



SECP
INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director (Insurance)

In the matter of

The Pakistan Mutual Insurance Company (Guarantee) Limited

Show Cause Notice Issue Date: June 30, 2015

Date of Hearing: August 20, 2015

Attended By:

1. Ch. Abdul Karim
Chief Executive
M/s. Pakistan Mutual Insurance Co. (Gte) Ltd;
2. Hafiz Muhammad Farooq Afzal
Manager Finance
M/s. Pakistan Mutual Insurance Co. (Gte) Ltd.

Date of Order: September 22, 2015

ORDER

Under Regulation 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012 Read with Section 11(1)(f), Section 12 and Section 156 of the Insurance Ordinance, 2000.

.....

This Order shall dispose of the proceedings initiated against M/s. The Pakistan Mutual Insurance Company (Guarantee) Limited (the "Company"), Mr. Jawad Amin, Mr. Muhammad Saleem, and Mr. Hassan Ahmad Khan for alleged contravention of Regulation 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012 (the "Regulations") read with Section 11(1)(f) and Section 12 of the Insurance Ordinance, 2000 (the "Ordinance"). The Company, Mr. Jawad Amin, Mr. Muhammad Saleem and Mr. Hassan Ahmad Khan shall be referred to as the "Respondents" hereinafter.

A. Background

2. It was observed that the Company appointed the following three persons to act as its directors during the years 2012 and 2013, the approval of which was not obtained by the Respondents prior to the assumption of charge as directors of the Company:

SECURITIES AND EXCHANGE
COMMISSION OF PAKISTAN
Insurance Division, NIC Building,
63 Jinnah Avenue, Islamabad, Pakistan

PABX: +92-51-9207091-4, Fax: +92-51-9100428, Web: www.secp.gov.pk

3



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 1

Name	Status	Date of last appointment	Qualification	Remarks
Jawad Amin	Non-Executive	13-08-2012	B.Com	Businessman
Muhammad Saleem	Non-Executive	08-03-2013	B.A	Prop. Raja Bus services, Faisalabad
Hassan Ahmed Khan	Non-Executive	24-04-2013	MBA	10 years' experience with various FI's

3. 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:

...
(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;..."*

4. In this regard, Clause (b) and (c) of sub-Section (1) of Section 12 of the Ordinance state 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;*

(c) *the insurer or applicant is directed and managed by a sufficient number of persons who are fit and proper persons to hold the positions which they hold;*

Explanation: A person is a fit and proper person who possesses such experience and qualifications as are appropriate for the duties for which he is responsible, and conducts those duties with due diligence and skill. A person is not a fit and proper person to hold the position of Chairman, or of Chief Executive or principal officer in Pakistan, of an insurance company if that person does not have experience or qualifications of direct relevance to the conduct of insurance operations. A person is not a fit and proper person if the association of that person with the insurer is or is likely, for whatever reason, to be detrimental to the interest of the insurer or of the policy holders, or is otherwise undesirable."

Handwritten signature/initials



5. And, Clause (a) of sub-Section (5) of Section 12 of the Ordinance states that:

"The insurer or applicant shall not be regarded as conducting its business in a sound and prudent manner if it:

(a) fails to satisfy an obligation to which it is subject by virtue of this Ordinance;..."

6. Moreover, Regulation 2(2) of the Regulations states 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."

7. In view of the above paras hereof, the Commission initiated proceedings against the Respondents by issuance of a Show Cause Notice bearing number ID/Enf/PMICL/2015/1434 on June 30, 2015, thereby calling upon them to show cause as to why the fine, as provided under Section 156 of the Ordinance should not be imposed for non-compliance with Regulation 2(2) of the Regulations read with and Section 11(1)(f) and Section 12 of the Ordinance. The contents of the Show Cause Notice have been reproduced below:

Sub: Show Cause Notice under Regulation 2(2) of the Insurance Companies (Sound & Prudent Management) Regulations, 2012 Read with Section 11(1)(f), Section 12 and Section 156 of the Insurance Ordinance, 2000.

1. WHEREAS, Clause (f) of Sub-section (1) of Section 11 of the Insurance Ordinance, 2000 (the "Ordinance") states that:

"Conditions imposed on registered insurers.-(1) An insurer registered under this Ordinance shall at all times ensure that:

*...
(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;..."*

2. AND WHEREAS, Clause (b) and (c) of sub-Section (1) of Section 12 of the Ordinance state 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;*



- (c) *the insurer or applicant is directed and managed by a sufficient number of persons who are fit and proper persons to hold the positions which they hold;*

Explanation: *A person is a fit and proper person who possesses such experience and qualifications as are appropriate for the duties for which he is responsible, and conducts those duties with due diligence and skill. A person is not a fit and proper person to hold the position of Chairman, or of Chief Executive or principal officer in Pakistan, of an insurance company if that person does not have experience or qualifications of direct relevance to the conduct of insurance operations. A person is not a fit and proper person if the association of that person with the insurer is or is likely, for whatever reason, to be detrimental to the interest of the insurer or of the policy holders, or is otherwise undesirable."*

3. AND WHEREAS, Clause (a) of Sub-section (5) of Section 12 of the Ordinance of 2000 states that:

"The insurer or applicant shall not be regarded as conducting its business in a sound and prudent manner if it:

- (a) *fails to satisfy an obligation to which it is subject by virtue of this Ordinance;..."*

4. AND WHEREAS, Regulation 2(2) of the Insurance Companies (Sound & Prudent Management) Regulations 2012 (the "Regulations") states 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. AND WHEREAS, it has been observed that M/s. Pakistan Mutual Insurance Company (Guarantee) Limited (the "Company") has appointed the following three persons to act as its directors during the years 2012 and 2013, the approval of which was not obtained by the above-named respondents prior to the assumption of charge as directors of the Company:

Name	Status	Date of last appointment	Qualification	Remarks
Jawad Amin	Non-Executive	13-08-2012	B.Com	Businessman
Muhammad Saleem	Non-Executive	08-03-2013	B.A	Prop. Raja Bus services, Faisalabad
Hassan Ahmed Khan	Non-Executive	24-04-2013	MBA	10 years' experience with various FIs

Handwritten signature/initials



6. AND WHEREAS, in view of the foregoing paras hereof, it prima facie appears that the respondents have failed to comply with the aforementioned provisions of the law, for which the Commission may take penal action in terms of Section 156 of the Ordinance.

7. AND WHEREAS, the provisions of Section 156 of the Ordinance state 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.”

8. NOW, THEREFORE, you are hereby called upon to show cause in writing within ten (10) days from the date of receipt of this notice as to why penalty as provided under Section 156 of the Ordinance may not be imposed upon you for contravening the provisions of Regulation 2(2) of the Regulations read with Section 11(1)(f) and Section 12 of the Ordinance, as aforesaid. In the event that you wish to be represented by a Representative, please ensure that the authorizing instrument (a board resolution or a power of attorney as may be appropriate) is submitted to this office along with your reply to this notice. In case you decide to opt for a hearing, you may appear in person or through a Representative. Please note that any reply submitted by a Representative without an appropriate authorizing instrument may not be taken into consideration for the purposes of the proceedings. All documents submitted by you in support of the reply must be duly authenticated. Please note that you will be liable under law for any concealment of any evidence or misstatement made in response of this show cause notice. We have video link facility available in the city in which you reside. In case you wish to avail this option please inform the undersigned in writing so that appropriate arrangements may be made in this regard.

Please acknowledge the receipt of this notice through return fax at the number provided in the letterhead.

-Sd/-
Hasnat Ahmad
Director (Insurance)

8. In response to the said Show Cause Notice, the Respondents, vide their letter no. A/290/15 dated July 11, 2015 stated that:

“...1. It is humbly submitted that we have already sought approval from the Commission vide our letter no. A/56/15 dated February 02, 2015, in respect of appointment of all the directors of the company (including the respondents



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 5

mentioned in the said notice), for the period 2014 to 2017. Copy of the letter is enclosed as ready reference.

2. The person appointed as directors were the only willing members who consented to act as directors of the company, when casual vacancy arose on account of demise of two directors namely Junaid Amin and Raja Manzoor Hussain, and the resignation of another director, Ch. Muhammad Ejaz Ahmed Kahloon, during the years 2012 and 2013.

3. However, approval from the commission for directors appointed during the year 2012 and 2013 to fill in the casual vacancy, could not be sought, owing to the constraint and limitation vis a vis consent of the interested parties.

4. Article 29 of the Articles of Association of the company states that the minimum number of its directors shall not be less than seven. Therefore, the company was constrained to appoint only those persons who consented to act as directors in the event of casual vacancy, to retain the minimum requirements of the number of directors, of the company.

5. According to section 184 (1) of the Companies Ordinance, 1984, "No person shall be appointed or nominated as a director or chief executive of a company or represent as holding such office, nor shall any person describe or name any other person as a director or proposed director or chief executive or proposed chief executive of any company, unless such person or such other person has given his consent in writing for such appointment or nomination."

The fact was duly intimated to the office of the Registrar, by way of filing Form 27, Form 28 and Form 29 on the following dates:

Name of the Directors Appointed	Date of submission
Jawad Amin	24/08/2012
Muhammad Saleem	21/03/2013
Hassan Ahmed Khan	03/05/2013

Acknowledgement of submission of forms by SECP, is enclosed.

In the view of foregoing, it is humbly stated that, having filed the Application with SECP (for Approval of appointment of all directors), we have in a way also complied with the pending requirements of the said Applications.

It is humbly submitted that despite the meagre volume of business of our company, the nominal professional expertise available with us, we are trying our level best to meet as far as possible our obligations with respect to compliances set out by the SECP. Please bear in mind that we are a small "Mutual Insurance" company which works on a collective benefit basis, rather than on profit taking, furthermore, the company has no share capital.



It is humbly requested that since we have to the best of our ability endeavoured to comply with the subject regulations / requirements, by filing Application with SECP seeking approval for appointment of all our directors, as such any repulsive order against us may please be condoned.

We assure you Sir, that in the meanwhile we shall do our best to comply in letter and spirit with your guidelines, and observations in the future."

9. It would be pertinent to state that there was only one attachment to the above quoted letter of July 11, 2015 i.e. a copy of the Company's letter no. A/56/15 dated February 2, 2015, which revealed that the Company had submitted certain documents relating to the appointment of directors and chief executive officer, before the Commission for grant of approval under the Regulations in respect of the newly appointed directors of the Company.

10. However, the Commission, vide its letter no. ID/PRDD/038-APPROVALS/2015/1538 dated March 27, 2015, advised the Company to furnish the following documents relating to the proposed directors of the Company, within fourteen days of receipt of that letter, so as to enable the Commission to process the application:

- a. CV's/Resumes, CNIC and recent photographs of the proposed directors;
- b. The Annexure - A to the application did not state the contact details, National Tax Numbers, detail of experience and the names of the persons on the board of the Company who were related to the applicant;
- c. Duly filled in undertaking in compliance with Regulation 3 of the Regulations.

11. Thereafter, the Company, vide its letter no. A/174/15 dated April 13, 2015, stated that efforts were being made to gather the required information and assured that the information would be furnished as soon as possible. Upon non-receipt of the requisite information, another reminder was issued to the Company vide Commission's letter no. ID/PRDD/038-APPROVALS/2015/2211 dated September 7, 2015, whereby the Company was advised to ensure submission of the requisite information within seven (7) days from the date thereof. However, till the date of this Order, no such information was ever received by the Commission, hence, the approval was not granted.

B. Hearings

12. The Commission, vide its notice no. ID/Enf/PMICL/2015/1665 dated August 4, 2015, scheduled the hearing for August 13, 2015 at 11:00 a.m.

13. However, the said hearing was adjourned on the request of the Respondents and therefore was rescheduled for August 20, 2015 at 11:00 a.m. via hearing notice no. ID/Enf/PMICL/2015/1860 dated August 12, 2015. The said hearing was



conducted through video link, connecting the Commission's Lahore office with the Head Office on the written request of the Company, vide letter no. A/326/15 dated August 8, 2015. The hearing of August 20, 2015 was attended by Ch. Abdul Karim - Chief Executive Officer of the Company and Hafiz M. Farooq Afzal - Manager Finance of the Company, for and on behalf of the Respondents.

14. Brief proceedings of the hearing of August 20, 2015 were as follows:
- The Respondents were asked to present the stance of the Company, on which they stated that their contentions have already been submitted before the Commission vide letter dated July 11, 2015;
 - The Respondents stated that prior approval to fill the casual vacancies on the board of directors was not sought erroneously, however, an application for grant of approval of the respondent directors was filed before the Commission;
 - The Respondents further stated that since all the directors of the Company were transporters and that they did not fulfill the requirements of the Regulations, so they believed that it would be worthless to seek approval of the Commission on something the Company knew about their non-compliance;

C. Issues

15. The Respondents were required to obtain prior approval of the Commission for the appointment of new directors in compliance with Regulation 2(2) of the Regulations, and Section 11(1)(f) and Section 12 of the Ordinance, which the Respondents failed to comply.

16. Moreover, the Respondents failed to file duly completed application for obtaining approval of the Commission under the Regulations.

D. Summary of arguments and conclusions in respect of each issue

17. The Respondents stated in their response letter of July 11, 2015 that during the years 2012 and 2013, three casual vacancies were created on the board of directors of the Company due to the demise of two (2) directors namely Mr. Junaid Amin (late) and Mr. Raja Manzoor Hussain (late), and resignation of another director, Ch. Muhammad Ejaz Ahmed Kahloon.

18. The Respondents further pointed out that the Company had to appoint new directors in pursuance of Article 29 of the Articles of Association of the Company regarding minimum number of directors (i.e. seven (7) directors).

Handwritten signature



19. The Respondents sent a letter dated February 2, 2015, whereby certain documents / information were filed before the Commission to seek approval of the Commission to appoint new directors on the basis of that incomplete application. The Respondents were of the opinion that they have in a way complied with the pending requirements of the said application by filing the application, which was incomplete, as stated earlier.

20. The Respondents also mentioned that the persons appointed as directors were the only willing members who gave their consent to act as directors of the Company, as and when casual vacancy arose during the years 2012 and 2013. The Respondents stated that the Company was constrained to appoint only those persons to act as directors who gave their consent, in order to meet the minimum number of directors as laid down in the Articles of the Company.

21. In this regard, it would be pertinent to point out that the Respondents were required to obtain the approval of the Commission before appointing the new directors to fill up the casual vacancies, however, at least the duly completed application should have been filed before the Commission prior to their appointment for the consideration and approval of the Commission. But, the Respondents did not file the complete information / documents despite two letters of the Commission (i.e. letter of March 27, 2015 and a reminder letter dated September 7, 2015), whereby the Respondents were advised to file complete application and submit all the documents / information, which were required to be filed much earlier.

22. In view of the above, it is inferred that the Respondents have not only contravened the provisions of the law, as aforesaid, by not seeking approval of the Commission before appointing the directors, but they have also ignored the Commission's express demand to file a duly completed application for consideration and approval of the Commission. Moreover, the Respondents have themselves stated during the course of hearing in the matter that since all the directors of the Company are transporters and that they do not fulfill the requirements of the Regulations, so it would be worthless to seek approval of the Commission on something the Company knows that its directors do not comply, which means that the default on part of the Respondents was deliberate and willful.

E. Overall conclusion

23. I have carefully examined and given due consideration to the written and verbal submissions of the Respondents, and have also referred to the provisions of the Regulation, the Ordinance and other legal references, I am of the view that the default of Regulation 2(2) of the Regulations read with Section 11(1)(f) and Section 12 is established. Therefore, the fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents i.e. the Company and the so-called directors of the Company.



24. 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. 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 so-called directors have failed to perform their duties with due care and prudence. As the persons associated with the Company as "directors" are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Regulation 2(2) of the Regulations, therefore, it could be legitimately inferred that the default was committed knowingly and willfully.

25. 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 the Regulation 2(2) of Regulations is established, as aforesaid. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed onto the Company and the respondent directors of the Company.

26. The provisions of Section 156 of the Ordinance state that:

"Penalties. - 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."

F. Penalties and directions

27. In exercise of the power conferred on me under Section 156 of the Ordinance read with S.R.O. 221(I)/2015 dated March 11, 2015, I, instead of imposing the maximum fine as provided under the said Sections, take a lenient view, and thus impose a fine of Rs. 10,000/- (Rupees Ten Thousand Only) on each of the respondent directors and Rs. 100,000/- (Rupees One Hundred Thousand Only) on the Company, due to the willful default of Regulation 2(2) of the Regulations, and Section 11(1)(f) and Section 12 of the Ordinance, as mentioned hereinabove. The Respondents are further directed to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

28. Hence, all the Respondents are hereby directed to deposit the applicable fine 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



date of this Order and furnish receipted vouchers issued in the name of the Commission for information and record.

29. In case of failure to comply with this Order, the Commission shall be bound to initiate proceedings under Section 63(2)(d) and / or Section 65 of the Ordinance. However, in case any willful misstatement is subsequently found in the submissions made by the Respondents, the Commission shall initiate proceedings under Section 158 of the Ordinance.

30. 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.

Hasnat Ahmad
Director

