7.2 million shares of PICT held by JSCL were sold at Rs 175 per share within one month of earlier sale. The price remained on increasing trend and escalated to Rs 200 per share approx.
- o. International Standard adopted for payment of bonus  
 On the question of International Standards and benchmark adopted by the Company on payment of bonus to AJS, No international standards, market practice, benchmark, study or research has been adopted by the Company. Moreover, the references provided by the Company are the Articles, general in nature.  
 One of the Articles relates to the compensation to fund manager, relevant of which is as follows  
*Hedge Fund Manager Compensation Structure Original post by Geri Terzo of Demand Media*  
*A hedge fund manager's compensation structure is twofold and includes investment earnings as well as fees charged to investors. Typically, fund managers assign a 2 percent fee for managing assets and a 20 percent fee for performance to investors. When a fund's investment performance falters, it hurts investor profits and fund-manager compensation. It is common for a hedge fund manager to also have his own money invested in a hedge fund.*  
 Whereas the other Article relates to private equity firm compensation structure.  
 Both these articles are not recognized and backed by any research and prima facie seem irrelevant.
- p. Omission of disclosures with respect to payment of bonus to AJS in the financial statements for the year ended on December 31, 2012.  
 The Company has shown the payment of bonus to AJS as Advisory Fee paid to directors of the Company. Further the same has not been disclosed in the related party transaction neither any explanation has been provided in the financial statement as required in IFRS.

Potential Violations:

Based on the observations and conclusion of the inspection report, it is proposed that the following proceeding may be initiated against the Company;

- a. Section 173 - proper minute book has not maintained by the Company.
- b. Section 193 - for carrying on the proceedings of Meeting dated February 26, 2005, without quorum and proceeding of meeting dated September 13, 2006, August 11, 2007 and August 16, 2008, are invalid as minutes of the meeting are not signed by the directors.
- c. Section 196- for transacting business beyond the powers of the Board of Directors, since the quorum was not sufficient to approve the Advisory Agreement made on February 26, 2005 and board awarded the bonus in contravention of its own approval dated February 26, 2005 and Clause 3:02 of the Advisory Agreement where in stage wise bonus has not been awarded. Moreover bonus was not paid at the end of financial year.
- d. Section 214 - for approving the advisory services agreement being the representatives of the interested directors.
- e. Section 216 - for participating in the proceedings of agenda item wherein, the director was interest during the meeting dated August 30, 2012.
- f. Section 492 of the Companies Ordinance, 1984 for omitting material fact regarding payment of Bonus to AJS and inappropriate disclosure in this regard.

Conclusion

In view of the above potential violations, it is proposed to initiate legal proceedings under the above mentioned provisions of the Ordinance and direction may be issued under Section 472 of the Ordinance to unwind the transaction in respect of payment of bonus to the director Mr. Ali Jahangir Siddiqui.