



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Askari General Insurance Company Limited

Show Cause Notice Issue Date: April 12, 2013

Date of Hearing: June 10, 2013

Attended By: Mr. Suleman Khalid
Company Secretary
Askari General Insurance Company Ltd.

Date of Order: July 17, 2013

ORDER

(Under Section 227 Read with Section 229 of the Companies Ordinance, 1984)

.....

This Order shall dispose of the proceedings initiated against M/s Askari General Insurance Company Limited ("the Company") for not complying with the provisions of Section 227 of the Companies Ordinance, 1984 (the "Ordinance").

Background Facts

2. The relevant provisions of Section 227 of the Ordinance require each company, registered under the Ordinance, to transfer all money or securities which is deposited by its employees in pursuance of their contracts of service with that company, within fifteen days from the date of such deposit in a special account to be opened in a scheduled bank, and that no portion of such amount may be utilized by that company except in the case of breach of employment contract on part of the employee as provided in that contract and after notice to the employee concerned. For the purpose of ready reference, Sub-section (1) and (3) of Section 227 of the Companies Ordinance, 1984 (the "Ordinance") are reproduced below:

As:

SECURITIES & EXCHANGE
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“Employees’ provident funds and securities.- (1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit in a special account to be opened by the company for the purpose in a scheduled bank or in the National Saving Schemes, and no portion thereof shall be utilized by the company except for the breach of the contract of service on the part of the employee as provided in the contract and after notice to the employee concerned.

...

(3) Where a trust has been created by a company with respect to any provident fund referred to in sub-section (2), the company shall be bound to collect the contributions of the employees concerned and pay such contributions as well as its own contributions, if any, to the trustees within fifteen days from the date of collection, and thereupon, the obligations laid on the company by that sub-section shall devolve on the trustees and shall be discharged by them instead of the company.”

3. Note no. 8 to the Annual Audited Accounts of the Company for the year ended December 31, 2011 revealed that an amount of Rs. 703,541/- was payable to the Provident Fund as at the yearend i.e. on December 31, 2011.

4. In this regard, the Company was asked to provide the audited accounts of the Provident Fund and the bank statement of the special account maintain in respect of the Provident Fund for the year 2011 vide the Commission’s letter no. Ins/AGICO/2011-01 dated June 1, 2012.

5. The Company, vide its letter no. Agico/CS/00529/012 dated June 29, 2012, had provided the audited accounts of the Provident Fund for the year ended December 31, 2010 and December 31, 2011 and the bank statement for the calendar year 2011.

6. In the abovementioned reply of the Company, the Company has admitted that they normally pay withdrawals from the Provident Fund through the Company’s operational bank accounts, which are used for normal operations and not from the Provident Fund account directly. Primarily, such withdrawals are booked as receivables from the Provident Fund account and whatever amount is received as Provident Fund, it is first adjusted against these receivables and then the net amount payable to the Provident Fund is deposited in the Provident Fund account.

7. On perusal of the reply of the Company, and documents and bank statements relating to the Provident Fund, it is evident that the Company has kept separate bank account for Provident Fund, yet the payments are made through Company’s bank account which is used for normal operations. And hence, it appears that the Company has mixed its normal operations with the Provident Fund account.

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 2

8. It has also been observed in the bank statement of the Provident Fund for the year ended December 31, 2011 that there have been certain cash deposits in the bank account. Detail of such cash deposits is as follows:

Askari General Insurance Company Limited Employees Provident Fund
Askari Bank Limited, AWT Plaza Branch, Rawalpindi
A/c No. 001-01-100-4970-1

Date	Particulars	Ins. No.	Val. Dt.	Debit	Credit	Balance
April 21, 2011	Cash	01913221			40,000.00	212,367.29
April 26, 2011	Cash	01884366			40,000.00	252,367.29
June 29, 2011	Cash	57230263			10,000.00	442,984.56
July 4, 2011	Cash	05720268			15,000.00	457,984.56
July 14, 2011	Cash	04993027			8,000.00	550,984.56
August 4, 2011	Cash	09632906			39,500.00	599,860.04
September 7, 2011	Cash	09867045			34,000.00	1,703,332.25
September 15, 2011	Cash	05874754			20,000.00	1,723,332.25
October 4, 2011	Cash	05874692			12,000.00	1,782,824.60
November 2, 2011	Cash	05859170			55,000.00	55,324.60
December 20, 2011	Cash	01867388			86,777.00	408,198.41
TOTAL					360,277.00	

9. The spirit and purpose of the Ordinance in respect of keeping a separate bank account of the Provident Fund is to safeguard the money deposited by the employees in this respect and to foster the transparency and traceability of the payments / deposits being made in the Provident Fund account. It appears that the Company has, by depositing cash into the Provident Fund, violated the essence of the provisions of Section 227 of the Ordinance, and the purpose of maintaining separate bank account of the Provident Fund has failed.

10. It has also been observed from the bank statement of the Provident Fund for the year ended December 31, 2011 that there have been certain withdrawals of huge amounts, which do not appear to be the withdrawals as a result of termination of the employment contracts. Detail of such withdrawals (including a reversal of Rs.890,924/-) is as follows:

Askari General Insurance Company Limited Employees Provident Fund
Askari Bank Limited, AWT Plaza Branch, Rawalpindi
A/c No. 001-01-100-4970-1

Date	Particulars	Ins. No.	Val. Dt.	Debit	Credit	Balance
Balance As On the Closing of 30/3/2011						952,308.66
March 31, 2011	Clearing	03282675		952,000.00		308.66
Balance As On the Closing of 8/8/2011						1,539,277.04
August 9, 2011	Rev	00014895		890,924.00		648,353.04

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		Balance As On Closing of 12/10/2011		1,782,824.60
October 13, 2011	Clearing	03282676	1,782,500.00	324.60
TOTAL		3,625,424.00		

11. The Company has apparently been wiping off the Provident Fund account by withdrawing the major chunk of the available balance, accumulated during a period.

12. In view of the foregoing paras, it appeared that the Company has contravened the provisions of Section 227 of the Ordinance by using / withdrawing amounts from the Provident Fund account in the normal course of operations, for which penal action as provided under Section 229 of the Ordinance may be taken.

Show Cause Notice

13. Accordingly, the Show Cause Notice was issued on April 12, 2013 under Section 227 read with Section 229 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 229 of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with provisions of Section 227 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 no AGICO/CS/000/612-013 dated April 23, 2013, stated that:

"...We would like to make it clear that the Company never uses funds of the Provident Fund Trust (the trust). All funds of the trust are always utilized for the benefit of the trustee only, in line with the applicable regulations.

We understand that you have made following three observations:

- mixing of normal operations of the Company and those of the Provident Fund Trust (The Trust) (Ref: para 1 to 6 of your letter);
- the Company itself depositing amounts in the Provident Fund Trust Account (Ref: para 7 to 8 of your letter); and
- withdrawal from the Provident Fund Trust Account (Ref: para 9 to 10 of your letter).

Response to each of your observations is entailed below.

- Mixing of normal company operations with the Trust:



Please note that the Company under no circumstances used the funds of the trust. However it pays to the members/trust for the routine requirements from its own account and recovers later from the Company contribution to the trust. This helps to avoid encashment of investment of the trust for routine matters.

b) Deposits in the trust:

We would like to affirm that none of the cash deposits identified by you were made by the Company.

All those deposits were received from the members of the trust who requested for a second withdrawal. It was done in compliance with the requirement of the section 105 of the Provident Fund Rules, which state as follows:

".....no second withdrawal from a recognized provident fund shall be permitted until the sum first withdrawn has been fully paid".

Please refer to the table below for the names of the members of the trust for deposits identified by you:

April 21, 2011	Cash	01913221	40,000.00	Asif bajwa
April 26, 2011	Cash	01884366	40,000.00	Farheen Khan
June 29, 2011	Cash	57230263	10,000.00	Safeer Awan
July 4, 2011	Cash	5720268	15,000.00	Asif Rasool
July 14, 2011	Cash	04993027	8,000.00	Intiaz Khan
August 4, 2011	Cash	09632906	39,500.00	Umar Farooq
September 7, 2011	Cash	09867045	34,000.00	Nasir Javed
September 15, 2011	Cash	05874754	20,000.00	Rifaqat Hussain
October 4, 2011	Cash	05874692	12,000.00	Rabia Umar
November 2, 2011	Cash	05859170	55,000.00	Rafiq Sajjad
December 20, 2011	Cash	01867388	86,777.00	Irsaad Ahmed

c) Withdrawal from the Provident Fund Trust Account:

The Company never withdrew any funds of the trust. The funds of the trust are invested by the trustee in the market as per the regulations. Following withdrawals identified by you were direct investment of the trust in the entity mentioned against respective investment.

March 31, 2011	Clearing	03282675	952,000.00	UBL Fund Manager
October 13, 2011	Clearing	03282676	1,782,500.00	MCB Cash Management Optimizer

Following transaction identified by you was a reversal of the dividend received by the trust, from the bank. The bank erroneously debited that dividend on 09-Aug-

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2011 but corrected its mistake and credited the amount in the trust's account on 12-Aug-2011.

August 9, 2011	Rev	0014895	890,924.00	Wrong Reversal, later correct by the Bank.
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A well reputed Chartered Accountants firm has been auditing the financial statements of the trust for the past many years and they have never identified any instance of non-compliance with law and best practices.

Keeping in view of the detailed clarifications provided, we hope that it will be absolutely clear that the Company never compromise on the requirements of the section 227 and hence penalty referred by your good self as specified in section 229 of the Companies Ordinance 1984 is not relevant to our case..." (Underlined to put emphasis)

15. The reply of the Company reveals that the Company first pays to the members / trustee for their routine requirements which is then settled / adjusted before the provident fund contribution is transferred to the trustee.

Hearing of the Case

16. Initially, the hearing in the matter was scheduled for May 17, 2013 at 3:30 p.m., which was communicated to the Company vide the Commission's hearing notice no. ID/Enf/ Askari/2013/16462 dated May 2, 2013.

17. However, the Company, vide its letter no. agico/accts/HO/05-035 dated May 15, 2013 had requested for an adjournment.

18. Thereafter, the hearing in the matter was scheduled for June 10, 2013 at 3:00 p.m., which was communicated to the Company vide the Commission's hearing notice no. ID/Enf/ Askari/2013/16610 dated May 20, 2013.

19. The hearing of June 10, 2013 was attended by Mr. Suleman Khalid, Company Secretary of the Company and Mr. Shah Rukh, Senior Vice President of the Company.

20. Brief proceedings of the hearing of June 10, 2013 are as follows:

- a. Prior to the start of the hearing proceedings, Mr. Suleman Khalid, Company Secretary of the Company presented the Power of Attorney whereby Mr. Abdul Waheed, Chief Executive Officer of the Company had authorized / nominated Mr. Suleman Khalid to appear before the Commission, submit

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- reply and produce record on behalf of the Company. Besides that a copy of the resolution of the Board of Directors dated September 30, 2010 was also presented in which Clause (c) empowers Mr. Abdul Waheed, Chief Executive Officer to appear or to nominate any attorney / officer of the Company to appear before the Commission to represent the interests of the Company. Hence accordingly, Mr. Suleman Khalid shall be referred to as the "Company's representative" hereinafter;
- b. The Company's representative was asked to present the stance of the Company, to which the Company's representative stated that the Company's response to the Show Cause Notice has already been submitted with the Commission, to which the Company stands by. However, the Company's representative while further clarifying the matter stated that since the amount in the PF account was immediately invested, therefore, the PF did not have enough funds to grant loans / advances to its members for which the Company has been granting such loans / advances to the employees, which were then adjusted from the balance amount payable to the PF;
- c. It was then clarified to the Company's representative that any loan / advance given by the Company to its employees is deemed to be the loan / advance given by the Company and not by the Provident Fund, as there exist certain legal and financial implications for which the Company's practice of making adjustments from the balance payable to the Provident Fund is highly discouraged and condemned;
- d. The Company's representative further emphasized that the Company has not been using the amount of the PF at any stage, in fact, the Company was facilitating the members of the PF as well as the PF itself, which has now been discontinued by the Company and that no deductive adjustments are made from the amount payable to the PF since the receipt of the Show Cause Notice;
- e. The Company's representative also prayed that a lenient view be taken while deciding upon the case and good intent of the Company be taken into consideration.

Consideration of Company's Submissions

21. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the Company's representative, Mr. Suleman Khalid, Company Secretary 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 227 of the Ordinance, as the Company was required to transfer all the amount collected from the employees in respect of the Provident Fund in the designated bank account maintained for the purpose of the Provident Fund within 15 days, and provision of making adjustments in the contributions payable to the trustee against any earlier payments made to trustee for meeting their day-to-day expenses does not exist. However, these day-to-day expenses included loans to the Company's employees, which were then adjusted from the respective balance of the Provident Fund.

22. 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 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 227 of the Ordinance, as aforesaid, therefore, it could be legitimately inferred that the default was committed.

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 227 of the Ordinance is established. Therefore, the penalty as provided under Section 229 of the Ordinance can be imposed onto the Company and/or its Directors.

24. Section 229 of the Ordinance states that:

"Penalty for contravention of section 226, 227 or 228.- Whoever contravenes or authorises or permits the contravention of any of the provisions of section 226 or section 227 or section 228 shall be punished with a fine which may extend to five thousand rupees and shall also be liable to pay the loss suffered by the depositor of security or the employee on account of such contravention."

Order

25. In exercise of the power conferred on me under Section 229 of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, condone the Company due to fact that the act of transfer of the adjusted contribution amount in the

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Provident Fund has not harmed the interests of the employees of the Company, rather the withdrawals were made / utilized by the employees and not by the Company, and that the Company did not appear to have any malicious intent.

26. However, the Company is hereby advised to ensure that no portion of the balance payable to the Provident Fund be utilized, adjusted or deducted, at any cost and at any point in time, and all such balance be transferred and / or paid to the Provident Fund account in strict pursuance of Section 227 of the Ordinance.

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.

Tariq Hussain
Director