



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Continental Insurance Company Limited

Show Cause Notice Issue Date: February 14, 2013

Date of Hearing: April 29, 2013

Attended By: Mr. S. M. Suhail
Partner
S. M. Suhail & Co., Chartered Accountants

Date of Order: June 27, 2013

ORDER

(Under Section 76 Read with Section 156 of the Insurance Ordinance, 2000)

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This Order shall dispose of the proceedings initiated against M/s Continental Insurance Company Limited ("the Company") for not complying with the provisions of Section 76 of the Insurance Ordinance, 2000 (the "Ordinance").

Background Facts

2. The provisions of Section 76 of the Ordinance state that:

"Insurer not to engage in misleading or deceptive conduct.- (1) An insurer shall not, in the course of its business as an insurer, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

...

(4) Where a policy holder has relied upon any representations by an insurer or by an agent of an insurer which are incorrect in any material particular, inasmuch as it has the effect of misleading or deceiving the policy holder in entering into a policy, the

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policy holder shall be entitled to obtain compensation from the insurer for any loss suffered.

(5) Notwithstanding the provisions of the foregoing sub-section, the Commission shall also have the power to levy a fine on the insurer which shall be equal to the lesser of twice the loss determined to be suffered by the policy holder under the foregoing sub-section and ten million rupees."

3. The website of the Company i.e. www.continentalinsurance.biz gave an impression to the general public that the Company was allowed to underwrite products related to property insurance, motor insurance, health insurance etc. by displaying certain deceptive and misleading content regarding these products onto the said website of the Company, whereas, the Company was only allowed to underwrite / transact Credit & Surety Ship class of business vide Certificate of Registration dated May 28, 2010.

4. The aforementioned website of the Company states "future products subject to approval of competent authority", and the Company has not approached the Commission to allow other classes of insurance business as is specified in the Ordinance.

The said disclosure regarding the future products on the website of the Company could have been misleading for the public at large, and hence, there were chances that the Company could have underwritten policies which may fall under other classes of business for which the Company is not permitted to underwrite.

5. In view of the foregoing paras hereof, it appeared that the Company has contravened the provisions of Section 76(1) of the Ordinance of 2000, which attracts the penal provisions under Section 76(5) and/or Section 156 of the Ordinance.

Show Cause Notice

6. Accordingly, the Show Cause Notice was issued on February 14, 2013 under Section 76 read with 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 76(5) and Section 156 of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with provisions of Section 76 of the Ordinance.

Company's Response to the Show Cause Notice

7. In response to the said Show Cause Notice, the Company through M/s S. M. Suhail & Co., Chartered Accountants vide their letter no. SMS-C-1952013 dated March 15, 2013, stated that:



“...You have objected in your instant notice that the Company has mentioned on the website that it will engage in property insurance, motor insurance, and health insurance; and you have pointed out that on the website it has also simultaneously been mentioned that it will be done after obtaining the permission from the Competent Authority.

Please also note that originally in the year 1998 the Company was granted the license of engaging to the traditional insurance business like property, motor, fire etc., as reflected in the license. The Company continued to do that business up to 2002. Subsequently, when the Company was revived, in the year 2010, it was provided the license of surety bonds; and the Company has a plan to engage in other insurance business and it will be done after obtaining the permission from the Competent Authority.

Moreover, please reconsider that the wordings mentioned on the website are self explanatory and neither deceptive nor misleading. It is in very simple language that the Company will engage in other insurance business and it will be done after obtaining the permission from the Competent Authority.

Consequently the above mentioned statement:

1. In no manner is deceptive or misleading to the reader.
2. Can not misguide the general public at large.
3. Has no material impact in nature.
4. Not a single customer has approached to the Company for such insurance.
5. The Company has not yet engaged in such a business, hence has not yet issued any such policy in this regard.
6. Only expresses the company's plans to engage in such a business in near future.

The Company Plans to engage in such business and shall complete the following:

1. The Company will complete necessary initial setup requirements.
2. The Company shall apply properly for obtaining the required license before engaging that insurance business.
3. On completion of all the requirements, the Company would be granted the license from the competent authority.
4. The Company will modify the website accordingly, on completion of compliance.

Further it is also apparent from record that the Company has only issued Credit & Surety policies so far as per the license granted to the Company; and it has never engaged in any other insurance business. Accordingly no policy holder has suffered any loss reflection thereof.



In view of the above facts it appears that the future plan mentioned on the website of the Company is neither deceptive nor misleading to any one. Accordingly the Company has not violated Section 76 of the Insurance Ordinance 2000. Consequently it is not justified to penalize the Company in this regard.

You are therefore requested to kindly look into the matter as per facts of the case and drop the action you intend to take against the Company and Directors. We hope that you will accede to request of the Company, and may process to conclude on this submission.

However, on your concern the Company has removed all future products from their website and we again assure that those products were not placed with the intention to deceive any person. (Underlined to put emphasis)

Hearing of the Case & Subsequent Developments (if any)

8. Although, the Company had not requested for a hearing in the matter, the Commission, on its own motion, had scheduled the hearing in the matter for April 29, 2013 at 4:00 p.m., which was communicated to the Company via the Commission's hearing notice no. ID/Enf/Continental/2013/16295 dated April 8, 2013.
9. Accordingly, the said hearing, which was held on April 29, 2013 at 4:00 p.m., was attended by Mr. S. M. Suhail of M/s S. M. Suhail & Co., on behalf of the Company (who will be referred to as the "Company's representative" hereinafter).
10. Brief proceedings of the hearing of April 29, 2013 are as follows:
 - a. Prior to the start of the hearing proceedings, the Company's representative handed over the Power of Attorney to the Commission to act on behalf of the Company;
 - b. The Company's representative was asked to present the stance of the Company, to which the Company's representative stated that since 2003, the Company was dormant and previously the Company has been underwriting various classes of business, but after 2010, when the Company obtained license of Credit and Surety Ship class, the Company has not underwritten any other business except the Credit and Surety Ship business;
 - c. The Company's representative further mentioned that the information demonstrated on the website of the Company is not misleading or deceptive due to the fact that there was a disclaimer that the Company will underwrite other businesses subject to the approval of the Commission;

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- d. The Company's representative also mentioned that the information which was shown on the website has now been removed;
- e. On clarifying to the Company's representative that how the contents of the website of the Company could misled or deceive the public, the Company's representative mentioned that the Company has not underwritten any other business but Credit and Surety Ship business, for which the Company has been authorized by the Commission. Moreover, he mentioned that the misleading contents of the website were due to an oversight by the Company, which may kindly be condoned.

Consideration of Company's Submissions

11. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through Mr. S. M. Suhail of M/s S. M. Suhail & Co.), and have also referred to the provisions of the Ordinance. I am of the view that there has been an established default of Section 76 of the Ordinance, as the Company and its Directors were required to ensure presence of non-deceptive information on the Company's website. Any information that is deceptive / misleading, whether partially or wholly, on any medium that is exposed / accessible to the general public is construed as non-compliance of the provisions of Section 76 of the Ordinance.

12. 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 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 76 of the Ordinance, as aforesaid, therefore, it could be legitimately inferred that the default was committed.

Conclusion

13. 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 76 of the Ordinance is established. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed onto the Company and/or its Directors.

14. Section 156 of the Ordinance states that:

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“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

15. In Exercise of the power conferred on me under Section 156 of the Ordinance, instead of imposing penalty onto the Company and /or its Directors, I take a lenient view, and thus, condone the Company due to the fact that the Company had made necessary corrections in the information available on the Company’s website, and that the Company had not underwritten any policies other than those which fall under the definition of Credit and Surety Ship class of business.

However, the Company is hereby issued a stern warning that in case of similar non-compliance in future a strong action against the Company will be taken.

16. 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