



SECP  
Insurance Division  
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

*In the matter of*

Shaheen Insurance Company Limited

Show Cause Notice Issue Date: May 2, 2013

Date of Hearing: October 28, 2013

Attended By: Mr. Farhan Janjuah  
Chief Financial Officer & Company Secretary  
Mr. Sohel N. Kidwai  
Chief Operating Officer  
Mr. Aijaz Ali Khan  
Head of Operation  
Mr. Imran Hussain  
Legal Advisor

Date of Order: December 18, 2013

**ORDER**

(Under Section 199 Read with Section 204 of the Companies Ordinance, 1984)

.....

This Order shall dispose of the proceedings initiated against M/s Shaheen Insurance Company Limited (herein referred to as "the Company") for making default in complying with the provisions of Section 199 of the Companies Ordinance, 1984 ("the Ordinance").

**Background Facts**

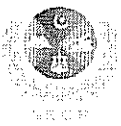
2. M/s Shaheen Insurance Company Limited ("the Company") is a public limited company, incorporated under the Companies Ordinance, 1984 ("the Ordinance"), and its shares are quoted on Karachi and Lahore Stock Exchanges.

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3. The provisions of Section 199 of the Ordinance states that:

*“Appointment of subsequent chief executive.- (1) Within fourteen days from the date of election of directors under section 178 or the office of the chief executive falling vacant, as the case may be, the directors of a company shall appoint any person, including an elected director, to be the chief executive, but such appointment shall not be for a period exceeding three years from the date of appointment.*

*(2) On the expiry of his term of office under section 198 or sub-section (1), a chief executive shall be eligible for reappointment.*

*(3) The chief executive retiring under section 198 or this section shall continue to perform his functions until his successor is appointed unless non-appointment of his successor is due to any fault on his part or his office is expressly terminated.”*

4. November 27, 2012, the Commissioner (Insurance) ordered an onsite inspection of the Company, in exercise of the powers conferred under Section 59A of the Insurance Ordinance, 2000. However the Company, vide its letter dated December 6, 2012, requested the Commission to extend the date of commencement of onsite inspection, which was acceded to by the competent authority vide letter dated December 7, 2012, and hence, onsite inspection commenced on December 17, 2012 instead of December 10, 2012 as mentioned in inspection order dated November 27, 2012.

5. During the course of the onsite inspection of the Company, the inspection team noted that the Company is operating without a Chief Executive Officer (CEO).

6. Mr. Asif Suleman, former CEO of the Company, informed the inspection team that he had already resigned as CEO, several months ago, and that Mr. Ashfaq-ur-Rehman will soon be joining as the new CEO of the Company.

7. It was observed that no approval under the Insurance Companies (Sound and Prudent Management) Regulations, 2012 was obtained from the Commission for any individual to act as the CEO of the Company. Mr. Asif Suleman has been coordinating with the inspection team until the end of December 2012, after which, the inspection team was informed that he would not be coming to office anymore, since then the Company was operation without having CEO as required under section 199 of the Ordinance.

8. In view of the abovementioned facts, it appears that the Board of Directors of the Company has contravened the provisions of Section 199 of the Ordinance by not appointing a Chief Executive Officer, for which penal action as provided under Section 204 of the Ordinance is justifiable.

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### Show Cause Notice

9. Accordingly, the Show Cause Notice was issued on May 2, 2013 under Section 199 read with Section 204 of the Ordinance to the Chief Executive and Directors of the Company, calling upon them to show cause as to why the penalty, as provided under Section 204 of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with provisions of Section 199 of the Ordinance.

### Company's Response to the Show Cause Notice

10. In response to the said Show Cause Notice, the Company, vide their letter of May 15, 2013 requested to allow two week time for submission of the written reply of the said notice, which was allowed via letter dated May 20, 2013. In response, the Company, vide their letter of July 19, 2013, stated that:

*"..... we wish to submit that Mr. Ashfaq-ur-Rehman did not join SICL Mr. Tariq Bakhtawar was appointed as CEO in March 2013 meeting but he also did not join. Mr. Asif Mahmood was shortlisted as CEO but his appointment did not materialize. Mr. Elsan-ul-Haq Board of Director was asked to conduct interviews for CEO in late March 2013. In April 20, 2013 CEO Mr. Faisal Hassan was appointed. However on July 17, 2013 his service too was terminated by the Board of Directors. From the position submitted above it could be seen that many persons were selected and appointed and the process has been continuing....."*

Further vide Company letter dated July 25, 2013 stated that:

*"we wish to submit an amendment in the contents of the letter dated July 19, 2013; Mr. Elsan-ul-Haq's name was mentioned as Director through an oversight. He attended the Board meeting on invitation.*

*Reverting to the reason for termination of Mr. Faisal Hassan ex CEO we wish to mention here that since he failed to satisfy the criteria set by the Commission his services were terminated by the Board....."*

11. The Company's representative at hearing has admitted the default and also brief about the steps were taken for removing the default, but the default is still exists.

12. In view of the foregoing, the default under section 199 of the Ordinance is established and the directors of the Company have made themselves liable for a fine under section 204 of the Ordinance.

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**Hearing of the Case & Subsequent Developments**

13. The hearing in the matter was scheduled on October 28, 2013 at 3:15 P.M., accordingly, the said hearing was attended by Mr. Farhan Janjua, Chief Financial Officer & Company Secretary, Mr. Sohail N. Kidwai, Chief Operating Officer, Mr. Aijaz Ali Khan, Head of Operation and Mr. Imran Hussain, Legal Advisor (they will be referred to as the "Company's representative" hereinafter).
14. Brief proceedings of the hearing of October 28, 2013 are as follows:
- a. Prior to the start of the hearing proceedings, the Company's representative was asked to provide the Power of Attorney for the presentation before the Director Insurance of the Show cause notice issued on May 2, 2013;
  - b. The Company's representative replied the Board of Director of the Company authorized them to appear before you and the said Power of Attorney will be provided you later on, the Director Insurance allowed and the Company vide its letter dated November 7, 2013 provided the same which was signed by Mr. Shahid Hameed, Director of the Company, wherein the reference was made to the resolution of the Board of Directors of the Company dated October 24, 2013, hence accordingly, the extracts of the said resolution of the Board was also provided to the Commission in which Mr. Shahid Hameed, Director was authorized by the Board to represent the Company and its Directors in any proceedings that may be brought against the Company by any department of the Commission in relation to the manner in which the affairs of the Company have been managed in the past. The said resolution of the Board also empowered / authorized Mr. Shahid Hameed, Director of the Company to delegate this power, which has been delegated to the Company's representative;
  - c. The Company's representative was asked to clarify the continuing default of the Company;
  - d. The Company's representative, while clarifying their position accepted the default and restated their earlier reply submitted to the Commission in response of the notice. They also stated that Mr. Asif Suleman actually resigned in December 2012 but his resignation was not accepted and he was there as CEO till March 2013 and also on the pay roll of the Company till that date. Then after the Company interviewed many person as stated in the letter dated July 19, 2013 but no one appointed as CEO of the Company;

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- e. The Company's representative further stated that Mr. Faisal Hassan appointed in April 2013 but the Board has terminated his appointment due to non fulfilment the "FIT and Proper Criteria under the (Sound and Prudent Management) Regulations, 2012;
- f. The Company's representative was asked to clarify how the Company is running without CEO. The Company's representative replied that the Chief Operating Officer (COO) is over sighting the affairs of the Company, and assured the Commission that soon the CEO approval will be sent to the Commission as required under the (Sound and Prudent Management), Regulations, 2012 and ensure compliance of section 199 of the Ordinance;
- g. Finally, the Company's representative requested the Commission to take a lenient view and condone the Company for contravening the provisions of Section 199 of the Ordinance.

#### Consideration of Company's Submissions

15. Having carefully examined the written responses, arguments, verbal submissions and after studying the facts and findings of the case as mentioned in the above paras of this Order, and then referring to the relevant provisions of the Ordinance, I have arrived at the following views;

- That the company by virtue of being a public listed company and carrying out general insurance business in Pakistan, its chief executive is responsible for the day to day affairs of the company besides the specific responsibilities of underwriting, insurance arrangements, implementation of business and investments strategy as approved by the Board, looking into the matters of audit committee, ensuring timely and accurately preparation of accounts and holding of periodical audit and other various decisions required under the Ordinance. In short all the wide range of duties and responsibilities associated with this important position, as provided by the Ordinance.
- In the backdrop of the preceding observations, the default of the company's directors under Section 199 of the Ordinance is now established. This conclusion calls for penalty as laid down under Section 204 of the Ordinance.

16. However, before proceeding further, I find it relevant to discuss the duties of the Directors. The Directors, in addition to the day-to-day running of the Company and the management of its business, also have some 'fiduciary' duties i.e. duties held in trust and some wider duties imposed by statute and breach of these statutory duties will usually be a criminal offence, punishable by fine or imprisonment. Hence, the Directors are gauged against a higher standard of accountability which requires

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them to be vigilant and perform their duties with due care. In the instant case, however, the Company and its Directors have failed to perform their duties with due care and prudence. As the Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Section 199 of the Ordinance, as aforesaid, therefore, it could be legitimately inferred that the default was committed.

### Conclusion

17. After carefully examining the arguments and studying the facts and findings of the case as mentioned in the above paras of this Order, the default of Section 199 of the Ordinance is established. Therefore, the penalty as provided under Section 204 of the Ordinance can be imposed onto the Company and/or its Directors.

18. Section 204 of the Ordinance states that:

*“Penalty.- (1) Whoever contravenes or fails to comply with any of the provisions of sections 198 to 203 or is a party to the contravention of the said provisions shall be liable to a fine which may extend to ten thousand rupees and may also be debarred by the authority which imposes the fine from becoming a director or chief executive of a company for a period not exceeding three years.”*

### Order

19. In view of the foregoing material information, I in exercise of the power conferred on me under Section 204 of the Ordinance, I impose a fine of Rs. 10,000/- (Rupees Ten Thousands Only/-) on each director of the Company, namely;

S. No.	Name	Fine (Rs.)
1.	Mr. Ikramullah Bhatti – Chairman	10,000
2.	Mr. Zafar Iqbal Mir – Director	10,000
3.	Mr. Tanweer Muhammad Sheikh – Director	10,000
4.	Mr. Imran Hafeez – Director	10,000
5.	Mr. Shahid Hameed – Director	10,000
	<b>Total</b>	<b>50,000</b>

20. The Directors of the Company are hereby directed to deposit the aforesaid fines in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty (30) days from the receipt of this Order and furnish receipted vouchers issued in the name of

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Commission for information and record, failing which proceedings under the Land Revenue Act, 1967 shall be initiated against the directors of the Company.

21. For the foregoing, the board of directors in hereby directed to undo the default by appointing the Chief Executive Officer within 30 days of the date of this Order to ensure the smooth running the Company's affairs. In this respect make sure, the compliance of (Sound and Prudent Management) Regulations, 2012.

22. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the Chief Executive Officer of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

**Tariq Hussain**  
Director