



INSURANCE DIVISION
Islamabad

Before Fida Hussain Samoo, Commissioner (Insurance)

In the matter of

Crescent Star Insurance Limited

Show Cause Notice No. and ID/Enf/CrescentStar/2016/7642,
Date: dated November 25, 2016

Date of Hearing: February 8, 2017

Attended By: Mr. Zeeshan Abdullah,
Advocate, M/s. Rabbani & Ansari, Advocates

Date of Order: April 25, 2017

ORDER

Under Section 45 read with Section 158 of the Insurance Ordinance, 2000 and
Section 492 of the Companies Ordinance, 1984.

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This Order shall dispose of the proceedings initiated against M/s. Crescent Star Insurance Limited (the "Company") and its Board of Directors for alleged contravention of Section 45 read with Section 158 of the Insurance Ordinance, 2000 (the "Ordinance of 2000") and Section 492 of the Companies Ordinance, 1984 (the "Ordinance of 1984"). The Company and its Directors shall be referred to as the "Respondents" hereinafter.

2. The Annual Audited Accounts of the Company for the year ended December 31, 2015 were reviewed and the Company was advised to provide information/ clarifications. The information revealed that the Investment Property was sold for Rs. 300 Million and the proceeds were reported in the Cash Flow Statement for the year ended December 31, 2015.

3. The cost of property was Rs. 184 Million and a profit of Rs. 116 Million was booked. The sundry receivables of Rs. 134 Million as at December 31, 2015 were also included against the sale of property. The Company through letter dated September 9, 2016 also confirmed receipt of funds against it. Moreover, review of the receipts *prima facie* indicated that the amounts were received in numerous tranches and it was unusual, as far as sale of the property was concerned.



4. An agreement dated Aug 20, 2015 available on record of the Company evidenced that the property was sold for consideration amounting to Rs. 300 Million. Further, the reply from the Company showed that a negative amount of Rs. 1 Million was adjusted against payments received and no explanation in this regard was provided.

5. The Commission vide letter dated October 25, 2016 sought further clarification regarding sale consideration and gain/loss calculation on the sale of investment property. The Company in its reply dated October 25, 2016 confirmed that the sale value of Rs. 300 Million and gain of Rs. 116 Million was reported in profit and loss account for the year ended December 31, 2015. Moreover, it was stated that an amount of Rs. 166.5 Million was collected up to December 31, 2015 and Rs. 133.49 Million was received in the subsequent period.

6. It transpired from the above that the proceeds from Investment Property amounting to Rs. 300 Million disclosed in the Cash Flow Statement for the year ended December 31, 2015 were apparently misstated. It appeared that the Company failed to comply with the mandatory provisions of Section 45 of the Ordinance by not maintaining proper books and record (i.e. the ledger accounts) as were required to be maintained.

7. The provisions of Section 45 of the Ordinance of 2000 state that:

"Books and records.- (1) Every insurer, in respect of all insurance business transacted by him, and in the case of an insurer incorporated in a jurisdiction outside Pakistan in respect of the insurance business transacted by the insurer in Pakistan, shall maintain proper books and records."

(2) Books, accounts and records in respect of insurance business transacted in Pakistan shall be maintained in Pakistan and in either the English or the Urdu language.

(3) For the purposes of this Ordinance, proper books and records shall include without limitation:

(a) a register or record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy holder, the date when the policy was effected and record of any transfer, assignment or nomination of which the insurer has notice;

(b) a register or record of claims, in which shall be entered every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds therefor; and



(c) such other books and records as may from time to time be prescribed.

(4) For the purposes of this Ordinance, the expression "books" includes –

- (a) a register;
- (b) accounts or accounting records, however compiled, recorded or stored;
- (c) a document; and
- (d) any other record of information.

(5) A book that is required by this Ordinance or the Companies Ordinance, 1984 to be kept or prepared by an insurer may be kept or prepared:

- (a) by making entries in a bound or loose leaf book;
- (b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or
- (c) in any other manner approved by the Commission. Provided that the matters recorded or stored are capable, at any time, of being reproduced in a written form or a reproduction of those matters is kept in a written form approved by the Commission.

(6) An insurer shall take all reasonable precautions, including such precautions, if any, as may be prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or part of a book required to be kept or prepared by an insurer."

8. The provisions of Section 158 of the Ordinance of 2000 state that:

"Penalty for false statement in document.- Except as otherwise provided in this Ordinance, whoever, in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Ordinance, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable [by the Commission] with fine which may extend to one million rupees."

9. Section 492 of the Ordinance of 1984 states that:

" Penalty for false statement. - Whoever in any return, report, certificate, balance sheet, profit and loss account, income and expenditure account, prospectus, offer of shares, books of accounts, application, information or explanation required by or for the purposes of any of the provisions of this Ordinance or pursuant to an order or direction given under this Ordinance makes a statement which is false or incorrect in any material particular, or omits any material fact knowing it to be material, shall be punishable with fine not exceeding [five] hundred thousand rupees."



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10. Hence, a Show Cause Notice bearing ID/Enf/CrescentStar/2016/7642 dated November 25, 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 158 of the Ordinance of 2000 and Section 492 of the Ordinance of 1984 for the alleged contravention of Section 45 of the Ordinance.

11. The Company vide letter dated December 3, 2016 requested to grant an extension of 15 days to respond to the Show Cause Notice. The extension as requested by the Company was allowed until December 20, 2016. Subsequently, the response of the Company was received vide letters dated December 20, 2016 and February 7, 2017. Contents of both the submissions are summarized below:

- i. Section 45 of the Insurance Ordinance, 2000 deals with books and records pertaining to issuance of insurance policies and payment of claims;
- ii. Balance Sheet, Income Statement, Cash Flow, and other statements which are part of Balance Sheet are outside the purview of Section 45 of the Insurance Ordinance and are maintained as per accepted accounting standards;
- iii. The subject SCN is not maintainable as the sale of Investment Property, cost of property, profit booked on its sales and its reporting in Cash Flow Statement are the same which have already been dealt in SECP Order No. ID/Enf/CrescentStar/2016/5737 dated June 21, 2016;
- iv. Non-compliance cannot be reopened as a separate distinct offence. The settled principle of double jeopardy prohibits duplicate trial and duplicate punishment;
- v. The aforesaid order contains transaction of investment property, its sale and its cost and its profit booked and its accounting treatment and resultant effect on Cash Flow;
- vi. Para 9 (iv) to (xi), Para 11 (iii) to (vi) and Para 13 deals with the aforementioned subjects;
- vii. The Annual Audited Accounts of the Company for the year ended December 31, 2015 have been maintained as per standard accepted accounting standards, have been duly audited by SECP approved auditors;
- viii. We deny any misreporting of any kind in the Audited Accounts of the Company for the year ended December 31, 2015.
- ix. A combined reading of provisions of Section 2 (xii) definition of "class of business", Section 2 (xxvii) definition of "insurance", Section 3 "division of insurance business into life and non-life", Section 4 "classes life and non-life



insurance business" and Section 45 "books and records in respect of all insurance business transacted by the insurer", in juxtaposition goes to show that the provisions of Section 45 only relating to books and accounts of insurance business i.e. policies to the policy holders and accounts pertaining to payment of claims and details regarding its rejection and repudiation, however, the show cause notice under reference does not even allege that the register of policies, register of claims or any other books or records are not maintained or show a defect in the maintenance thereof. In view of the fact that there is no defect in the maintenance of records, there is no contravention of Section 45.

- x. It is submitted that the allegation of alleged mis-statement of an amount of Rs. 300 Million against investment properties of the CSIL, the same does not fall within the ambit of Section 45. Further, so far provisions of Section 158 is concerned, the same also does not attract on the present case as the same applies on the statements given under Section 46 of the Insurance Ordinance, as the show cause notice under reference alleged mis-statement in statement of Cash Flow of the year ended December 2015, which is a matter of provisions of sub-clause (iii) of clause (b) of sub-section (1) of Section 46 of the Insurance Ordinance, 2000 whereas, admittedly, the show cause notice under reference has not been issued under Section 46 of the Insurance Ordinance, apparently due to the reason that earlier show cause notice dated April 1, 2016 relating to accounting and reporting had already been issued and decided and therefore, it is evident that the august Commission in order to avoid ground of double jeopardy not issued show cause notice under reference under Section 46 of the Ordinance, 2000, however made same matter (at least one of them) already adjudicated upon subject matter of present show cause notice, which is, in any manner, not sustainable under the law, therefore, liable to be recalled.
- xi. Paragraphs 3, 4, 5 and 6 of SCN were about the transaction relating to disposal of the investment property of the company during the year ended 31st December, 2015. The relevant information of the said disposal is fully disclosed in the balance sheet, profit & loss account, note 16 regarding investment property and note 20 regarding sundry receivables. These transactions have been properly recorded by the company and as such there is no violation of the Section 45 of the Insurance Ordinance, 2000.
- xii. The allegation is against the provisions of Section 45 which deals only of register of policies, register of claims and other books in respect of insurance business transacted.
- xiii. Even otherwise, it is respectfully stated, that the proceeds from sale of investment property of Rs. 300 Million have been correctly disclosed for fair presentation of the transaction in accordance with normally acceptable accounting practices which is evidencing by sale documents of the property.



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These proceeds are made up of bank deposits of Rs. 166.5 Million upto 31 December 2015 and receivable balance of Rs. 133.5 Million as on 31 December 2015. The said balance received by the CSIL until March, 2016 and quarterly account of March 2016 does not show this payment.

- xiv. Full amount of sale proceeds have been disclosed in the Cash Flow Statement under the head 'Investing Activities' which was necessary to match with the disclosure of 'gain on sale of investment property' in the profit & loss account to avoid confusion. The impact of amount receivable has been included in 'other operating activities.
- xv. Cash Flow Statement is merely a statement derived from the balance sheet and profit & loss account and does not directly reflect the balances in books of account or records as such. It is based upon the balance sheet and profit & loss account and has to be read with other financial information provided in the annual financial statements and not in isolation; just like receipts and payments account which takes into account the actual effect of transactions and not all the literal receipts and payments.
- xvi. There is no misstatement whether material or otherwise whatsoever in the statement of Cash Flow. Moreover Section 45 cannot be invoked as it relates to the maintenance of books and records of the business transaction by the insurance company and as such do not deal with the matter of presentation of any statement particularly when it is not even directly derived from books and records of the company.
- xvii. Paragraph 9 reproduces Section 158 of the Insurance Ordinance and Section 492 of the Companies Ordinance, which are regarding penalty for willful, deliberate and material false statements. Section 492 of the Companies Ordinance 1984 specifically mentions balance sheet, profit & loss account, income & expenditure account, prospectus etc. but does not even mention Cash Flow Statement, so allegation of misstatement in Cash Flow also outside the purview of Section 492 of the Companies Ordinance, 1984.
- xviii. There was no willful, deliberate and material false statement or contravention of Section 45 of the Insurance Ordinance and hence provisions of 158 of the Insurance Ordinance and of Section 492 of the Companies Ordinance are not applicable.

12. Before proceeding further in the matter, it was considered necessary to provide an opportunity of hearing to the Respondents. The hearings were scheduled/rescheduled on the following dates:

Sr. No.	Hearing Scheduled on	Status
1	January 4, 2017 at 10:30 am	Cancelled and rescheduled on request of the Respondents



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2	January 16, 2017 at 11:30 am	Cancelled and rescheduled on request of the Respondents
3	January 26, 2017 at 11:30 am	Cancelled and rescheduled on request of the Respondents
4	February 8, 2017 at 11:30 am	Hearing held

13. The hearing was held at Head Office of the Commission on February 8, 2017 and was attended by Mr. Zeeshan Abdullah, from M/s. Rabbani & Ansari, Advocates on behalf of the Respondents, hereinafter referred to as (the "Authorized Representative").

14. During the hearing, the Authorized Representative reiterated submissions made through letters dated December 20, 2016 and February 7, 2017. The Authorized Representative maintained that the SCN was unsustainable, as the allegations have already been dealt in the previous order. He read out the contents of the previous order and stated that the present SCN tantamount to double jeopardy. At the end of the hearing Respondent was asked to provide revised Cash Flow Statement for the year ended December 31, 2015 in order for the Commission to evaluate whether this was deliberate misstatement or an error.

15. Thereafter, the Respondents vide letter dated March 9, 2017 submitted their comments, which are reproduced below:

"...there may be no question of revised cash flow statement for the year ended December, 2015 as the cash flow statement under reference was prepared as per well recognized Accounting Standard (IAS-7) in which reporting of sale proceeds of investments is permissible where the turnover is quick, the amounts are large and the maturity is short, for example, maturity period is of three months or less, and in the instant case as a matter of fact and record, there was a quick turnover, amount was large and cash receipt maturity period was of period lesser than three months from cash flow reporting therefore the sale proceeds from investments was rightly shown as Rs. 300 Million as the balance amount of Rs.133,495,834 was received well before the expiration of 3 months as evincing from quarterly accounts ended March, 2016 wherein receivable were shown to be nil.

Question of preparation of "revised cash flow statement" does not arise also because any specific instruction for revision or a specific objection to the published cash flow statement is not given. The only objection seems to have been made is that cash received against sale of investment property is Rs. 166.5 Million and Rs 133.9 Million have been received after about three months. Showing proceeds from investment property at a figure other than Rs 300 Million would be wrong because true proceeds for the property comprise of both cash received and the right to receive cash for the property. Similarly, in such a case gain on sale of investment property could not have been shown at Rs 116 Million which is correct amount of gain as shown in the "profit and loss account" also. The transaction was completed during the year 2015 therefore the whole of the profit pertains to this year. The foregoing



makes it clear that "proceeds from investment property" and "gain on sale of investment property" if shown at any figures other than those appearing in published cash flow statement would be misleading and a source of confusion as these would not match with the figures in other financial statements.

We may further draw your attention on the point that a vast majority of published cash flow statement begin with "profit before taxation" as per accounts. The amount is includes cash generated from operation without making any adjustment for credit sales included in the sales figure. The adjustments are not made in the sales but occur as increase/decrease in trade debts and trade payables.

We trust the above submissions make it clear that the "cash flow statement" in question has been prepared in accordance with the provisions of IAS-7 and lucidly presents a true picture in line with the other financial statements. It does not involve contravention of any provisions of law or of accounting standard and therefore proceeding initiated may kindly be dropped...."

16. Section 45(4)(b) of the Ordinance of 2000 provides the definition of books which includes accounts or accounting records. Therefore, argument of the Respondents that financial statements are outside the purview of Section 45 of the Ordinance of 2000 are not tenable.

17. IAS 7 para 20 states that:

Under the indirect method, the net cash flow from operating activities is determined by adjusting profit or loss for the effects of:

(a) changes during the period in inventories and operating receivables and payables;

18. According to the aforementioned para, the Company was required to include third party receivables into operating activities however the Company reported this particular transaction in investing activities of the Cash Flow Statement which was not in compliance with para 20 of the IAS 7. Hence, it is clear that that the amount was wrongly presented in the Cash Flow Statement. However, the Company claimed in its financial statements that financial statements are prepared according to IFRS but the aforesaid treatment contradicts its stance.

19. 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. In view of the additional submissions made by the Company and comments provided by the Respondents in the foregoing paragraphs, I hereby warn the Company for the presentation issue in the Cash Flow Statement. Furthermore, the Company is advised to exercise due prudence and caution in the future whilst complying with requirements of law and applicable IFRS.



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20. 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 or directors of the Company) in accordance with the law on matters including those subsequently investigated or otherwise brought to the knowledge of the Commission.

Fida Hussain Samoo
Commissioner (Insurance)

