



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Mr. Shahid Nasim, Executive Director (Insurance)

In the matter of

M/s EFU General Insurance Limited

Date of Show-Cause Notice: July 24, 2012
Date of Hearing: September 12, 2012
Attended by: Mr. Altaf Qamruddin Gokal
Chief Financial Officer & Company Secretary
Date of Order: September 28, 2012

ORDER

(Under Section 32(2) Read with Section 156 of the Insurance Ordinance, 2000)

This Order shall dispose of the proceedings initiated against M/s EFU General Insurance Limited (hereinafter referred to as ("the Company")) for making a default in complying with the requirements of Section 32(2) of the Insurance Ordinance, 2000 ("the Ordinance").

Background Facts

The relevant facts for the disposal of this case are briefly stated as under:

1. Sub-Section (2) of Section 32 of the Ordinance, states that:

"(2) For the purposes of this Part, subject to sub-section (1), the following are not admissible assets:

*....
(k) amounts available to the insurer under guarantees;
...."*

2. It was observed that the Company, in their Statement of Assets for Solvency Purposes as at December 31, 2010, has included the deposits received as security against guarantees amounting to Rs.320.12 million as admissible assets in violation of section 32(2)(k) of the Insurance Ordinance. The auditor has also qualified the Regulatory Returns on this inclusion of deposit.



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3. In view of the abovementioned observations, it appeared that the Company has contravened the provisions of sub-Section (2) of Section 32 of the Ordinance.

Show-Cause Notice

4. On July 24, 2012, a Show-Cause Notice under Section 32(2) read with Section 156 of the Ordinance was served to the Directors and Chief Executive of the Company, whereby the Company was asked to clarify their position as to why the penalty under Section 156 of the Ordinance may not be imposed on them for contravening the provisions of Section 32 of the Ordinance.

Company's Reply

5. The Company, in response to the Show-Cause Notice vide its letter of August 6, 2012, argued as under:

"amounts available to the insurer under guarantees' are the deposits received as security margin against guarantees amounting to Rs. 320.12 million is reflected as liability in our Balance Sheet. As required by the law the amount is placed in bank deposits maturing within twelve months.

It is our understanding of the Rule that as the liability is fully reflected in total liabilities, it is appropriate that the related amount placed in Bank Deposits be shown as admissible assets, thereby having Nil impact on Solvency.

However, even if the amount of said deposits is taken out of admissible assets, our net admissible assets are much about the minimum requirement under Rule 13 of the SEC (Insurance) Rules 2002." (Underlined to put emphasis)

6. The reply of the Company revealed that the Company has included the amount of Rs.320.12 million under guarantee in their admissible assets, which is not permissible under the law.

7. Therefore, the hearing in the matter was rescheduled for September 12, 2012 at 03:00 p.m., which was communicated to the Company vide Commission's letter dated August 27, 2012.

Proceedings of the Hearing

8. At the commencement of the hearing (which was held on September 12, 2012), Mr. Altaf Qamruddin Gokal, Chief Financial Officer & Company Secretary of the Company (the "Company's representative") presented a "General Power of Attorney" duly authorizing Mr. Altaf Qamruddin Gokal,



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the Chief Financial Officer & Company Secretary of the Company to be the true and lawful attorney of the Company in the name.

9. The Company vide their letter of September 10, 2012 authorized Mr. Altaf Qamruddin Gokal, Chief Financial Officer & Company Secretary of the Company to appear in person in the hearing in the matter before the Executive Director (Insurance).

10. Following arguments were made by the Company's representative during the course of the hearing:

- a. The Company's representative argued that, in their opinion, if an asset is not taken as admissible then its corresponding liability should also not be taken in calculating the solvency;
- b. The Company's representative stated that they had the same argument with their Auditors as well, who has given a qualified opinion on the issue.
- c. It was then clarified to the Company's representative that law remains the same for everyone, and it is not bound by an opinion which is in contradiction to what the law says.

Consideration of the Submission

11. 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 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 as required by the Ordinance under Section 32(2) of the Ordinance i.e. the Directors of the Company were required to ensure compliance with the clear wordings of the of Section 32(2) of the Ordinance, therefore, it could be legitimately inferred that the default was committed, as the Company's Auditors had pointed out the same.

Conclusion

12. 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 32(2) of the Ordinance is established. Therefore, the penalty as



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provided under Section 156 of the Ordinance can be imposed on the Company, which 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."

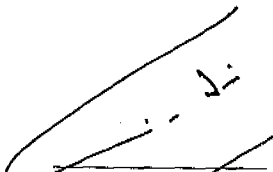
Order

13. In exercise of the power conferred on me under Section 156 of the Ordinance, instead of imposing the maximum penalty, I impose a nominal fine of Rs. 100,000/- (Rupees One Hundred Thousand Only) due to the fact that the Company had not complied with the provisions of Section 32(2) of the Ordinance although the same was pointed out by the statutory Auditor of the Company, which is evident from the Auditor's Report on the financial statements of the Company for the year ended December 31, 2010.

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.

14. *M/s. EFU General Insurance Limited* are hereby directed to deposit the aforesaid fine of Rs. 100,000/- (Rupees One Hundred Thousand Only) 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 Commission for information and record.

15. This Order is issued without prejudice to any other action that the Commission may initiate against the Company in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.


Shahid Nasim
Executive Director