



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Shahid Nasim, Executive Director (Insurance)

In the matter of

Askari General Insurance Company Limited

Date of Show Cause Notice: December 21, 2011
Date of Hearing: January 27, 2012
Attended by: Mr. Abdul Waheed, President & Chief Executive Officer
Date of Order: April 13, 2012

ORDER

(Under Section 166 read with Section 156 of the Insurance Ordinance, 2000)

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This Order shall dispose of the proceedings initiated against Askari General Insurance Company Limited ("the Company") for not complying with the provisions of Section 166 of the Insurance Ordinance, 2000 ("the Ordinance").

Background Facts

2. The provisions of Section 166 of the Ordinance state:

"Insurance of public property.- (1) This section applies to direct nonlife insurance of public property.

(2) In this section –

(a) "Company" means the National Insurance Company Limited;

(b) "public property" means:

1. any property, movable or immovable, which belongs to, or the safety of which is the legal responsibility of, -

(A) the Federal Government, a Provincial Government or a local authority or statutory corporation; or

(B) any company, firm, undertaking, institution, organisation or other establishment which is managed or controlled by the Federal or a



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Provincial Government or local authority or statutory corporation or in which such Government, by itself or jointly with a local authority or corporation or company managed or controlled by it, holds a controlling financial share or interest or which is specified by the Federal Government for the purposes of this clause; and

(ii) *a project financed out of an external loan, or with external aid until it reaches:*

(A) *in the case of an industrial project, the stage at which it is capable of commencing normal production; and*

(B) *in the case of any other project, the stage at which it is capable of being put to the use for which it is intended; and*

(c) *"statutory corporation" means a body corporate, other than a company, established or set up by the Federal Government or a Provincial Government in pursuance of any law.*

(3) *Subject to the provisions of sub-sections (4) and (5), all insurance business relating to any public property, or to any risk or liability appertaining to any public property, shall be placed with the Company only and shall not be placed with any other insurer:*

Provided that marine, aviation and transport insurance relating to goods the import of which is financed out of an external loan, or with external aid, may, at the option of the importer, be placed with any insurer authorised to carry out such insurance business in the country giving the loan or aid.

(4) *The Federal Government may –*

(a) *by order in writing exempt from compliance with subsection (3) any property or liability to which that subsection applies; or*

(b) *by notification in the official Gazette exclude from the application of sub-section (3) such property or liability as is specified in that notification.*

(5) *If the Company declares in writing that it is not able, by virtue of the operation of a provision of this Ordinance or for any other reason, to enter into a contract of insurance to which sub-section (3) refers, the property or liability which is the subject of that proposed contract of insurance shall be exempted from the provisions of sub-section (3) to the extent of the insurance proposed to be obtained by means of that contract of insurance.*

(6) *Any person who insures, and any insurer which accepts insurance of, any property or liability, knowing such insurance to be in contravention of sub-section (3), shall be guilty of an offence:*



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Provided that no person shall be in contravention of sub-section (3) by reason only of that sub-section becoming applicable to property or liability to which it was not applicable at the time that a contract of insurance in respect of that property or liability was taken out."

3. The Company vide email transmission dated April 26, 2011 applied for an NOC for insurance of PAF JF-17 Aircrafts, in response of company's request the Commission has informed the Company via email transmission of April 26, 2011 that the insurance of aircrafts of Pakistan Air Force (PAF) have to be placed with National Insurance Company Limited (NICL) in terms of the provisions of Section 166 of the Ordinance.

4. The Company has made an application for provisional approval of the Commission, vide their letter of November 2, 2011, for placement of 100 percent of the risk, i.e. four JF-17 Thunder aircrafts of PAF, facultative abroad. The coverage spans over 12 days. This case revealed that the Company has underwritten a Third Party (Bodily Injury / Property Damage) Legal Liability (Aviation Liability) insurance cover for the aircrafts (4 – JF-17 Thunders) of Pakistan Air Force.

5. The Commission, vide email transmission of November 15, 2011, asked the Company to submit the acceptance/regret slip issued by the NICL. The Company did not submit the acceptance/regret slip. However, on December 8, 2011, the Commission again wrote an email to the Company whereby the Company was asked to submit its reply to the Commission's previous email of November 15, 2011, and the Company was also advised to apprise whether NICL has declared, in writing, that they are not willing to take up the abovementioned risk of PAF.

6. The Company submitted its response in writing via their letter dated December 12, 2011, stating that the project will be financed out of non-public funds as quoted by Air Cdre Khalid Mahmood of PAF, when the Company mentioned to obtain an NOC from NICL for the same. The Company in its reply also stated that the proviso of Section 166(3) of the Ordinance clearly specifies that it is at the option of the insured to place all such marine, aviation and transport risks with the insurers, other than NICL, where the risk is financed out of an external loan or external aid. And since, the PAF has already mentioned that the insurance of these aircrafts will be financed out of non-public funds, the NOC from NICL is not required.

7. In the meanwhile, the Commission also sought clarification / comments from NICL, vide Commission's letter dated November 28, 2011, regarding whether they have issued any sort of NOC to the PAF and/or the Company that they are not willing to take up the aforesaid risk of PAF. NICL, vide their letter dated December 7, 2011, stated that they have not issued any NOC to the Company.

8. Keeping in view the abovementioned facts, it may be inferred that the Company has underwritten the aforementioned risk of PAF without seeking an NOC from NICL or an



exemption from the Federal Government. Also, that the Company's stance that the aforementioned risk of PAF belongs to marine, aviation and transport business and it is financed out of non-public funds and that it is not required to seek an NOC from NICL is inadmissible, as the proviso of Section 166(3) of the Ordinance relates to the import of goods. The aforesaid proviso reads as under:

"Provided that marine, aviation and transport insurance relating to goods the import of which is financed out of an external loan, or with external aid, may, at the option of the importer, be placed with any insurer authorised to carry out such insurance business in the country giving the loan or aid."

9. In view of the above, it appears that the Company has contravened the provisions of Section 166 of the Ordinance by underwriting Third Party Liability insurance of the JF-17 Thunder aircrafts of the PAF, which were participating in the Dubai Air Show, which may be penalized under Section 156 of the Ordinance.

10. The applicable penal provision of the Ordinance for contravention of Section 166 is stated in Section 156, which 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, 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."

Show Cause Notice

11. Accordingly, a Show Cause Notice was issued on December 21, 2011 under Section 166 of the Ordinance to the Chief Executive, Directors of the Company and the Company itself, calling upon them to show cause as to why the penalty, as provided in Section 156 of the Ordinance, should not be imposed upon them and/or upon the Company for not complying with provisions of Section 166 of the Ordinance.

Company's Response to the Show Cause Notice

12. The Company, via its letter dated January 10, 2012 responded to the abovementioned Show Cause Notice. The summary of the reply has been reproduced below:

The Company was approached by PAF Air Head Quarters Islamabad via letter no. AHQ/75850/25/OPS/JF-17 dated October 2, 2011, seeking quotations from the Company for providing third party insurance cover to PAF for participation in Air Show in Dubai for the



period 8th November 2011 to 19th November 2011. It was also stated in the said letter that the offer received from the Company shall be compared with quotes from other insurance companies before taking a final decision. Keeping in view the relevant law and restriction under Section 166 of the Ordinance, the matter was discussed with the reinsurer and it was also explained to the officer of PAF that the Company cannot insure this risk due to the restricted provision of law. The Air Head Quarter informed the Company that although there is no doubt that the Air Craft JF-17 Thunder is a public property, but the participation in Air Show in Dubai is being made only with the view to present the new innovation in the field of Air Craft to attract the attention of participating countries for "commercial" sale purpose.

The Company accepted that Askari General Insurance the Company had underwritten the subject policy, however, the Company reiterated that the PAF officials had informed them that the participation of the Aircrafts in the Air show in Dubai was purely for commercial purposes and the organizer / JV partner requested to purchase this insurance independently. The expenses accrued were to be funded from other resources extended for exhibition of commercial activities and not from the public funds. The reinsurer also agreed to reinsure the subject risk when it was made clear to them that it was commercial activity and for commercial activity resources can be generated from organizer as well as the interested parties / countries, therefore, the issuance of policy does not fall within the ambit of Section 166 of the Insurance Ordinance, 2000.

It was further stated that the JF 17 Thunder Air Craft is a joint venture product of Pakistan and the Government of China, whereas the joint venture partner was also interested that the product should be presented in the air show. The insurance cover and other expenses incurred thereon were funded by the organizers / promoters. Therefore, it cannot be construed that the insurance cover extended by the Company comes in the ambit of section 166 of the Ordinance."

13. Para wise comments on the Show Cause Notice briefly state the same points as stated above.

Hearing of the Case

14. Hearing of the said case was conducted at 03:30 p.m. on January 27, 2012 before Mr. Shahid Nasim, Executive Director (Insurance) which was attended by Mr. Abdul Waheed, President and Chief Executive Officer, Askari General Insurance Company Limited.

15. The Chief Executive Officer of the Company submitted the Delegation of Powers dated September 30, 2010 before the Executive Director – Insurance, whereby, the Board of Directors of the Company, delegated powers to the CEO of the Company for appearing before the Commission on any legal case. Two Directors of the Company to whom the Show Cause Notice was issued were not Directors of the Company at the time the power was delegated to CEO. Therefore, power of attorney of the said two Directors was called from the CEO. However, the CEO via his written submission clarified that he himself is responsible for the decision to extend insurance to PAF for the third party liability associated with JF-17



Thunder Aircrafts and none of Directors of the Company have any involvement in the decision, and therefore, requested the Executive Director – Insurance to withdraw the Show Cause Notice against the Directors of the Company.

16. The CEO of the Company submitted written submissions and also submitted legal opinion sought on the said case, before the Executive Director – Insurance. The written submission of the CEO briefly state the grounds which lead to the issuance of the insurance policy to PAF:

- a. *“Insurance policy was to be issued for risk arising OUTSIDE Pakistan to which in our understanding (at that time) Section 166 didn’t apply. You would also appreciate that this is a borderline case in which no clear express guidelines are available.*
- b. *PAF informed us that the quotation provided by NICL was not able to fulfill their objectives of air show.*
- c. *The insurance policy was to cover Third Party Liability and not the assets of PAF and thereby in our opinion (at that time) no ‘public property’ as per the definition of Section 166 was involved.*
- d. *PAF had confirmed us that no NOC from NICL is required as the insurance premium is being paid by their Chinese partners and not out of public funds.*
- e. *We had submitted our application for provisional approval of SECP on 2nd November 2011 in which all the details of transaction in question were provided informing SECP that risk will start from November 08 2011 to November 19, 2011. However, when we didn’t receive any reply or objection regarding the same from SECP, we assumed that there is no issue with the insurance policy in question and went ahead with it. SECP sent us email on 15th November and by that we had already issued the insurance policy as the Dubai Air Show started on 13th November.”*

17. Moreover, the legal opinion submitted by the CEO on the case briefly state the grounds based on which the Company is not liable to action and/or penalty, because:

- a. Under Section 166(3) of the Ordinance, all insurance business relating to any public property or to any risk or liability pertaining thereto is required to be placed with NICL except: (i) where the Federal Government exempts or excludes application of this requirement (Sub-section (4) of Section 166); (ii) where NICL declares its inability to insure in writing (Sub-section (5) of Section 166); and (iii) where the proviso to Sub-section (3) becomes applicable.
- b. It is inferred from above that the requirement that NICL insure risks associated with “public property” is not absolute.
- c. In the light of Section 1(2) of the Ordinance, the provisions of the Ordinance extend within the territorial limits of Pakistan, unless otherwise specifically provided.
- d. Therefore, the condition or requirement set out in Section 166 pertains to insuring of risks with respect to public property only and that too in Pakistan.
- e. Mere reading of Section 165 shows that Sub-Section (1) specifically applies to coverage of risks in respect of “any property or interest” outside Pakistan, which expression covers public property as well.



- f. Therefore, Section 166, read with Section 1(2) and Section 165 of the Ordinance, makes it clear that Section 166 applies to insurance business relating to public property the coverage of which is to be provided within Pakistan.
- g. Where coverage in respect of any public property or interest, including that appertaining to public property, is to be provided outside Pakistan, the relevant provision of the Ordinance is Section 165.

18. Therefore, it was stated in the legal opinion, that in their considered view, Section 166 of the Ordinance is not relevant to the issue in hand, and the question squarely falls under the mischief of Section 165 of the Ordinance. It was further stated in the legal opinion that it is accepted that under the provisions of Section 165 of the Ordinance, that the Aircrafts were located in Pakistan at the time the insurance was affected, however, the insurance in question pertained to risks outside Pakistan. Importantly, the Ordinance does not bar the Company from insuring risks outside Pakistan.

19. It is further stated that, we do note that Section 165 does contemplate framing of rules by the Federal Government in this behalf, but such provision cannot be construed to operate as an embargo on the conduct of lawful business in the absence of such rules.

20. During the hearing proceedings, It was stated by the- Director Insurance that the written submission made by the Company is contradictory within itself as it states that Section 166 of the Ordinance is not applicable in this case, whereas, extensive correspondence on the matter was done in the month of April 2011 with the Company, whereby, via email communication dated April 26, 2011 it was clearly communicated to the Company that according to Section 166 of the Ordinance, the aircrafts of PAF are deemed to be "public property" and thus have to be insured with NICL. It was also stated that PAF has no choice but to insure its assets with NICL under the law.

21. The CEO of the Company stated that PAF had stated that in this case NOC is not required from NICL. Moreover, the Company via its letter dated November 2, 2011 had sought permission for facultative placement of the risks abroad, and the Air Show in Dubai was to be held from November 13, 2011 to November 19, 2011 with the insurance cover beginning from November 8, 2011 to November 19, 2011. The Commission did not communicate any adverse issues on the said permission, until an email was received on November 15, 2011 calling for submission of NOC from NICL. By then the insurance cover on the risk had already started. Since no adverse communication was received from the Commission in this regard, we went ahead with the transaction and issued policy to PAF.

22. In response The Director – Insurance counter argued that firstly how can PAF interpret and communicate on the book of law, when it does not possess the expertise to do so, secondly, in the case of facultative permission, if the permission was not granted and no response was given by the Commission, how can you assume that no response shall be deemed approved?



23. The CEO of the Company stated in that in the month of April, the Commission asked us to seek NOC from NICL, which NICL did not give, and therefore, we the Company did not insure that business. However, in this case PAF said that these aircrafts are from China and are to be sold and that China would be paying all the expenses with regards to this Air Show. It was further stated that PAF had stated that the Chinese partner did not accept NICL's quotation on the said risk. With reference to the email from the Commission dated November 15, 2011, the email was received when the risk was already half expired and at that point in time, how could the Company withdraw itself from the cover?

24. It was asked from the CEO of the Company that the letter of the Company dated November 2, 2011 clearly stated that it is necessary to make payment to reinsurer before inception of the policy, otherwise the risk will be cancelled by the reinsurer. Similar statement was also given by the Insurance Broker in this case, whose email to the Company clearly stated that the underwriters require the premium prior to the start of the air show, and there can be no extensions allowed for premium settlement. When the Commission did not give approval of facultative permission abroad, and the Company was not authorized to pay the premium, then contrary to the statement above, how did the Company commence with writing the risk. The CEO of the Company in response stated that these sorts of policy wordings are used, but these are not implemented in letter and spirit.

25. It was brought in the knowledge of the CEO of the Company that underwriting this risk raises greater concerns for the Commission on the underwriting capabilities of the Company. If in case the risk associated with the thirty party cover, the insured would call from the Company to pay the claim, which would in turn ask the reinsurer to pay its part of the claim, and as per the policy wordings, since the reinsurer did not receive the reinsurance premium in advance, therefore, the reinsurer would reject the payment of claim and this would compel the Company to refuse payment of claim to the insured. Moreover, the overall balance sheet footing of the Company shows that the Company does not have the assets / reserves to pay the claim itself, if in case the reinsurer withdraws from the payment of claim.

26. The CEO of the Company denied the contention of the Commission in this regard and stated that such is not the case in international markets and if in case risk aroused, the reinsurer would not have withdrawn from the case.

27. Furthermore, the CEO of the Company requested the Executive Director – Insurance to take a lenient view while deciding the case as the Company wrote this risk on the understanding that Section 166 of the Ordinance was not applicable in this case.

Consideration of Company's Submissions

28. The submissions made by the Company on the case seem to be contrary in itself as the Company initially via its letter of December 08, 2011 stated that the risk was written on the basis of proviso to Section 166(3) of the Ordinance. After the issuance of the Show Cause Notice to the Company, the Company stated that the JF=17 Thunder Aircrafts were



joint venture between Government of China and Pakistan and that the expenses incidental to the air show were paid by the JV partner.

Moreover, no response from the Commission on the provisional approval of facultative placement of risk was taken by the Company as deemed approved.

Moreover, the Company was clearly communicated earlier via Commission's email dated April 26, 2011 to abstain from insuring aircrafts of PAF as they are public property and all assets and liabilities appertaining to public property can only be insured from NICL.

29. The law does not in case provide for that payment of premium from non-public funds implies that the provisions of Section 166 of the Ordinance are not applicable on public property. The law itself has clearly stated the reasons and exemptions for not insuring risks with NICL.

30. Moreover, it is note able that the Company in its provisional approval of facultative placement application dated November 2, 2011 sought approval of four Aircraft of PAF to reinsured from abroad, however during the hearing proceeding the Company's CEO disclosed that only three Aircrafts were participated in the Dubai Air Show. The company neither informing nor intimating the Commission of this change in the risk to be insured.

31. The legal opinion on the case states that Section 166 in this case should be read with Section 1(2) and Section 165 of the Ordinance, and it seems from the legal opinion that the learned counsel is ignorant of the fact that Federal Government via the Insurance Rules, 2002 have devised a Rule on Insurance of interests outside Pakistan. For their kind knowledge Rule 23 of the Insurance Rules, 2002 is reproduced below for ease reference:

23. Insurance of interests in Pakistan .—(1) *For the purposes of subsection (1) of section 165 of the Ordinance, no person shall insure outside Pakistan any risk or part thereof in respect of any property or interest which is located in Pakistan at the time the insurance is effective.*

(2) *The Federal Government may grant exemption to any person from the requirements of sub-rule (1)—*

(a) Where any risk cannot be insured suitably in Pakistan; or

(b) Where there are reasons of exceptional nature for granting exemption.

(3) *The exemption under sub -rule (2) shall be for such property or interests, and for such period as the Federal Government may deem fit.*

32. As per Section 165 of the Ordinance read with Rule 23 of the Insurance Rules, 2002, no person can insure any risk outside Pakistan until the Federal Government grants exemption to the person and the exemption from federal government can only be granted when the risk cannot be reliably insured in Pakistan, whereas, the said risk was insured in Pakistan, and also there was no reason of exceptional nature for granting exemptions.



Contrary to what Section 165 of the Ordinance actually means, if in case, the point of view stated in the legal opinion is accepted, still the Company did not seek exemption from the Federal Government in this regard, which is again a violation of the book of law.

More important is to understand the actual meaning of Section 165 of the Ordinance read with Rule 23 of the Insurance Rules, 2002. The aforesaid Section and Rule actually refer to the purchasing of insurance from abroad when it is not available or cannot be reliably insured in Pakistan.

Conclusion

33. I have carefully examined and given due consideration to the written submissions of the Company and have also referred to the provisions of the Ordinance. I am of the view that there has been a default under the relevant provision of the Ordinance. The submissions made by the Company on the case are not legitimate and therefore the contravention of the provision of the Law is established.

34. Before proceeding further, I find it relevant to discuss the duties of the Directors & the Chief Executive. The Directors & the Chief Executive Officer of a Company, 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 obligations imposed by statute on them and on the Company. The Directors and the Chief Executive of the Company are supposed to be well aware of their legal obligations and the Company's legal obligation in the aforesaid matter along with the consequences of the said defaults.

35. The Company has not only contravened the provisions of law, but also has neglected the instructions given by the Commission to the Company.

36. Underwriting this risk has although not placed any burden on the Company, but if in case any risk actually aroused from the underwriting of this risk, the Company was not in a position to actually pay the claim, had the reinsurer refused to pay its share of claim. This raises serious concern for the Commission on the underwriting capabilities of the Company and the persons incharge of the management of the Company.

37. Going on with issuance of the policy, although the Commission did not provide its approval and/or consent for facultative placement, again raises serious concerns for the Commission on the way the Company is doing business and the way the Company respects seeking approval under the provisions of law.

38. Relying on the interpretation of individuals / institutions on the book of law, who are not competent enough or do not have the mandate to interpret the book, again shows the seriousness of the Company to follow the law in letter and spirit.

39. Askari General Insurance Company being a public listed company is expected to exhibit more prudence and a compliant corporate behavior but the facts mentioned hereinabove shows that the Company did not comply with the provisions of Ordinance.



Order

40. Based on the facts and findings of the case as mentioned in the above paras of this Order, the default under Section 166 read with Section 156 of the Ordinance is established, the Chief Executive and the Directors of the Company and the Company have made themselves liable for fine under Section 156 of the Ordinance.

41. I, in exercise of powers conferred on me under Section 156 of the Ordinance, instead of imposing penalties, on each Directors of the Company impose a fine of Rs. 100,000/- (Rupees One Hundred Thousand Only) on the Chief Executive Officer, Mr. Abdul Waheed and a fine of Rs. 200,000/- (Rupees Two Hundred Thousand Only) on the Company i.e. Askari General Insurance Company Limited.

42. Furthermore, the Company is hereby directed to cancel the policy issued to PAF in view of the matter discussed in the above paras of this order. The Company is also advise to furnish to the Commission, the endorsement from the policyholder for the effect of this cancellation along with the evidence of refund of premium and any other such documents deemed necessary for this purpose.

43. Moreover, I also WARN and advise the Chief Executive, the Directors of the Company and the Company itself to exercise due caution in the future whilst complying with the requirements of the law.

44. The Chief Executive Officer and M/s Askari General Insurance Company Limited, are hereby directed to deposit the aforesaid fines aggregating to Rs. 300,000/- (Rupees Three Hundred Thousand Only) in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan ("the Commission") with MCB Bank Limited within thirty (30) days from the receipt of this Order and furnish receipted vouchers issued in the name of the Commission for information and record. Failing which, proceedings under the Land Revenue Act, 1967 shall be initiated against the Chief Executive Officer of the Company, which may result in the attachment and sale of movable and immovable property. It may please be noted that the said fines are imposed on the Chief Executive Officer in their personal capacity and they are required to pay the said amounts from their personal resources.


Shahid Nasim
Executive Director