



SECP
INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director (Insurance)

In the matter of

Continental Insurance Company Limited

Show Cause Notice Issue Date: June 2, 2016

Date of Hearing: August 9, 2016

Attended By: Mr. Hasan Mandviwalla
M/s. Mandviwalla & Zafar
Advocates & Legal Consultants

Date of Order: August 23, 2016

ORDER

Under Section 46(1)(b) Read with Section 51 and Section 156 of
the Insurance Ordinance, 2000.

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This Order shall dispose of the proceedings initiated against the Directors of M/s. Continental Insurance Company Limited (the "Company"), for alleged contravention of Section 46(1)(b) read with Section 51 of the Insurance Ordinance, 2000 (the "Ordinance"). The Directors of the Company shall be referred to as the "Respondents" hereinafter.

A. Background

2. It is an established fact that the Company is a non-listed public limited company incorporated on September 5, 1984 under the Companies Ordinance, 1984, and is registered under the Ordinance to carry on non-life insurance business in Pakistan.

3. The Company, vide its letter dated April 21, 2016, requested the Commission to grant an extension of three months for submission of the Annual Audited Accounts and Regulatory Returns for the period ended December 31, 2015, due to non-availability of its Chief Executive Officer and Chief Financial Officer. In response, the Commission vide letter no. ID/OSM/Continental/2016/4993 dated May 5, 2016 advised the Company to

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comply with the requirements of Section 158 of the Companies Ordinance, 1984 and Rule 14 of the Companies (General Provisions & Forms) Rules, 1985.

4. The Company *prima facie* failed to submit Annual Audited Accounts / Published Financial Statements along with Regulatory Returns for the year ended December 31, 2015 within the time as stipulated under Section 51(1) of the Ordinance.

5. The provisions of Section 46(1)(b) of the Ordinance require every insurer to prepare and deliver to the Commission the annual statutory accounts and regulatory returns duly audited by an approved auditor. The relevant provisions of Section 46(1)(b) are reproduced as under:-

“Accounting and reporting.- (1) Every insurer shall at the expiration of each year prepare and deliver to the Commission with reference to that year annual statutory accounts comprising the following statements duly audited by an approved auditor:

(b) in the case of a non-life insurer,

- (i) a statement of assets and liabilities;*
- (ii) a statement of profits and losses;*
- (iii) a statement of cash flows;*
- (iv) a statement of premiums;*
- (v) a statement of claims;*
- (vi) a statement of expenses;*
- (vii) a statement of investment income;*
- (viii) a statement of claims analysis;*
- (ix) a statement of exposures; and*
- (x) such other statements as may be prescribed by the Federal Government;*

each in such form as may be prescribed by the Commission and prepared in accordance with such regulations as are issued by the Commission from time to time in this behalf.”

6. Regulation 3(1) of Part - B of Annexure II of the Securities and Exchange Commission (Insurance) Rules, 2002 (the “Regulations”) states that:

“Provisions applicable to Regulatory Returns

(1) The form of Regulatory Returns shall consist of the following which shall be submitted according to the published Forms annexed to these Regulations:

- Balance Sheet (Form GA), which shall be deemed to constitute the “Statement of Assets and Liabilities” required by S46(1)(b)(i) of the Ordinance.*

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- Profit and Loss Account (Form GB) which shall be deemed to constitute the "statement of profits and losses for the shareholders fund" required by S46(1)(b)(ii) of the Ordinance.
- Statement of Cash Flows (Form GC) required under S46(1)(b)(iii) of the Ordinance.
- Statement of Premiums (Form GD) required under S46(1)(b)(iv) of the Ordinance.
- Statement of Claims (Form GE) required under S46(1)(b)(v) of the Ordinance.
- Statement of Expenses (Form GF) required under S46(1)(b)(vi) of the Ordinance.
- Statement of Investment Income (Form GG) required under S46(1)(b)(vii) of the Ordinance.
- Statement of Claims Analysis (Form GH) required under S46(1)(b)(viii) of the Ordinance.
- Statement of Exposures (Form GI) required under S46(1)(b)(ix) of the Ordinance.
- Statement of Assets for Solvency Purposes (Form GJ) which is hereby prescribed under S46(1)(b)(x) of the Ordinance.
- Classified Summary of Assets in Pakistan (Form GK) which is hereby prescribed under S46(1)(b)(xi) of the Ordinance.

And, Regulation 4(1) of the Regulations states that:

"Provisions applicable only to Published Financial Statements

(1) The form of Published Financial Statements shall consist of the following which shall be submitted according to the published Forms annexed to these Regulations:

- Required to be filed under S233(5) of the Companies Ordinance 1984, for which the revised forms are being hereby prescribed:
 - o Balance Sheet (Form GA).
 - o Profit and Loss Account (Form GB).
- The following which shall be deemed to be required under S233(5) of the Companies Ordinance 1984:
 - o Statement of Cash Flows (Form GC).
 - o Statement of Premiums (Form GD).
 - o Statement of Claims (Form GE).
 - o Statement of Expenses (Form GF).
 - o Statement of Investment Income (Form GG)."

7. The timeline for submission of the returns required to be filed under Section 46(1)(b) of the Ordinance has been laid down under Section 51(1) of the Ordinance, which states that:

"Submission of returns.- (1) The audited statements and report referred to in sub-sections (1) and (5) of section 46 and the report and statement referred to in section

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50, including any report referred to in sub-section (7) of section 50, shall be furnished as returns to the Commission in such manner as may be prescribed by the Commission, but in any case including at least one printed copy, within four months from the end of the period to which they refer:

Provided that the Commission may on application by an insurer extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding one month."

8. Hence, Show Cause Notice bearing number ID/Enf/Continental/2016/5488 dated June 2, 2016 was issued to the Respondents, thereby calling upon them to show cause as to why punitive action may not be taken against them in terms of Section 156 of the Ordinance for not complying with the provisions of Section 46(1)(b) read with Section 51(1) of the Ordinance.

9. Upon receipt of the said Show Cause Notice, the Respondents, through their letter dated June 10, 2016 under the signature of their counsel i.e. M/s. Mandviwalla & Zafar, Advocates and Legal Consultants, requested for grant of an additional seven days to file the response to the said Show Cause Notice. The said request for an extension was acceded to by the Commission vide letter no. ID/Enf/Continental/2016/5541 dated June 14, 2016, whereby the Respondents were allowed an extension till June 23, 2016 for submission of their written response to the Show Cause Notice.

10. Subsequently, the Respondents, vide their letter no. Ref-CICL-C-4382016 dated June 22, 2016 stated that:

"...It is respectfully submitted that:

- 1) *The Company wrote a letter to the Commission dated April 21, 2016 requesting an extension for submission of annual accounts for 2015, and for the first quarter of 2016, as a result of resignation of the previous Chief Executive Officer, on July 31, 2015 and the previous Chief Financial Officer, in July 2015 without giving any notice.*
- 2) *The relevant records and system passwords of the Company were not handed over by its previous management, hence the delay in submission of the abovementioned accounts.*
- 3) *The Commission responded by way of letter dated May 5, 2016 bearing reference no. ID/OSM/Continental/2016/4993 referring to Section 158 of the Companies Ordinance 1984 in terms of which an application was required to be made by the Company under Rule 14 of the Companies (General Provisions & Forms) Rules, 1985 to the Commission to request for such extension in submission of the above-mentioned accounts.*
- 4) *Application under Rule 14 of the Companies (General Provisions & Forms) Rules, 1985 dated May 28, 2016 ("Application") was submitted to the*

Ans



Commission containing the prescribed information along with the following enclosed annexures:

- (a) Certificate of the Company's Auditors explaining the reasons for delay in completion of audit and minimum time required for the purpose;
- (b) Affidavit of Chief Executive Officer;
- (c) Duly Paid Fee Challan;
- (d) Copy of latest audited balance sheet and profit and loss account for the year ended December 31, 2014.

It was requested by way of the Application for the Commission to grant an extension until July 31, 2016 to hold the Company's Annual General Meeting and submit annual accounts of the year ended 2015 and the first quarter accounts of 2016.

...

- 6) It is respectfully submitted that the process of filing an application for extension pursuant to Section 51(1) of the Ordinance with the Commission was initiated in April 2016, when the Company wrote to the Commission by way of letter dated April 21, 2016, which is within four months from the date that at least one printed copy of the accounts was to be submitted to the Commission pursuant to the Section 51(1) of the Ordinance. The application was made thereafter and submitted to the Commission on May 28, 2016 immediately after the Company was put at notice by the Commission by way of letter dated May 5, 2016. In this regard it is respectfully submitted that at the time of submitting the Application the Company was still within the three plus one month time period as allowed pursuant to 51(1) of the Ordinance.

In view of the above it is humbly prayed that the Hon'ble Commission grants the Company an extension until July 31, 2016 to submit the accounts of the year ended December 31, 2015 and for the first quarter of 2016."

B. Hearings

11. The Commission, vide its notice no. ID/Enf/Continental/2016/6003 dated July 18, 2016, scheduled the hearing for July 28, 2016 at 11:30 a.m., which was rescheduled for August 2, 2016 at 11:30 a.m. through the Commission's notice no. ID/Enf/Continental/2016/6111 dated July 27, 2016, on the request of the Respondents vide letter no. Ref-CICL-C-4452016 dated July 25, 2016. The Respondents vide their letter no. Ref-CICL-C-4432016 dated August 3, 2016 again requested for an adjournment, which was acceded to and the hearing was then fixed for August 9, 2016 at 10:00 a.m. vide notice no. ID/Enf/Continental/2016/6216 dated August 4, 2016.

12. The said hearing was attended by Mr. Hasan Mandviwalla, Advocate of M/s. Mandviwalla & Zafar, Advocates & Legal Consultants for and on behalf of the Respondents.

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13. Brief proceedings of the hearing of August 9, 2016 were as follows:
- a. The authorized representative / attorney was asked to present the stance of the Respondents, on which he stated that the Respondents have already submitted their contentions before the Commission;
 - b. The representative referred to an order passed by the Director (Insurance) on December 28, 2012 in the matter of show cause notice under Section 46(1) read with Section 51(1) and Section 156 of the Ordinance issued to M/s. The Credit Insurance Company Limited, whereby lenient view was taken and a penalty of only Rs. 20,000/- was imposed despite the fact that the said company applied for an extension in submission of accounts vide letter dated July 2, 2012 i.e. well after the due date for submission of the annual accounts and regulatory returns for the year 2011;
 - c. The representative further stated that the position of the Respondents is far better than what was elaborated in the abovementioned order of December 28, 2012, as the Respondents applied for an extension well before the due date for submission of the financial statements. Hence, a lenient view should be taken in the instant matter;
 - d. The representative also admitted the fact that filing of the financial statements is still pending on part of the Respondents;
 - e. The representative further pointed out that the main cause of delay was non-availability of the relevant data / information / record which was previously in the custody of the former CEO / CFO of the Company who did not handover this data / information / record upon their immediate resignation.

14. Subsequent to the hearing, representative of the Respondents, vide letter dated August 11, 2016, reiterated his arguments in the form of an unsigned document in which he mentioned that the Annual General Meeting in which financial statements of the Company will be approved, shall take place within the week of August 20, 2016. The representative also prayed that a lenient view be taken as the Respondents and the Company had no intentions depicting late filing of the financial statements for year ended December 31, 2015.

C. Issues

15. In terms of Section 46(1)(b) read with Section 51(1) of the Ordinance, the Company was required to file the audited annual accounts and regulatory returns for the year ended December 31, 2015 within four months from the close of the year 2015, however, as evident from the record and arguments, the Company has

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failed to file the said financial statements till the date hereof. Therefore, the violation of the aforementioned sections of the Ordinance is clearly established.

D. Summary of arguments and conclusion in respect of each issue

16. The arguments, documents and evidences which have been submitted by the Respondents so far have been found to be evidencing the fact that the Company has failed to file the said financial statements till the date hereof. Therefore, the violation of the aforementioned provisions of the Ordinance is clearly established. In this regard, the Respondents have based their argument on the fact that their former CEO and CFO left the Company with immediate effect which deprived the Company and the Respondents of the necessary data / information / record including password of the Company's IT / ERP system. The Company in another matter has stated that soon after resignation of the previous CEO, Board of Directors in its meeting on July 23, 2015 unanimously appointed one of the elected directors Syed Nayyar Hasnain Haider as Chief Executive of the Company with effect from August 01, 2015. Copy of the board resolution was also provided. As the new CEO was appointed well before finalization of the annual statutory accounts and regulatory returns for the year ended December 31, 2015, the reason given by the Company for delayed submission is not tenable.

17. Therefore, in view of the above and as stated earlier, the violation of Section 46(1) and Section 51(1) of the Ordinance is clearly established, for which the Respondents may be penalized in terms of Section 156 of the Ordinance, 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, 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."

E. Overall conclusion:

18. 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 and other legal references, I am of the view that the default of Section 46(1) and Section 51(1) of the Ordinance established. The Company requested to grant extension to submit the annual statutory accounts and regulatory returns till July 31, 2016. The Company, however, failed to submit the

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same during this period. Therefore, the fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents.

F. Penalties and directions

19. In exercise of the power conferred on me under Section 156 of the Ordinance read with S.R.O. 122(I)/2016 dated February 12, 2016, I, instead of imposing the maximum fine as provided under the said provision, impose a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) on the Company, due to the default of Section 46(1)(b) and Section 51 of the Ordinance, as mentioned hereinabove. The Company and its management are further directed to immediately file the financial statements for the year 2015 along with the audit report thereon. Further, the Company and its management are also directed to observe strict compliance of the provisions of the Ordinance, Rules and Regulations in future.

20. 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.

21. 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.

Hasnat Ahmad
Director

