



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Security General Insurance Company Limited

Show Cause Notice Issue Date: March 28, 2014

Date of Hearing: May 07, 2014

Attended By: Mr. Rashid Sadiq
Chief Executive
M/s RS Corporate Advisory (Private) Limited

Date of Order: July 28, 2014

ORDER

(Under Regulation 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012, Section 11(1)(f) and Section 12(1)(b) Read With Section 63(1) and Section 156 of the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s Security General Insurance Company Limited ("the Company") and its Directors for not complying with the requirements of Regulation 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012 (the "Regulations"), and Section 12(1)(b) and Section 11(1)(f) of the Insurance Ordinance, 2000 (the "Ordinance").

Background Facts

2. The provision of Clause (f) of Sub-section (1) of Section 11 of the Ordinance states that:

"Conditions imposed on registered insurers.-(1) An insurer registered under this Ordinance shall at all times ensure that:

...

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(f) *the insurer meets, and is likely to continue to meet, criteria for sound and prudent management including without limitation those set out in section 12;...*"

3. The provision of Clause (b) of Sub-section (1) of Section 12 of the Ordinance requires that:

"Criteria for sound and prudent management.- (1) For the purposes of this Ordinance, the following shall, without limitation, be recognised as criteria for sound and prudent management of an insurer or applicant for registration as a person authorised to carry on insurance business:

...

(b) each director and officer or (in the case of an applicant which is a body corporate incorporated outside Pakistan) the principal officer in Pakistan of the insurer or applicant is a fit and proper person to hold that position;..."

4. Regulation 2(2) of the Regulations requires that:

"A proposed director or chief executive or principal officer of the insurer shall not assume the charge of office until their appointment has been approved by the Commission."

5. The Company has held the election of Directors in the Annual General Meeting which took place on April 30, 2012. However, it has been noted that the approval from the Commission as required under the Regulations was not obtained by the Company till the date on which the Show Cause Notice was issued.

6. The matter was taken up with the Company for seeking comments on non-complying with provisions of the Regulations, to which the Company, in its letter no. SECY/SECP/9082 dated February 2, 2013, boldly stated that:

"...we submit that the following are the names of existing Board of Directors:

Chief Executive Officer:

Ms. Nabiha Shahnavaz Cheema

Board of Directors:

1. *Mian Hasan Mansha*
2. *Mr. Jehanzeb Amin*
3. *Mr. Mahmood Akhtar*
4. *Mr. I. U. Niazi*
5. *Mr. Badar ul Hasan*

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We assure you to comply with the provisions of Circular 15 (I)/2002 dated 09 January 2013 whenever any new person is proposed to be appointed as director/CEO of the Company..."

7. It was inferred from the above quoted response of the Company that the Company has refused to comply with the requirements of the Regulations, which were effective on the very day of their notification i.e. January 9, 2012, and that the election of Directors of the Company were held on April 30, 2012 i.e. after the Regulations were notified vide S.R.O. 15(I)/2012 dated January 9, 2012.

Hence, in terms of Regulation 2(2) of the Regulations, any election or appointment the persons as Directors or the Chief Executive Officer of the Company were required to obtain prior approval of the Commission.

8. In view of the foregoing paras hereof, it appeared that the persons appointed to act as the Directors or the Chief Executive of the Company in the election of April 30, 2012, have not assumed the charge of office of the Chief Executive Officer and the Directors of the Company with the approval of the Commission, thereby it appeared that the Company has contravened the provisions of Regulation 2(2) of the Regulations and Section 12(1)(b) read with Section 11(1)(f) of the Ordinance, for which punitive actions as provided under Section 63(1) and Section 156 of the Ordinance may be invoked.

Show Cause Notice

9. Accordingly, the Show Cause Notice was issued on March 28, 2014 under Regulation 2(2) of the Regulations, Section 11(1)(f) and Section 12(1)(b) read with Section 63(1) and Section 156 of the Ordinance to the Company and its so-called Directors, calling upon them to show cause as to why the penalty, as provided under Section 156 of the Ordinance, should not be imposed upon the Company and/or its so-called Directors (including the so-called Chief Executive) for not complying with provisions of Regulation 2(2) of the Regulations, and Section 12(1)(b) and Section 11(1)(f) of the Ordinance.

Company's Response to the Show Cause Notice

10. Mr. Rashid Sadiq, Chief Executive Officer of M/s RS Corporate Advisory (Private) Limited, while acting on behalf of the Company and its "Directors" through a letter of authority dated April 3, 2014, submitted response to the aforesaid Show Cause Notice via letter dated April 11, 2014, whereby they had stated that:

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"...Our Clients received a letter from the Commission on 30 January 2013, No. Ins/SD/2013/15368, requesting the names of directors and CEOs who had been appointed after the issuance of the Regulations. The Company duly responded vide letter dated 02 February 2013, providing the names of the directors and the CEO who were elected on 30 April 2012. The Company also, via the same letter, conveyed to the Commission its utmost commitment to complete compliance with the Regulations and assured that the Company will ensure the same in the future.

...

Therefore, it is respectfully submitted that our Clients did not envisage the interpretation and resulting requirements of the Regulations. The non-compliance with the Regulations is, hence, due to misunderstanding rather than a knowing and willful defiance as alleged in the SCN..." (Underlined to put emphasis)

11. The reply of the Company, through M/s RS Corporate Advisory (Private) Limited, gives an impression that the Company and the persons appointed as the Directors and the Chief Executive of the Company have unintentionally contravened the provisions of Regulation 2(2) of the Regulations, and Section 12(1)(b) and Section 11(1)(f) of the Ordinance.

12. The reply further stipulated that the Company pledges to file applications for seeking the approval of the Commission as required under Regulation 2(2) of the Regulations and Section 12(1)(b) of the Ordinance.

Hearings of the Case & Subsequent Developments

13. M/s RS Corporate Advisory (Private) Limited through their letter of April 11, 2014 stated that the Company's "Directors" intend to be heard in person in case the Commission is not satisfied with the submission made in that letter.

14. The Commission had scheduled the hearing in the matter for May 7, 2014 at 11:30 a.m., which was communicated to the Company via the Commission's hearing notice no. ID/Enf/SGICL/2014/19492 dated April 23, 2014.

15. Accordingly, the said hearing, which was held on May 7, 2014 at 11:30 a.m., was attended by Mr. Rashid Sadiq, Chief Executive of M/s RS Corporate Advisory (Private) Limited, on behalf of the Company and its "Directors" (who will be referred to as the "Company's representative" hereinafter).

16. Briefly, the Company's representative reiterated the contents of his letter dated April 11, 2014. Thereupon, it was pointed out to the Company's representative that in January 2013, the Company was asked to provide the names of the newly elected "Directors" of the Company, which was responded by the Company in the month of February 2013, and that ample time has already elapsed since that correspondence



during which filing of the application and obtaining the Commission's approval thereby observing compliance of the provisions of the Regulations under consideration could have been done. The Company's representative mentioned that the Company had not gone through the Regulations earlier and it was merely an oversight on part of the Company and the persons appointed / elected to act as Directors of the Company, however, he assured that the Company shall soon be filing applications before the Commission for seeking its approval under these Regulations. The Company's representative further assured that the Company and all of its "Directors" will ensure compliance with these Regulations in future.

Consideration of Company's Submissions

17. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through Mr. Rashid Sadiq, Chief Executive of M/s RS Corporate Advisory (Private) Limited, and have also referred to the provisions of the Ordinance and the Regulations. I am of the view that there has been an established default of Regulation 2(2) of the Regulations, and Section 12(1)(b) and Section 11(1)(f) of the Ordinance, as the Company and its "Directors" were required to seek approval of the Commission before elections of the Company's Directors were held on April 30, 2012.

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 persons elected and acting as "Directors" of the Company have failed to perform their duties with due care and prudence. Therefore, it could be legitimately inferred that the default was committed and prolonged / continued.

19. However, it has been given to understand / believe that the Company and the persons appointed as the Directors and the Chief Executive of the Company have unintentionally contravened the provisions of Regulation 2(2) of the Regulations, and Section 12(1)(b) and Section 11(1)(f) of the Ordinance, and that it was merely an oversight on part of the Company and the persons appointed / elected to act as Directors of the Company.

20. Moreover, the Commission vide its letter no. ID/SD/SGICL/2014/16 dated July 1, 2014 has granted the approval of five persons to act as the Directors of the Company, as the approval for the Chief Executive (Ms. Nabiha Shahnawaz Cheema) was not required at that time, as stipulated in that letter. Thereafter, the Company,



through M/s RS Corporate Advisory (Private) Limited vide their letter of July 3, 2014, has provided the copy of the aforesaid approval of the Commission.

Conclusion

21. 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 Regulation 2(2) of the Regulations and Section 12(1)(b) read with Section 11(1)(f) of the Ordinance is established. Therefore, the direction under Section 63(1) of the Ordinance and / or the penalty as provided under Section 156 of the Ordinance can be imposed onto the Company and/or its Directors.

22. Sub-section (1) of Section 63 of the Ordinance state that:

“Power of Commission to issue direction to cease entering into new contracts of insurance.- (1) The Commission may issue a direction to cease entering into new contracts of insurance if it believes on reasonable grounds that an insurer registered under this Ordinance has failed, or is about to fail, to comply with the conditions of registration set out in section 11.”

23. Section 156 of the Ordinance states that:

“Penalty for default in complying with, or acting in contravention of this Ordinance.- Except as otherwise provided in this Ordinance, any insurer who makes default in complying with or acts in contravention of any requirement of this Ordinance, and, where the insurer is a company, any director, or other officer of the company, who is knowingly a party to the default, shall be punishable with fine which may extend to one million rupees and, in the case of a continuing default, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.”

Order

24. In exercise of the power conferred on me under Section 63(1) and Section 156 of the Ordinance, instead of directing the Company to cease entering into new contracts of insurance or even imposing the penalty onto the Company and / or its Directors (including the Chief Executive), take a lenient view, and thus, condone the Company and its Directors (including the Chief Executive) due to facts as mentioned in para 19 and para 20 hereof.

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Also, the Company, its Directors and the Chief Executive are hereby issued **stern warning** that in case of similar non-compliance in future a stronger action will be taken.

25. This Order is issued without prejudice to any other action that the Commission may initiate against the Company, its Directors and / or its management in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

A handwritten signature in black ink, appearing to read 'Tariq Hussain', is written over a horizontal line.

Tariq Hussain
Director (Insurance)