



SECP  
Insurance Division  
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

*In the matter of*

The Crescent Star Insurance Company Limited

Show Cause Notice Issue Date: April 3, 2013

Date of Hearing: June 10, 2013

Attended By: 1. Mr. Shahid Hussain, Consultant  
2. Mr. Malik Mehdi, Chief Financial Officer

Date of Order: April 22, 2014

**ORDER**

(Under Section 245 of the Companies Ordinance, 1984)

.....

This Order shall dispose of the proceedings initiated against M/s The Crescent Star Insurance Company Limited ("the Company") for not complying with the provisions of Section 245 of the Companies Ordinance, 1984 (the "Ordinance").

**Background Facts**

2. The provisions of Section 245(1) and (2) of the Ordinance, requires every listed company to file quarterly and half yearly financial statements with the Commission within one month of the close of each quarter of its financial year, which states:

*"Quarterly accounts of listed companies.- (1) Every listed company shall, –*

*(a) within one month of the close of first, second and third quarter of its year of account, prepare and transmit to the members and the stock exchange in which the shares of the company are listed a profit and loss account for, and balance-sheet as at the end of that quarter, whether audited or otherwise; and*

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(b) *simultaneously with the transmission of the quarterly profit and loss account and balance-sheet to the members and the stock exchange, file with the registrar and the Commission such number of copies thereof, not being less than three, as may be prescribed.*

(2) *The provisions of sub-sections (1) and (2), of section 241 shall apply to the half-yearly accounts."*

3. It appeared that the Company has not complied with the aforesaid provisions contained in the Ordinance and has not yet been able to submit its quarterly returns for the quarters ended March 31, 2012, June 30, 2012 and September 30, 2012.

4. The Company was intimated through the Commission's letter no. ID/SD/CSICL/2012/14922 dated November 21, 2012, followed by reminder letters bearing reference no. ID/SD/CSICL/2012/14983 and ID/SD/CSICL/2012/15662, dated November 27, 2012 and February 19, 2013, respectively, in which the Company was advised to submit the requisite quarterly returns and explain the reasons for contravening the provisions of Section 245 of the Ordinance.

5. The Company neither submitted its quarterly returns as required under Section 245 of the Ordinance nor did it adequately and satisfactorily respond to the Commission's aforesaid letters. The Company, vide its letter dated November 28, 2012, stated that:

*"...we request to kindly give us time to send SECP requested Quarterly Returns, as our company secretary was on leave for Moharrum, and resume his duty on November 27, 2012.*

*The requested return will be sent to you as soon as possible..."*

6. It appeared that the Company has contravened the provisions of Section 245(1) & (2) of the Ordinance, which attract penal action against the Company as provided under Section 245(3) of the Ordinance.

### Show Cause Notice

7. Accordingly, the Show Cause Notice was issued on April 3, 2013 under Section 245 of the Ordinance to the Chief Executive Officer, the Directors and Chief Accountant & Company Secretary of the Company, calling upon them to show cause as to why the penalty, as provided under Section 245(3) of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with provisions of Section 245(1) & (2) of the Ordinance.



**Company's Response to the Show Cause Notice & Hearing**

8. Since, no written response of the Company was received within the timeframe allowed by the Show Cause Notice, the Commission had, on its own motion, issued hearing notice no. ID/Enf/CSICL/2013/16424 dated April 29, 2013, in order to provide the addressees of the Show Cause Notice with an opportunity of being heard. Vide the said hearing notice, hearing in the matter was scheduled for May 7, 2013.

9. Thereafter the Company, while referring to the Commission's hearing notice no. ID/Enf/CSICL/2013/16424 dated April 29, 2013 vide their letter of May 6, 2013, communicated that the Board of Directors of the Company has appointed and authorized "Naveed Zafar Ashfaq Jaffery & Co., Chartered Accountants" to represent and submit the reply of the Show Cause Notice on behalf of the Board and the Company (including the Management).

10. Vide the above letter of the Company, the copy of the Board's resolution dated May 6, 2013 was attached whereby the Board of the Company had further authorized "Naveed Zafar Ashfaq Jaffery & Co., Chartered Accountants" to seek extension for 21 days on behalf of the Board and its Management.

11. Accordingly, M/s Naveed Zafar Ashfaq Jaffery & Co., Chartered Accountants (the "Counsel of the Company"), vide their letter no. NZAJ-KHI/001/SECP/05/2013 dated May 6, 2013, sought an extension of 21 days for submission of reply to the Show Cause Notice.

12. The Commission, vide its hearing notice no. ID/Enf/CSICL/2013/16538 dated May 9, 2013, had scheduled another hearing for May 20, 2013, which was later on re-scheduled for June 10, 2013, vide the Commission's hearing notice no. ID/Enf/CSICL/2013/16562 dated May 14, 2013.

13. Accordingly, the hearing in the matter of the Show Cause Notice was held on June 10, 2013 at 11:00 a.m., which was attended by Mr. Shahid Hussain of the Counsels of the Company and Mr. Malik Mehdi, Chief Financial Officer of the Company, to represent the Company.

14. Right at the beginning of the said hearing, Mr. Shahid Hussain handed over the power of attorney, duly signed by Mr. Naim Anwar, Director of the Company. However, the Board, vide their resolution of May 6, 2013, had already appointed / authorized the Counsels of the Company to represent the Company, its Directors and the Management of the Company in the matter of the Show Cause Notice, therefore, Mr. Shahid Hussain of the Counsels of the Company is considered to be the authorized representative of the Company, its Directors and the Management of the Company in the matter of the Show Cause Notice.

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15. During the course of the said hearing, the authorized representative accepted the default of Section 245 of the Ordinance on part of the Company, as the Company has not submitted the requisite returns / accounts as required by the said Section. The authorized representative further stated that the default was due to the negligence of the previous management of the Company, however, the current Management of the Company is willing to abide by the requirements of the Law. The authorized representative further submitted the Company's quarterly returns / accounts for the first, second and third quarters of 2012 under Section 245 of the Ordinance vide their letter dated June 10, 2013.

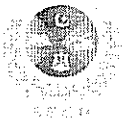
16. At last, the authorized representative prayed before the Commission that a lenient view be taken in the matter.

### Consideration of Company's Submissions

17. I have carefully examined and given due consideration to the written and verbal submissions of the Company, its Directors and the Management of the Company (through their authorized representative, Mr. Shahid Hussain, of the Counsel of the Company), and have also referred to the provisions of the Ordinance. I am of the view that there has been an established default of Section 245 of the Ordinance, as the Company was required to file the quarterly accounts for the quarters ended March 31, 2012, June 30, 2012 and September 30, 2012 within the timeframe as stipulated under Section 245 of the Ordinance.

18. 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 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 245 of the Ordinance, as aforesaid, therefore, it could be legitimately inferred that the default was committed knowingly, as the requisite quarterly accounts / returns were file on the day of hearing in the matter of the Show Cause Notice i.e. June 10, 2013, and that considerable time had already elapsed since the due date of filing of these quarterly accounts / returns.

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### Conclusion

19. 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 245(1) & (2) of the Ordinance is established. Therefore, the penalty as provided under Section 245(3) of the Ordinance can be imposed onto the Company, its Directors and/or its Management.

20. Section 245(3) of the Ordinance states that:

*"If a company fails to comply with any of the requirements of this section, every director, including chief executive and chief accountant of the company who has knowingly by his act or omission been the cause of such default shall be liable to a fine of not exceeding one hundred thousand rupees and to a further fine of one thousand rupees for every day during which the default continues."*

### Order

21. In exercise of the power conferred on me under Section 245(3) of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, condone the Company due to fact that the Company has filed the requisite returns and that the act of late submission of the aforementioned quarterly accounts has not harmed the interests of the shareholders and the policyholders of the Company.

However, the Company is hereby issued a stern warning that in case of similar non-compliance in future a stronger action against the Company will be taken.

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