



INSURANCE DIVISION
Islamabad

Before Fida Hussain Samoo Commissioner (Insurance)

In the matter of

The Co-operative Insurance Society of Pakistan Ltd.

Show Cause Notice Issue Date: ID/Enf/Cooperative/2017/7114 dated February 24, 2017

Date of Hearing: April 17, 2017

Attended By: Mr. Fateh Khan Niazi, CEO
The Co-operative Insurance Society of Pakistan Ltd

Ch. Akhtar Mahmood, Director
The Co-operative Insurance Society of Pakistan Ltd

Mr. Muhammad Hanif Niazi
Advocate Supreme Court

Date of Order: May 18, 2017

ORDER

Under Regulation 2(2) of Insurance Companies (Sound and Prudent Management) Regulations 2012, Section 11(1)(f), Section 12(1)(b) read with Section 60 and Section 156 of the Insurance Ordinance, 2000.

.....

This Order shall dispose of the proceedings initiated against M/s. The Co-operative Insurance Society of Pakistan Limited (the "Society") and the Chief Executive and Directors for alleged contravention of Regulation 2(2) of Insurance Companies (Sound and Prudent Management) Regulations 2012 (the "Regulations"), Section 11(1)(f), Section 12(1)(b) of the Insurance Ordinance, 2000 (the "Ordinance"). The Society, its Chief Executive Officer (CEO) and Directors shall be collectively referred to as the "Respondents" hereinafter.

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

3. The Commission, vide letter dated July 19, 2016, advised the Society to file applications to seek approval of appointment of its CEO and Directors as required



under the Regulations. In response, the Society requested to grant an extension in the said matter. However, the Commission did not accede to the said request of the Society for extension.

4. The Society submitted applications for approval of appointment of the CEO and Directors vide letter dated July 30, 2016. The Commission, vide letter dated September 6, 2016, advised the Society to furnish Declaration from each of the proposed Directors in terms of Regulation 3(iv) *ibid* on stamp paper along with affidavit regarding integrity and financial soundness and Bachelor's degree of the proposed CEO, duly attested by Higher Education Commission (HEC).

5. The Commission vide its letters dated November 2 & 29, 2016 reminded the Society to adhere to the requirement of provision of HEC's attested Bachelor's degree of the proposed CEO. The Society was also advised to furnish certified copies of experience certificates of each of the proposed Directors; vide Commission's letters dated December 27, 2016.

6. In addition to the affidavits mentioned in para (4) above, consequent to notification of the amendments in the Regulations vide SRO No. 1165(I)/2016 dated December 22, 2016, the Society was also required to submit affidavit as per Annexure "C" in respect of each of the proposed Directors. The Commission vide letters dated December 16, 2016 and December 27, 2016 also sought comments from the Society about overdue amounts in respect of two of its Directors. The Society was issued a reminder vide Commission's letter dated January 19, 2017 for submission of the deficient information/ documents.

7. The Society, vide letter dated January 27, 2017, responded that a meeting of the Board of Directors had been called for collection of the requisite documents and the same would be provided as and when received. It was observed that the Society failed to comply with the requirements of the Regulations despite multiple reminders issued by the Commission.

8. In view of the above, the Respondents, *prima facie*, failed to meet the mandatory requirements under the provisions of Regulation 2(2) of the Regulations, Sections 11(1)(f) and 12(1)(b) of the Ordinance.

9. 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."

10. The relevant provisions of Section 11(1)(f) of the Ordinance state that:

"An insurer registered under this Ordinance shall at all times ensure that-

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;"



11. Section 12(1)(b) of the Ordinance states 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;”

12. Section 60 of the Ordinance states that:

“Power of the Commission to give directions to the insurer.- (1) The Commission may, if it believes on reasonable grounds that an insurer registered under this Ordinance has failed, or is about to fail, to comply with the conditions of registration set out in section 11, issue to the insurer such directions, not otherwise provided for in this Ordinance, as it believes on reasonable grounds to be necessary to protect the interests of the policy holders of the insurer.

(2) The Commission may, on representation made in this behalf, or on its own motion, modify, or cancel any direction issued under sub-section (1) and may, in so modifying or cancelling a direction, impose such conditions as it may deem on reasonable grounds to be appropriate under the circumstances.

(3) Every insurer shall comply with any direction issued under sub-section (1) or such direction as modified under sub-section (2) subject to such further conditions, if any, as may be imposed.”

13. 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 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.”

14. Therefore, a Show Cause Notice (SCN) ID/Enf/Cooperative/2017/7114 Dated February 24, 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 and/or direction under Section 60 of the Ordinance may not be issued for the aforementioned alleged contraventions of the law.



15. Thereafter, the Society vide letter dated March 10, 2017 provided details of education and experience of each of the proposed Director/CEO in its reply along with submissions, summarized as under: -

- i. Election of the Board of Directors was held on July 27, 2014. The intimation of the same was submitted by the Society to the Commission vide letters dated April 28, 2015, June 23, 2015 and September 14, 2015. However, the Commission did not raise any objection to the election of Directors. The law on the subject is that approval is deemed to be granted unless it is disapproved. Reliance is placed on QUINION vs. Horne (1906) ICH, 596.
- ii. The person should have either experience or qualification as per the provision of the Ordinance. In other words, he should have one out of the two. The word experience is self-explanatory whereas word qualification means, the possession by an individual of qualities, properties or circumstances, natural or adventurous, which are inherently or legally necessary to render him eligible to fill an office or to perform public duty. The education is not the sole criteria for that. Rather, the other attending qualities matter much.
- iii. Regarding the alleged overdue against Mr. Nadeem Akram Khan, it would be appropriate to state that his case is pending adjudication in the Banking court, District Sargodha. Overdue against Mr. Hassan Zaheer has not been established as the case filed by the bank regarding the said overdue has been dismissed.
- iv. The requisite information was provided to the Commission vide letters dated February 14, 17, 21, 23 & 24, 2017 and March 2 & 8, 2017.
- v. There is no violation of the provisions of the Ordinance or of the regulation either by the Society or by its Directors. Hence, no punitive action can be taken against the Respondents under Sections 60 and 156 of the Ordinance on the following grounds:-
 - a) The society and its Directors have fully complied with the conditions of registration as set out in Section 11 of the Ordinance;
 - b) The conditions imposed by the Commission also stand complied with; and
 - c) Any direction or conditions imposed have been duly complied with;

16. Subsequently, the Commission vide letter no. ID/Enf/Cooperative/2017/9066 dated March 31, 2017, scheduled a hearing for April 17, 2017 at 11:30 a.m. at the Head Office of the Commission in Islamabad to provide an opportunity of being heard to the Respondents. The hearing was attended by Mr. Fateh Khan Niazi, Chief Executive of the Society, Chaudhry



Akhtar Mahmood, Director of the Society and Mr. Muhammad Hanif Niazi, Advocate Supreme Court as authorized representative to represent the Respondents before the Commission in the instant matter.

17. Brief proceedings of the hearing of April 17, 2017 are as follows:
- i. The Respondents stated that overdue balance are only considered when it exceeds Rs. 1 million, therefore affidavits submitted by the Society in respect of the Directors were correct;
 - ii. The Respondents insisted that amendments in the Regulations, as per which the new requirement i.e. overdue balance regardless of any amount against the proposed Directors, is applicable from December, 2016;
 - iii. The Respondents stated that Mr. Nadeem Akram has been suspended from the Society. In this regard, the Respondents submitted his suspension letter;
 - iv. Regarding political experience of Mr. Hassan Zaheer, the Respondents were of the view that it includes management experience, therefore it satisfies the requirement of the Regulations; and
 - v. The Respondents assured the Commission that compliance would be ensured in future and requested the Commission to take a lenient view in the matter.

18. The Respondents were required to ensure compliance with the mandatory provisions of Regulation 2(2) of the Regulations, Section 11(1)(f), Section 12(1)(b) of the Insurance Ordinance.

19. Interpretation of the Respondents that Directors are required to have either of experience or qualification, is not in accordance with provisions of the Ordinance. Section 12 of the Ordinance in the explanation para provides that:

"A person is a fit and proper person who possess such experience and qualifications as are appropriate for duties for which he is responsible....."

20. The Respondents have failed to remove the deficiencies in applications for approval of the Directors as communicated by the Commission. The Respondents have stated that Annexure C and other deficiencies would be met after the forthcoming Board meeting.

21. 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 Regulation 2(2) of the Regulations, Sections 11(1)(f) and 12(1)(b) of the Ordinance is established. Therefore, the fine as provided under



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 5

Section 156 of the Ordinance can be imposed onto the Respondents i.e. the Society, its Chief Executive and Directors. However, keeping in view the undertaking given by the Respondents, that the deficiencies would be removed soon after holding of meeting of the Board of Directors, I hereby allow the Respondents a period until July 31, 2017 to rectify all the defaults and deficiencies in the applications of the proposed CEO and Directors.

22. This Order is issued without prejudice to any other action that the Commission may initiate against the Society and / or its management (including the Chief Executive Officer of the Society) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Fida Hussain Samoo
Commissioner (Insurance)

