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SECP
INSURANCE DIVISION
Islamabad

Before Tahir Mahmood, Commissioner (Insurance)

In the matter of

National Insurance Company Limited

Show Cause Notice No. and Issue Date: ID/Enf/NICL/2017/12903 dated
December 13, 2017

Date of Hearing: March 28, 2018

Attended By: Mr. Farrukh Majeed Qureshi
Company Secretary
M/s National Insurance Company
Limited

Date of Order: April 18, 2018

ORDER

**Under Section 46(6) of the Insurance Ordinance 2000 read with Section 156 of the
Insurance Ordinance, 2000**

.....
This Order shall dispose of the proceedings initiated against M/s. National Insurance Company Limited (the "Company") and its Board of Directors for alleged contravention of Section 46(6) of the Insurance Ordinance, 2000 (the "Ordinance"). The Company and its Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Ordinance to carry on non-life insurance business in Pakistan.

3. The Company failed to submit the Statement of Compliance for the year ended December 31, 2010 as per requirement of Section 46(6) of the Ordinance. The Commission, vide letter dated October 24, 2017, advised the Company to provide reason for non-submission of the said statement. The Company vide letter dated November 10, 2017 responded as under:-

"As far as the attachment of Statement of Compliance under Section 46(6) of the Insurance Ordinance, 2000 with the Regulatory Returns for the year 2010 & 2011 is concerned, your attention is drawn to the Agenda Item No. 2 of the Draft Minutes of the 12th Annual General Meeting held on March 30, 2017, which states that:

"Likewise, the meeting considered the relevant provisions of Section 46(6) of the Insurance Ordinance, 2000 concerning the statement of compliance, whereon it was decided that the current Board or any member thereof may not issue the said statement of compliance, as the Board was not aware of the status of compliance during the years

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2010 & 2011. Accordingly, it was decided that no statement of compliance in terms of Section 46(6) of the Insurance Ordinance, 2000 shall be issued for the years 2010 & 2011."

4. Section 46(6) of the Ordinance requires that:

"(6) The statements referred to in sub-section (1) shall be signed, in the case of a company, by the chairman, if any, and two directors and the principal officer of the company, or in the case of an insurer incorporated in a jurisdiction outside Pakistan, by its principal officer in Pakistan and any two directors (or the closest comparable officer equivalent thereto) and shall be accompanied by a statement containing the names and descriptions of the persons in charge of the management of the business during the period to which such accounts and statements refer; by a report by such persons on the affairs of the business during that period; and a statement by such persons signed by the same persons who have signed the accounts that

(a) in their opinion the annual statutory accounts of the insurer set out in the forms attached to the statement have been drawn up in accordance with the Ordinance and any rules made thereunder;

(b) the insurer has at all times in the year complied with the provisions of the Ordinance and the rules made thereunder relating to paid-up capital, solvency and reinsurance arrangements; and

(c) as at the date of the statement, the insurer continues to be in compliance with the provisions of the Ordinance and the rules made thereunder relating to paid-up capital, solvency and reinsurance arrangements."

5. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/NICL/2017/12903 dated December 13, 2017 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Section 156 of the Ordinance should not be imposed on them for the aforementioned alleged contraventions of the law.

6. The Company vide letter dated December 22, 2017 sought extension until January 15, 2018 to submit reply to the aforesaid Show Cause Notice. The request of the Company was acceded to and extension was granted until January 15, 2018.

7. Thereafter, the Respondents submitted their reply vide letter dated January 15, 2018, which is reproduced hereunder:

".....we would like to draw your kind attention to the fact that the statement of compliance under Section 46(6) of the Insurance Ordinance, 2000 entails a declaration of the following:

(a) in their opinion the annual statutory accounts of the insurer set out in the forms attached to the statement have been drawn up in accordance with the Ordinance and any rules made thereunder;



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- (b) *the insurer has at all times in the year complied with the provisions of the Ordinance and the rules made thereunder relating to paid-up capital, solvency and reinsurance arrangements; and*
- (c) *as at the date of the statement, the insurer continues to be in compliance with the provisions of the Ordinance and the rules made thereunder relating to paid-up capital, solvency and reinsurance arrangements.*
3. *Accordingly, it may please be noted that had the Directors issued the abovementioned statement of compliance duly signed by the persons who have signed the Annual Audited Accounts for the years ended December 31, 2010 & December 31, 2011, it would have amounted to a misstatement as the current Directors were neither present during the period to which the said accounts relate nor were the Directors aware of the compliance status of the Company during that period. Such confirmation, purely for the purposes of technical compliance, would therefore be in breach of the Directors' fiduciary duty towards the Company and its shareholder and also violate the Public Sector Companies (Corporate Governance), Rules 2013.*
4. *Moreover, a professional legal advice was obtained during the year 2016 as per which, the superior courts have consistently held that in the event that the approval of the Board of Directors is required for a transaction under Section 196 of the Companies Ordinance, 1984, the same must be taken prior to subject transaction. In other words, retrospective approval of the Board of Directors is unlawful. Hence, it may be inferred that the current Directors were not competent to sign and issue any such statement of compliance for the period during which they were not on the Board of NICL. Accordingly, the Board as well as the shareholders considered it expedient not to issue any statement of compliance for the years ended December 31, 2010 & December 31, 2011.*
5. *It is, therefore, requested that the abovementioned factual position / contention be considered and a lenient view may please be taken in the best interest of justice...."*
8. **In the interest of justice and to provide another opportunity to the Respondents, the Commission vide letter dated March 20, 2018, bearing no. ID/Enf/NICL/2018/14100 scheduled the hearing on March 28, 2018.**
9. **The hearing of March 28, 2017 was held at the Company Registration Office of the Commission at Karachi, which was attended by the Authorized Representative of the Respondents namely Mr. Farrukh Majeed Qureshi, Company Secretary representing the Respondents before the Commission in the instant matter.**
10. **During the hearing, the Representative stated that the current Directors were not present during the period to which the said accounts relate to and they were not aware of the compliance status of the Company at that time. He further reiterated that it would have been misstatement had the current directors submitted the statement of compliance. The Representative was clarified that during the Ministry of Commerce meeting held on November 30, 2016, it was already communicated that current directors would not be held liable and therefore any such statements could have been provided with disclaimer.**



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11. In terms of Section 46(6) of the Ordinance, the Company was required to submit Statement of Compliance to the Commission which, the Company failed to submit for the year ended December 31, 2010.

12. The Respondents have argued that the current Board may not issue the said statement of compliance, as the Board was not aware of the status of compliance during the years 2010. Furthermore, they are of the view that any such statement of compliance would tantamount to misstatement therefore compliance in terms of Section 46(6) of the Ordinance could not be made.

13. The Company should have complied with the requirements of Section 46(6) of the Ordinance. There is no exemption available in the Ordinance under which the Company may be allowed, not to submit the said statement of compliance. Not only the Company has contravened the provision of Section 46(6) of the Ordinance but also in essence violated the basic condition imposed on registered insurers. Section 11(h) of the Ordinance explicitly states that :

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

(h) the insurer is, and is likely to continue to be, able to comply with such other of the provisions of this Ordinance as are applicable to it."

14. In light of the above, the response of the Company is not tenable. It is mandatory for the Company to comply with the provisions of the Ordinance. Refusal to provide compliance certificate tantamount to the violation of Section 46(6) of the Ordinance. It would not have been difficult exercise for the Company to verify compliance and submit compliance report to the Commission accordingly. Furthermore, as per the meeting with MOC, current board would not be held liable for the action/inaction of the past directors. Excerpt from the meeting minutes of November 30, 2016 is reproduced hereunder:

".....signing of the accounts was the responsibility of the Board of Directors and shareholders could not assume this role. He further clarified that though BOD is empowered to sign the accounts, it could not, however, be held responsible for any liability arising from any wrong doing in the past..."

15. 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 Ordinance, the Rules made thereunder and/or other legal references, I am of the view that the default of Section 46(6) of the Ordinance is established. Therefore, the fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents.

16. Section 156 of the Ordinance provides 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



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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."

17. In exercise of the power conferred on me under Section 156 of the Ordinance I, instead of imposing the maximum fine as provided under the said provisions, impose a fine of Rs. 100,000/- (One hundred thousand Only) on the Company due to the default of Section 46(6) of the Ordinance, as mentioned in the above paras hereof.

18. Hence, the Company is 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.

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 CEO of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.


Tahir Mahmood
Commissioner (Insurance)

