



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 Janjua  
Chief Financial Officer & Company Secretary  
Mr. Sohail N. Kidwai  
Chief Operating Officer  
Mr. Aijaz Ali Khan  
Head of Operation  
Mr. Imran Hussain  
Legal Advisor

Date of Order: December 16, 2013

**ORDER**

(Under Section 204A (1) Read with Section 498 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 204A (1) 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 relevant facts for disposal of this case briefly stated are that in pursuance of Sub-Section (1) of Section 204A of the Ordinance, Shaheen Insurance Company Limited, being a public listed company, is required to have a whole time secretary, possessing prescribed qualification. However, during the proceedings of inspection of the Company under Section 59A of the Insurance Ordinance 2000 held from December 17 2012 to January 31, 2013, it has been noted that the Company does not have any whole time secretary.

4. It was noted that Mr. Huzaifa Hanifa Tola resigned from the post of the Chief Financial Officer (CFO) & Company Secretary on November 14, 2011, and after he left the Company, Mr. Asif Suleman was acting as the Company Secretary in addition to the duties of the Chief Executive Officer until he also resigned from the Company in December 2012.

5. Since after December 2012, the Company has no Company Secretary, as required under Section 204A (1) of the Ordinance.

6. In view of the abovementioned paras, it appears that the Company has contravened the provisions of Section 204A(1) of the Ordinance by not having a whole time company secretary, for which penal action as provided under Section 498 of the Ordinance is justifiable.

7. Objective of the mandatory appointment of a whole time company secretary is to make sure full compliance with all the statutory provisions and the Corporate Laws applicable to the company as being a listed entity.

8. For the purpose of ready reference, the provisions of Sub-section (1) of Section 204A of the Ordinance are reproduced below:

*"Certain companies to have secretaries and share registrars.- (1) A listed company shall have a whole time secretary and a single member company shall have a secretary possessing such qualifications as may be prescribed."*

#### Show Cause Notice

9. Accordingly, the Show Cause Notice dated May 2, 2013 under Section 204A read with Section 498 of the Ordinance was served on the Chief Executive and directors of the Company, calling upon them to explain as to why appropriate action may not be initiated against them under the law for aforesaid contravention.

*He:*



### 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:

*"..... regarding appointment of Company Secretary in Shaheen Insurance Company Limited since after December 2012, in this regard we wish to mention here that as acting Chief Financial Officer Mr. Jamil Nasir was working for first four months of the 2013. During this period in March 2013 BOD Meeting Mr. Adnan Ibrab was appointed as CFO who later on refused to join. Then Mr. Intiaz Aziz was appointed as CFO & Company Secretary who also did not join. Ultimately Mr. Farhan Janjuh was given appointment letter on June 04, 2013. He has joined the Company is working in the capacity of CFO & Company Secretary...."*

11. In view of the foregoing, the default under sub-section (1) of section 204A of the Ordinance is established and the directors and Chief Executive of the Company have made themselves liable for a fine under section 498 of the Ordinance. The reply of the Company reveals that the Company has also taken the necessary steps to remove the default.

### Hearing of the Case & Subsequent Developments

12. The hearing in the matter was scheduled on October 28, 2013 at 3:00 P.M., accordingly, the said hearing was attended by Mr. Farhan Janjuah, 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).

13. Brief proceedings of the hearing of October 28, 2013 are as follows:

- a. The Company's representative appeared and argued the case and stated that Mr. Farhan Janjuah was appointed as the Company Secretary and CFO of the Company in the month of June 2013 which was already informed to the Commission via letter dated July 19, 2013,;
- b. The Company's representative was asked to clarify why the Company was in default, as a public listed company must have a whole time Company Secretary and also asked to provide the evidence of the appointment of the Mr. Farhan Janjuah as Company Secretary,;
- c. The Company's representative, while clarifying their position accepted the default and agreed to submit the evidence of appointment of Company



Secretary which was submitted via letter dated November 7, 2013, the Company's representative informed that the management interviewed number of persons and also offer the position of Company Secretary but no one joined the company finally Mr. Farhan was joined on June 20, 2013,;

- d. The Company's representative, while admitting the default of the aforesaid provisions of the Ordinance, stated that they are fully compliant of the said Section since June 2013 and requested the Commission to take a lenient view and condone the default.

### Consideration of Company's Submissions

14. I have carefully examined and given due consideration to the written and verbal submissions 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 204A (1) of the Ordinance, as the Company was a public listed Company and listed on the stock exchanges of the country must have a whole time company secretary as required in the Ordinance, to perform to ensure compliance with statutory provisions of all corporate laws applicable to listed companies and to integrate the wide ranging duties and responsibilities associated with this important position.

15. 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 204A (1) of the Ordinance, as aforesaid, therefore, it could be legitimately inferred that the default was committed.

### Conclusion

16. 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 204A (1) of the is established. Therefore, the penalty as provided under Section 498 of the Ordinance can be imposed onto the Company and/or its Directors.

17. Section 498 of the Ordinance states that:

*Mo,*



*“Penalty where no specific penalty is provided elsewhere in the Ordinance.- If a company or any other person contravenes or fails to comply with any provision of this Ordinance or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, for which no punishment is provided elsewhere in this Ordinance, the company and every officer of the company who is in default or such other person shall be punishable with a fine which may extend to one million rupees, and, where the contravention is a continuing one, with a further fine which may extend to one hundred thousand rupees for every day after the first during which the contravention continues.”*

**Order**

18. In exercise of the power conferred on me under Section 204A (1) of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, condone the Company due to fact that the Company took steps to appoint this mandatory position of secretary and also tried to get fill the vacant position and finally appointed Company Secretary on June 20, 2103 as evident from Form-29 submitted to this office.

Also, 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.

19. 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