



INSURANCE DIVISION
Islamabad

Before Fida Hussain Samoo, Commissioner (Insurance)

In the matter of

Continental Insurance Company Limited

Show Cause Notice Issue Date: ID/Enf/Continental/2017/8428 February 9, 2017

Date of Hearing: April 26, 2017

Attended By: Syed Bulent Sohail
M/s. Hassan & Hassan (Advocates)

Date of Order: May 16, 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 and Section 180 read with Section 186 of the Companies Ordinance, 1984.

.....

This Order shall dispose of the proceedings initiated against M/s. Continental Insurance Company Limited (the "Company") 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 of 2000") and Section 180 of the Companies Ordinance, 1984 (the "Ordinance of 1984"). The Company, its Chief Executive and Directors shall be collectively referred to as the "Respondents" hereinafter.

2. During examination of the Annual Audited Accounts and Regulatory Returns of the Company for the period ended December 31, 2015, it was revealed that the Company did not obtain approval of the Commission for appointment of its Chief Executive Officer ("CEO") and Directors, in terms of Regulation 2(2) of the Regulations.

3. Director's report of the Company for the year 2015, stated that: -

"During the year, Capt. Jamil Akhtar Khan had resigned from CEO position and Company has appointed Syed Nayyar Hasnain Haider, being an elected director, to fill his casual vacancy."

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4. Further, the Company in its Annual General Meeting held on December 16, 2016 resolved that:

"Resolved that the following four members be and are hereby elected as Directors of M/s. Continental Insurance Company Limited, for a period of three years with effect from December 08, 2015, subject to the regulatory approval of competent authority

- i. Syed Nayyar Hasnain Haider
- ii. Naveed Ahmed Siddiqui
- iii. Ahmed Zafar Shaheen Siddiqui
- iv. Deeba Siddiqui"

5. As per record of the Commission, the Company did not file applications to seek approval of the said CEO / Directors in terms of Regulation 2(2) of the Regulations.

6. The Company did not hold election of Directors immediately after the expiry of three years term of the existing Directors as on December 8, 2015 in terms of Section 180 of the Ordinance of 1984 read with Circular No. 3 of 2006 dated 10th February, 2006. The Company instead elected its Directors in its Annual General Meeting held on December 16, 2016.

7. In view of the above, it appeared that the Company and the above named proposed CEO & Directors violated the provisions under Regulation 2(2) of the Regulations, Sections 11(f) and 12(1)(b) of the Ordinance of 2000, and Section 180 of the Ordinance of 1984.

8. 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."

9. The relevant provisions of Section 11 (1) (f) of the Ordinance of 2000 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;"

10. Section 12(1)(b) of the Ordinance of 2000 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;"

11. Section 180 of the Ordinance of 1984 states that:

Term of Office of Director:- (1) A director elected under section 178 holding office for a period of three years unless he earlier resign, becomes disqualified from being a director or otherwise ceased to hold office.

(2) Any casual vacancy occurring among the directors may be filled up by the directors and the person so appointed shall hold office for the remainder of the term of the director in whose place he is appointed.

12. Therefore, a Show Cause Notice (SCN) ID/Enf/Continental/2017/8428 dated February 9, 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 of 2000 and Section 186 of the Ordinance of 1984 should not be imposed on them for the aforementioned alleged contraventions of the law.

13. Upon non-receipt of reply to the SCN, the Commission vide letter dated February 28, 2017 bearing no. ID/Enf/Continental/2017/8653 scheduled the hearing on March 20, 2017. However, Syed Bulent Sohail from M/s. Hassan & Hassan (Advocates), the "Authorized Representative" of the Company, vide letter dated March 18, 2017 sought additional time. Hence, request of the Authorized Representative was acceded to, and the Commission vide letter dated March 20, 2017, allowed a period of one week (i.e. till March 27, 2017) to submit the comments. Further period of one week (i.e. till April 7, 2017) was allowed on the request of the Authorized Representative.

14. Thereafter, the Commission vide letter dated April 17, 2017 bearing no. ID/Enf/Continental/2017/9245 scheduled the hearing on April 26, 2017 at 3:30 pm. Subsequently, response of the Respondents to the aforesaid SCN was received vide letter dated April 19, 2017, which is summarized as under:

- i. The same Directors were elected who had previously been approved by the Commission in terms of regulation 2(2) of the Regulations, namely, Syed Nayyar Hasnain Haider, Naveed Ahmed Siddiqui, Ms. Deeba Siddiqui and Ahmed Zafar Shaheen Siddique, vide SECP's letter dated April 12, 2013. Moreover, since there was no change in the particulars of the Directors in terms of the Regulations, fresh approval for the same was presumed not to be required under the law.
- ii. Moreover, CEO and all Directors are eligible under the fit and proper criteria prescribed under the Regulations read with the applicable provisions of the Ordinance of 2000. More specifically, CEO and all the Directors meet the specific requirements of Regulation 2 and 3 of the



Regulations in terms of integrity and track record, financial soundness, competence and capability and conflict of interest.

- iii. The Company had also submitted Form 29 on December 22, 2012 pursuant to Section 205 of the Ordinance of 1984, which was duly accepted by SECP. In Form 29, the particulars of Directors and the CEO were specified. Therefore, the factual position was disclosed, in good faith, by the Company in its earlier regulatory returns.
- iv. The Company has submitted its application dated April 4, 2017, for approval of its CEO and Directors prior to hearing in the instant matter. Delay in this respect, is an unintentional oversight and will not occur again under any circumstances. A case for leniency and condonation has been made out by the Company and reliance in this regard is placed on *Pakistan General Insurance Company Limited reported in 2016 CLD 1021 (SECP Insurance Division)*, *Securities General Insurance Company Limited reported in 2016 CLD 863 (SECP Insurance Division)* and *Takaful Pakistan Limited reported in 2016 CLD 2312 (SECP Appellate Bench)*.
- v. Moreover, the sudden resignation without notices of key senior management personnel (CEO, CFO and Company Secretary) led to unintentional lapses i.e. non-holding of election of Directors. The Respondents duly addressed these lapses and held election of Directors as soon as the audited accounts were available so that the AGM could be held on December 16, 2016 as noted in the SCN under reply. Moreover, the Company sought an extension from the Registrar for an extension in holding of the AGM, however, no response whatsoever was received from the Registrar.
- vi. The Company is a tightly held entity where majority of the shares are held by members of two families i.e., that of Mr. Naveed Ahmed Siddiqui (NAS) and Mr. Ahmed Zafar Shaheen Siddique (AZSS) - more than 99.9% paid up capital of the Company is owned by NAS / AZSS and their dependents.
- vii. Moreover, the Company has a good track record of meeting its claims and liabilities, which have been met or addressed properly by the Company. Moreover, the Respondents and the Company are ready and willing to provide an undertaking to SECP that the Company shall promptly meet the applicable legal requirements in the future.
- viii. It is a matter on record that the policyholders of the Company have not lodged any complaint with SECP as a result of non-payment of claims and other grievances.
- ix. Moreover, the Respondents have demonstrated a track record of beneficial actions in respect of the Company, which has led to the turn around of the Company in a period of less than 7 years. Now, the Company has posted



healthy profits in the preceding year. Consistent with their track record, the Respondents took immediate actions to ensure continued compliance of the Company under the applicable laws relating to solvency.

- x. In light of the foregoing facts and circumstances, the it is humbly submitted that SECP takes a lenient view in the matter and not exercise its powers under Section 186 to debar the Respondents. The same, if exercised, will be detrimental to the Company keeping in view its performance in a short period of time. Keeping in view the adversities and difficulties faced by the Company, the Respondents have been undeterred in their resolve to satisfy the legal requirements.
- xi. The preamble to the SECP Act, 1997 calls for "*beneficial regulation of the capital markets, superintendence and control of corporate entities and for matters connected therewith and incidental thereto*". Moreover, pursuant to Section 22(4) of the SECP Act, 1997, it is humbly requested that the adjudicating authority takes into consideration the facts and circumstances of the instant case, the viability of the Company and the quality and capability of the Respondents as beneficial contributors to the insurance industry and the interests of existing and potential policyholders. It would, therefore, serve the ends of justice if a benign view is taken by SECP and the condonation sought for is granted.

15. The hearing of April 26, 2017 at 03:30 p.m. was held at the Head Office of the Commission in Islamabad in order to provide the Respondents final opportunity of being heard. The hearing was attended by the Authorized Representative to represent the Respondents before the Commission in the instant matter.

16. During the proceedings of the hearing, Authorized Representative reiterated the stance submitted through letter dated April 19, 2017. He maintained that same Directors assumed the charge, for whom second approval was not considered to be required.

17. The Company was required to seek approval of the Commission for the appointment of CEO and Directors. However, the Company appointed CEO and Directors in AGM held on December 16, 2016 while appointment of the Director was made retrospectively with effect from December 8, 2015. The Company should have sought approval before December 2015 (i.e. expiry of their 3 years' term). The Company being an insurer should have been aware of the relevant laws.

18. The Company has claimed that applications for approval of the CEO and Directors have been submitted before the hearing date i.e. April 4, 2017. It is pertinent to mention here that the hearing was scheduled on March 20, 2017 (vide letter dated February 28, 2017). However, on the request of the Respondents it was cancelled. The Company availed this time to submit the applications, which does not in any way support the stated stance. It is apparent that applications of the

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proposed Directors were received subsequent to issuance of the Show Cause Notice dated February 9, 2017.

19. On expiry of three years term of the Directors in December 2015, the Company was required to hold election of its Directors for the fresh term at that time. However, the Company did not hold election of its Directors in violation of Section 180 of the Ordinance of 1984.

20. It is pertinent to mention that the approval of CEO as well as Board of Directors from the Commission is valid only for the respective term of office as confirmed by the Board Resolution. For the subsequent term, a fresh approval is required.

21. In terms of Regulation 2(2) of the Regulations, no Director or CEO of the Company can assume charge of new term without prior approval of the Commission. Therefore, the Directors and CEO have violated the said regulation by assuming charge of their new terms without obtaining Commission's approval.

22. 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 Ordinance of 2000 and Section 180 the Ordinance of 1984. However, the Company failed to meet the requirements. The Company was issued reminder dated May 18, 2016 by the Commission, the contents of which are reproduced below:

".... your kind attention is invited towards the Regulation 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012, notified vide S.R.O. 15(I)/2012 dated January 9, 2012, which requires that a proposed Director of an insurer shall not assume the charge of his office until his appointment has been approved by the Commission.

2. It has been observed that the Company has not obtained the aforesaid approval in respect of appointment of its Directors. The Company is, therefore, advised to submit details of its existing Directors along with a copy of the Commission's approval, if any and date of their appointment...."

23. It can be said that the Company was made aware at least through the aforesaid letter for compliance with the Regulations. However, applications for approval of CEO and Directors have been submitted in April 2017. It can be inferred that default was willful and was in the knowledge of the Respondents. The SCN was issued on the basis of violation of the aforementioned provision of law. It is not relevant here for Commission to consider factors such as how the Company's management has turned around the business, no complaints against the Company have been lodged/filed or the Company has good track record. Furthermore, the Respondents have referred few case laws whereby the Commission has taken lenient view in the matter and did not impose penalty. However, there are recent cases where penalty was imposed for not complying with Regulation 2(2) of the Regulations. Some of those instances are given below:



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Respondent Company	Order Date through	Amount of penalty imposed
Excel Insurance Company Ltd.	February 23, 2017	Rs. 100,000
Credit Insurance Company Ltd.	February 15, 2016	Rs. 500,000

24. Nevertheless, the Commission has power and discretion to impose fine/penalty or take lenient view where deems appropriate.

25. 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, Section 11(1)(f), Section 12(1)(b) of the Ordinance of 2000 and Section 180 of the Ordinance of 1984 is established. Therefore, the fine as provided under Section 156 of the Ordinance of 2000 and Section 186 of the Ordinance of 1984 can be imposed onto the Respondents i.e. the Company, its CEO and Directors.

26. Section 156 of the Ordinance of 2000 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."

27. Section 186 of the Ordinance of 1984 states that:

"Penalties. - Whoever knowingly and willfully contravenes or fails to comply with any of the provisions of sections 174 to 185 or is a party to the contravention of the said provisions shall be liable to a fine which may extend to ten thousand rupees and may also be debarred by the authority which imposes the fine from becoming or continuing a director of the company for a period not exceeding three years."

28. However, before proceeding further, I find it relevant to discuss the duties of the Directors who are, 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. The 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, Section



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11(1)(f), Section 12(1)(b) of the Ordinance of 2000 and Section 180 of the Ordinance of 1984 .

29. In exercise of the power conferred on me under Section 156 of the Ordinance of 2000 and Section 186 of the Ordinance of 1984 read with S.R.O. 122(I)/2016 dated February 12, 2016, I, instead of imposing the maximum fine as provided under the said provisions, impose an aggregate fine of Rs. 300,000/- (Rupees Three Hundred Thousand Only) on the Respondents as per following details:

Sr. No.	Name of Respondents	Total
1	Syed Nayyar Hasnain Haider -Managing Director	50,000
2	Mr. Ahmed Zafar Shaheen Siddiqui-Director	50,000
3	Mr. Naveed Ahmed Siddiqui-Director	50,000
4	Mrs. Deeba Siddiqui -Director	50,000
5	M/s. Continental Insurance Company Limited	100,000
	Total	300,000

30. Hence, 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.

31. 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.

Fida Hussain Samoo
Commissioner (Insurance)

