



SECP
INSURANCE DIVISION
Islamabad

Before Fida Hussain Samoo, Commissioner (Insurance)

In the matter of

Excel Insurance Company Limited

Show Cause Notice No. and Date: ID/Inf/Excel/2016/, October 18, 2016

Date of Hearings: January 2, 2017 & February 8, 2017

Attended By:

1. Mr. Ijaz Ahmed
Advocate
M/s. Ijaz Ahmed & Associates
2. Mr. Sarfraz Ahmed
Advocate
M/s. Ijaz Ahmed & Associates

Date of Order: February 23, 2017

ORDER

Under Regulation 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012, and 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. Excel Insurance Company Limited (the "Company") and its Board of Directors including former Chief Executive Officers (Mr. Ghulam Muhammad and Mr. Muhammad Azhar Khan), for alleged contravention of Regulation 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012 (the "Regulations") read with Section 11(1)(f) and Section 12(1)(b) of the Insurance Ordinance, 2000 (the "Ordinance"). The Company and the said individuals shall be referred to as the "Respondents" hereinafter.

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

3. It was observed that the Company did not obtain approval of the Commission for appointment of Mr. Muhammad Azhar Khan as its Chief Executive Officer (CEO) as required under the Regulations.

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4. In response to the application for seeking approval of appointment of Mr. Muhammad Azhar Khan as CEO, the Commission vide letter dated October 7, 2015, advised the Company to furnish his Bachelor's degree duly attested by HEC, his experience certificate and affidavit regarding eligibility and conflict of interest. The Company however, failed to furnish the aforesaid requirements.

5. In view of the above, it appeared that the Company and the above named proposed CEO violated the provisions under Regulation 2(2) of the Regulations, Sections 11(f) and 12(1)(b) of the Ordinance, for which punitive action under Section 156 of the Ordinance can be taken against the Company and/or its Directors & its former Chief Executive Officer and the proposed CEO or a direction under Section 60 of the Ordinance may be given.

6. Regulation 2(2) of the Regulations, Section 11(1)(f) and Section 12(1)(b) of the Insurance Ordinance, 2000 are reproduced below: -

Regulation 2(2) of the Regulations

"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."

Section 11(1)(f) of the Ordinance

"Conditions imposed on registered insurers. -(1) An insurer registered under this Ordinance shall at all times ensure that:

...

(f) 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;..."

Section 12(1)(b) of the Ordinance

"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;..."

7. In view of the above paras hereof, the Commission initiated proceedings against the Respondents by issuance of a Show Cause Notice bearing number ID/Enf/Excel/2016/7114 on October 18, 2016, thereby calling upon them to show cause as to why the fine, as provided under Section 156 of the Ordinance should not be imposed for non-compliance with Regulation 2(2) of the Regulations read with Section 11(1)(f) and Section 12(1)(b) of the Ordinance.

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8. The Company vide letter dated October 25, 2016 sought an extension till November 15, 2016 to submit reply to the aforesaid Show Cause Notice. Extension as requested by the Company was granted. However, the Respondents did not submit any response within the stipulated time. Thereafter, this Office vide letter dated November 30, 2016 scheduled the hearing on December 7, 2016. The hearing was rescheduled on January 2, 2017 on request of the Company. The Respondents consented to appear for the aforesaid hearing via video link of the Commission's Karachi Office. The hearing was attended by Mr. Ijaz Ahmed and Mr. Sarfraz Ahmed, Advocates of M/s. Ijaz Ahmed & Associates for and behalf of the Respondents.

9. During the hearing, the Respondents referred to the transitional provisions under the Regulations, whereby existing Chief Executive Officer was required to comply with the provisions within five years from the date of notification of the Regulations i.e. January 9, 2012. The Respondents stated that Mr. Ghulam was also Director on the Board of PICIC Insurance Limited and therefore he resigned from Board of the Company in 2014. They further stated that Mr. Azhar was appointed as CEO of the Company after the resignation of Mr. Ghulam. The Respondents mentioned that HEC did not certify/verify the degrees of Mr. Azhar due to non-availability of his marks sheet. The Respondents requested to allow them to submit written response to the SCN and reschedule the hearing.

10. The Company vide letter dated January 9, 2017 submitted its response to the SCN. The reply to the SCN was not found satisfactory, therefore before proceeding further in the matter, it was considered necessary to provide an opportunity of hearing to the Respondents. The Commission, vide its letter No. ID/Enf/Excel/2017/8258 dated January 20, 2017, scheduled the hearing for February 1, 2017. The hearing was rescheduled on February 8, 2017 on request of the Respondents and was held through video link facility of the Commission connecting the Commission's Karachi Office with its Head Office in Islamabad. Mr. Sarfraz Ahmed Advocate and Mr. Ijaz Ahmed Advocate of M/s. Ijaz Ahmed & Associates attended the hearing for and behalf of the Respondents.

11. Submission of the Respondents both through their reply to the SCN and at the time of hearing are summarized as under:

- i. The Respondents stated that the Commission did not prevent/restrict the proposed CEO Mr. M. Azhar Khan to work as CEO of the Company. It was Company's understanding that he can work as CEO while his application with the Commission was pending;
- ii. The Company as a precautionary measure, submitted documents of Mr. Ghulam Ali Muhammad for CEO who had previously served as Director and CEO of the Company; He also served on the board of PICIC Insurance Ltd. from April 2011 to March 2016;



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- iii. Mr. Ghulam Muhammad completed his degree 38 years ago and documents older than 30 years carry a presumption of accuracy under article 100 of Qanun-e-Shahdat, Order 1984. Certified copies of such old documents was a time consuming exercise and without any corresponding benefit;
- iv. The Respondents were required to comply with the provisions within five years from the date of notification of the Regulations i.e. January 9, 2012. The Company made application in a timely manner. Verification of the degrees from HEC was beyond the control of the Company;
- v. Degrees of the both the proposed CEOs could not be verified from HEC due to non-provision of their marks sheets. The Respondents stated that their request for waiving the requirement of verification of the degrees from HEC was declined by the Commission. Therefore, application of Syed Arif Hussain for appointment of CEO of the Company has been sent to the Commission for approval; and
- vi. The Respondents prayed that they tried to meet the deficiencies. They stated that non-compliance in the matter was not deliberate and therefore, lenient may be taken in the matter.

12. It would be pertinent to state that Regulation 2(2) of the Regulations specifically requires that prior approval of the Commission should be obtained by the persons before assuming the charge as CEO/Director of an insurer, hence, the application for grant of approval to act as CEO of the Company by the Respondents should have been filed and approved before their assumption of charge as CEO.

13. The Company did not obtain approval of its Chief Executive in terms of the Regulations. The Company failed to respond to the Commission's letter dated October 7, 2015, wherein the Company was advised to submit HEC's attested educational testimonials, affidavits in respect of conflict of interest and eligibility; and experience certificate of Mr. Muhammad Azhar Khan.

14. As per the transitional provisions, relaxation available to the CEO to comply with the provisions within five years from the date of notification of the Regulations was no more available to Mr. Ghulam Ali Muhammad after his resignation from the position of Chief Executive of M/s. Excel Insurance Company Limited.

15. It would be pertinent to mention here that application of the proposed CEO, Mr. Azhar Khan was not pending with the Commission as the Company, vide letter dated October 7, 2015, was advised to furnish his Bachelor's degree duly attested by HEC, his experience certificate and affidavit regarding eligibility and conflict of interest. The Commission did not refuse to give the approval; rather, the



Company was advised to meet the aforesaid deficiencies. However, the Company did not meet the said deficiencies. Therefore, Company's non-compliance was deliberate and willful.

16. The Company did not submit the HEC's attested degree of Mr. Azhar Khan despite expiry of several months. Non-availability of the educational testimonials of the proposed CEO should have been taken into account by the Company while appointing him in view of the mandatory requirement of the Regulations.

17. The Company proposed to appoint another person i.e. Mr. Ghulam Muhammad as CEO without verifying his educational testimonials, despite the fact that earlier CEO was not approved by the Commission due to his deficient qualification requirements.

18. The Respondents were required to ensure compliance with Regulation 2(2) of the Regulations, Section 11(1)(f) and Section 12(1)(b) of the Ordinance by seeking prior approval of the Commission for appointment of a newly elected CEO, which the Respondents failed to comply.

19. Therefore, in view of the above, it is established that the Respondents have failed to obtain approval of the Commission under the Regulations, prior to assumption of charge as CEO/Director of the Company.

20. 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 element of default of Regulation 2(2) of the Regulations, Sections 11(f) and Section 12(1)(b) of the Ordinance is there, for which the fine/penalty as provided under 156 of the Ordinance can be imposed onto the Company and/or its Directors.

21. The provisions of Section 156 of the Ordinance state that:

"Penalties. - 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."

22. Relevant provisions of 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



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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.

23. In exercise of the powers 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. 100,000/- (Rupees One Hundred Thousand Only) on the Company, due to the default of Regulation 2(2) of the Regulations, Sections 11(f) and Section 12(1)(b) of the Ordinance, as mentioned hereinabove. Further, the Company and its management are also directed to observe strict compliance of the provisions of the Ordinance, Rules and Regulations in future.

24. 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.

25. 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)

