



SECP  
Insurance Division  
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

*In the matter of*

Crescent Star Insurance Limited

Show Cause Notice Issue Date: March 28, 2014

Date of Hearing: May 19, 2014

Attended By: Mr. Malik Mehdi Muhammad  
Chief Financial Officer  
M/s Crescent Star Insurance Limited

Date of Order: October 30, 2014

**ORDER**

**(Under Section 46(1) read with Section 51(1) and Section 156 of the Insurance Ordinance, 2000)**

.....

This Order shall dispose of the proceedings initiated against M/s Crescent Star Insurance Limited ("the Company") for not complying with Section 46(1) read with Section 51(1) of the Insurance Ordinance, 2000 ("the Ordinance").

**Background Facts**

2. The relevant provision of Section 46(1) of the Ordinance states that:

*"Accounting and reporting.- (1) Every insurer shall at the expiration of each year prepare and deliver to the Commission with reference to that year annual statutory accounts comprising the following statements duly audited by an approved auditor:*

...  
*(b) in the case of a non-life insurer,*

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- (i) a statement of assets and liabilities;
- (ii) a statement of profits and losses;
- (iii) a statement of cash flows;
- (iv) a statement of premiums;
- (v) a statement of claims;
- (vi) a statement of expenses;
- (vii) a statement of investment income;
- (viii) a statement of claims analysis;
- (ix) a statement of exposures; and
- (x) such other statements as may be prescribed by the Federal Government;

each in such form as may be prescribed by the Commission and prepared in accordance with such regulations as are issued by the Commission from time to time in this behalf.  
..."

3. Regulation No. 3(1) of Part - B of the Securities and Exchange Commission (Insurance) Rules, 2002 (the "Regulations") states that:

*"The form of Regulatory Returns shall consist of the following which shall be submitted according to the published Forms annexed to these Regulations:*

- Balance Sheet (Form GA), which shall be deemed to constitute the "Statement of Assets and Liabilities" required by S46(1)(b)(i) of the Ordinance.
- Profit and Loss Account (Form GB), which shall be deemed to constitute the "statement of profits and losses" required by S46(1)(b)(ii) of the Ordinance.
- Statement of Cash Flows (Form GC) required under S46(1)(b)(iii) of the Ordinance.
- Statement of Premiums (Form GD) required under S46(1)(b)(iv) of the Ordinance.
- Statement of Claims (Form GE) required under S46(1)(b)(v) of the Ordinance.
- Statement of Expenses (Form GF) required under S46(1)(b)(vi) of the Ordinance.
- Statement of Investment Income (Form GG) required under S46(1)(b)(vii) of the Ordinance.
- Statement of Claims Analysis (Form GH) required under S46(1)(b)(viii) of the Ordinance.
- Statement of Exposures (Form GI) required under S46(1)(b)(ix) of the Ordinance.
- Statement of Assets for Solvency Purposes (Form GJ) which is hereby prescribed under S46(1)(b)(x) of the Ordinance.
- Classified Summary of Assets in Pakistan (Form GK) which is hereby prescribed under S46(1)(b)(x) of the Ordinance."

4. Section 51 (1) of the Ordinance states that:



*“Submission of returns.- (1) The audited statements and report referred to in sub-sections (1) and (5) of section 46 and the report and statement referred to in section 50, including any report referred to in sub-section (7) of section 50, shall be furnished as returns to the Commission in such manner as may be prescribed by the Commission, but in any case including at least one printed copy, within four months from the end of the period to which they refer:*

*Provided that the Commission may on application by an insurer extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding one month.*

*...”*

5. As per the record of the Commission, the Company has failed to submit the following four statements forming part of the Regulatory Returns as required by Regulation 3 of the Regulations read with Section 46(1)(b) and Section 51(1) of the Ordinance:

1. Statement of Claim Analysis (Form GH) for the year ended December 31, 2012;
2. Statement of Exposures (Form GI) for the year ended December 31, 2012;
3. Statement of Assets for Solvency Purposes (Form GJ) for the year ended December 31, 2012; and
4. Classified Summary of Assets in Pakistan (Form GK) for the year ended December 31, 2012.

6. This observation was taken up with the Company to which the Company replied vide their letter dated November 11, 2013 that:

*“We respect all the statutory requirement of SECP, and will be abiding all the rules and regulation in the future. Please find enclosed following statutory return as per Regulation 3 of Annexure II of Part B of the SEC (Insurance) Rules, 2002 read with Section 46(1)(b) and Section 51(1) of the IO 2000...”*

7. The Company had filed the aforementioned Regulatory Returns (four statements) vide the Company's letter dated November 11, 2013 i.e. with a delay of 195 days.

8. In view of the above, it appeared that the Company has contravened the provisions of Regulation 3 of the Regulations read with Section 46(1)(b) read with Section 51(1) of the Ordinance regarding submission of the Regulatory Returns for the year ended December 31, 2012.

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9. In addition to the abovementioned contravention, the Audit Report as required by Regulation 6 of the Regulations, on the aforementioned Regulatory Returns for the year ended December 31, 2012, was also not submitted with the Commission within due timeframe i.e. when these Regulatory Returns were due to be filed. The said Audit Report was filed with the Company's letter dated November 11, 2013.

10. The provisions of Regulation 6 of the Regulations state that:

***"Audit Report***

*(1) Both the Regulatory Returns and Published Financial Statements shall be accompanied by an Audit Report as required under S48(2) of the Ordinance in accordance with the annexed format."*

11. It was also noted that the Annual Audited Accounts (Published Financial Statements) of the Company for the year ended December 31, 2012 were approved by the Board of Directors of the Company on May 24, 2013 and the Auditor's Report on these Annual Accounts was signed off on the same date, however, the Auditor's Report on the abovementioned four financial statements (forming part of the Regulatory Returns) was signed by the Auditors of the Company on July 31, 2013, which further leaves sufficient grounds to believe that preparation and the audit of the said four financial statements / Regulatory Returns was deliberately delayed by the Company.

12. In view of the above, it appears that the Company has also contravened the provisions of Regulation 6 of the Regulations read with Section 48(2) of the Ordinance, for which the Commission may take action as provided under Section 156 of the Ordinance for the aforementioned contraventions.

**Show Cause Notice**

13. Accordingly, the Show Cause Notice was issued on March 28, 2014 under Section 46(1) read with Section 51(1) and Section 156 of the Ordinance to the Chief Executive and Directors of the Company, 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 Chief Executive and Directors for not complying with provisions of Section 46(1) read with Section 51(1) of the Ordinance.

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

14. In response to the said Show Cause Notice, the Company, vide their letter dated April 24, 2014, have made the following argument:

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*"...We would like to mention that due to structural changes in the Company, we could not comply with some statutory compliances under section 46(1) (b) read with section 51(1) and section 156 of the Insurance Ordinance, 2000. We assure you that this has not been intentional and we respect all the provisions and will abide by the regulations in letter and spirit in the future..."*

### Hearings of the Case & Subsequent Developments

15. Although the Company, through their letter dated April 24, 2014, did not opt to be called for a hearing in the matter, the hearing in the matter was scheduled for May 19, 2014, on the motion of the Commission, which was communicated to the Company via hearing notice no. ID/Enf/Credit/2014/19575 dated April 30, 2014.

16. The hearing in the matter of the aforesaid Show Cause Notice was attended by Mr. Malik Mehdi Muhammad, the Chief Financial Officer of the Company, who was authorized to represent the Company and its Directors in the instant matter, through a Power of Attorney dated May 19, 2014. Accordingly, Mr. Mehdi shall be referred to as the "Company's representative" hereinafter.

17. During the course of the hearing in the matter which was held on May 19, 2014, the Company's representative mentioned that the delay occurred unintentionally, and hence, the Company's representative prayed that the Show Cause Notice be withdrawn.

18. It would also be pertinent to state that the Company had submitted its Annual Audited Accounts for the year ended December 31, 2013 that were required to be submitted in pursuance of Section 233(5) of the Companies Ordinance, 1984, were submitted on April 21, 2014 i.e. with a delay of 13 days, as these Accounts were required to be sent on the date on which the notice of the Annual General Meeting was issued / published i.e. on April 9, 2014. The observation was taken up with the Company vide Commission's letter no. ID/SD/CSICL/2014/19758 dated May 19, 2014, which was responded to by the Company vide its letter of May 29, 2014, in which the Company stated that:

*"We are aware of the requirement associated to Section 233(5) of the Companies Ordinance, 1984, which require submission of 5 copies of accounts to be sent to the Commission, but due to printing press facing electricity and load shedding problems, printed copies of the accounts were provided with a delay which was completely unintentional. In this regard, please condone us for the delay."*

19. Moreover, four statements (Form GH, GI, GJ and GK) of the Regulatory Returns for the year ended December 31, 2013 that were required in pursuance of

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Section 46(1) read with Section 51(1) of the Ordinance, were submitted with the Commission May 21, 2014 i.e. with a delay of 21 days, as these Returns were required to be furnished to the Commission latest by April 30, 2014. The observation was taken up with the Company vide Commission's letter no. ID/SD/CSICL/2014/19758 dated May 19, 2014, which was responded to by the Company vide its letter of May 29, 2014, in which the Company stated that:

*"Statutory returns for the year ended December 31, 2013 as per Regulation 3 of Annexure II of Part B of the SEC (Insurance) Rules, 2002 read with Section 46 (1)(b) and Section 51(1) of the IO 2000 have been provided to your office dated May 21, 2014."*

20. In view of the foregoing paras hereof, it can be inferred that the Company is a habitual late filer, and that too during the pendency of the proceedings under the same provisions of the law, through the aforementioned Show Cause Notice.

#### Consideration of Company's Submissions

21. 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, and have also referred to the provisions of the Ordinance. I am of the view that there has been an established default of Section 46(1)(b) read with Section 51(1) of the Ordinance appertaining to the appertaining to the filing of the Annual Accounts and Regulatory Returns. Moreover, the Company had repeated the same contravention by filing the statements / returns / accounts for the year ended December 31, 2013 late.

22. However, before proceeding further, I find it relevant to comment on 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 performing 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 46(1)(b) and Section 51(1) of the Ordinance, therefore, it could be legitimately inferred that the default was committed, and that too was repeated during the pendency of the proceedings at hand.

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### Conclusion

23. 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 46(1)(b) and Section 51(1) of the Ordinance is established. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed onto the Company, its Directors and/or its Management for the aforementioned contravention of the provisions of the Ordinance.

24. 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, or any direction made by the Commission, the Commission shall have the power to impose fine on the insurer, 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

25. In exercise of the power conferred on me under Section 156 of the Ordinance, I, instead of imposing the maximum penalty as provided therein, impose a fine of Rupees Five Hundred Thousand Only (Rs. 500,000/-) onto the Company's Chief Executive Officer due to the reason that during the pendency of the instant proceedings under Section 46(1) read with Section 51(1) of the Ordinance against the Company, the Company had repeated the same contravention by filing the statements / returns / accounts for the year ended December 31, 2013 late, as mentioned in Paras 18 and 19 hereof.

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

26. *M/s. Crescent Star Insurance Limited* is hereby directed to deposit the aforesaid fine of Rs. 500,000/- (Rupees Five 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 a receipt thereof.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
*Insurance Division*

*Continuation Sheet 7*

27. 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.

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

**Tariq Hussain**  
Director - Insurance