



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

The Pakistan General Insurance Company Limited

Show Cause Notice Issue Date: March 31, 2014

Date of Hearing: July 1, 2014

Attended By: 1. Mr. Rahat Aziz
2. Mr. M. Barkatullah

Date of Order: August 20, 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 The Pakistan 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:

...

Min

SECURITIES & EXCHANGE
COMMISSION OF PAKISTAN

Insurance Division, State Life Building-2
4th Floor, Wallace Road, Karachi. Pakistan

Tel: +92-21-32461053, +92-21-32465469 Fax: +92-21-32423248 Web: www.secp.gov.pk



(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. It was evident from the Agenda Item No. 4 of the Notice of the Annual General Meeting, which was held on April 30, 2013, that the Company had elected the following nine Directors for a period of three years commencing May 2, 2013:

S.No	Names of the Persons
1	Mr. Ch. Manzoor Ahmed
2	Mr. Ch. Zahoor Ahmed
3	Mr. Ch. Ghulam Mustafa
4	Mr. Ch. Mazhar Zahoor
5	Mr. Mehmood ul Haq
6	Mr. Usman Ali
7	Mr. Ch. Athar Zahoor
8	Mr. Muhammad Saleem
9	Mr. Rehan Beg

6. The Agenda Item No. 4 of the said Notice of the Annual General Meeting stated that:

"To elect nine Directors as fixed by the board under Section 178(1) of the Companies Ordinance, 1984 in accordance with the provisions of the said ordinance for a period of three years commencing 2nd May 2013. The names of the retiring directors are:



- Ch. Manzoor Ahmed
- Usman Ali
- Ch. Zahoor Ahmed
- Mazhar Zahoor
- Ghulam Mustafa
- Rehan Beg
- Dr. Mehmood ul Haq
- Muhammad Saleem
- Athar Zahoor"

7. In view of the above, clarification / comments on the abovementioned observation were sought from the Company, which was responded by the Company vide their letter no. SECP/2013/78692 dated October 1, 2013, in which the Company had stated that there was no change in the Board of Directors of the Company, and that the same Directors were re-elected.

8. The above-named persons have not assumed the charge of office of the Directors and the Chief Executive Officer 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 31, 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 then 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 then so-called Directors (including the then 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. The Company vide their letter no. SECP/2014/79826 dated April 29, 2014 stated that there is no change in the board of directors and that the same members were elected as directors of the Company which were previously serving as the directors of the Company. The Company also stated that they were under the impression that if the same persons are re-elected on the board as Directors of the



Company then there would not be any need for seeking the Commission's approval under the Regulations, and also mentioned that the application for seeking approval has now been filed with the Commission for its approval. Lastly, the Company prayed before the Commission to take a lenient view in the instant matter and assured that such an oversight of law on part of the Company will not occur again.

11. Thereafter, the Commission vide its letter no. INS/SUP/PGICL/2014/28927 dated June 24, 2014 had granted its approval to the following nine Directors of the Company:

S.No	Names of the Persons
1	Mr. Manzoor Ahmed
2	Mr. Ch. Zahoor Ahmed
3	Mr. Ch. Ghulam Mustafa
4	Mr. Ch. Mazhar Zahoor
5	Mr. Qazi Mehmood-ul-Haq
6	Mr. Rais-ud-Din
7	Mr. Ch. Athar Zahoor
8	Mr. Nasir Ali
9	Mr. Muazzam Gul Beg

* Three of the approved Directors were appointed in place of the previously elected three of the nine Directors of the Company in the AGM of April 30, 2013.

Hearings of the Case & Subsequent Developments

12. The Commission had scheduled the hearing in the matter for July 1, 2014 at 10:00 a.m., which was communicated to the Company via the Commission's hearing notice no. ID/Enf/PGI/2014/20065 dated June 16, 2014.

13. Accordingly, the said hearing, which was held on July 1, 2014 at 10:00 a.m., was attended by Mr. Rahat Aziz and Mr. M. Barkatullah of M/s S. A. Associates, who were authorized through an Authority Letter to act on behalf of the Company and its "Directors" (who will be referred to as the "Company's representatives" hereinafter).

14. Briefly, the Company's representatives reiterated the contents of the Company's letter no. SECP/2014/79826 dated April 29, 2014. The Company's representatives further stated that the Chief Executive & Directors and the Company have now obtained the approval of the Commission under the Regulations, and that the non-compliance was merely as a result of the misunderstanding of the applicability of the Regulations as to whether these will be applicable onto the re-elected Directors, or not. Thereafter, the Company's representatives further assured that the Company and all of its "Directors" will ensure compliance with these Regulations in future.



Consideration of Company's Submissions

15. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the Company's representatives), 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, 2013.

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 them to be vigilant and perform their duties with due care. In the instant case, however, the persons elected 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.

17. 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.

18. Moreover, the Commission, vide its letter no. INS/SUP/PGICL/2014/28927 dated June 24, 2014, had granted its approval to nine Directors of the Company

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 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 & the Chief Executive.

20. 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."

21. 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

22. 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 17 and para 18 hereof.

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.

23. 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.

Tariq Hussain
Director (Insurance)