



INSURANCE DIVISION
Islamabad

Before Fida Hussain Samoo, Commissioner (Insurance)

In the matter of

Chubb Insurance Pakistan Limited

Show Cause Notice No and SCN NO. ID/Enf/Chubb/2017/9746 Dated May
Issue Date: 30, 2017

Date of Hearing: June 21, 2017

Attended By: Mr. Humzah Chaudhri
CFO
M/s. Chubb Insurance Pakistan Limited

Mr. Gohar Rashid
M/s. Chubb Insurance Pakistan Limited

Date of Order: July 3, 2017

ORDER

Under Rule 18 of the Insurance Rules, 2017 (Rule 7 of Insurance Rules, 2002) read with Para 4 of Circular 22 of 2013 and Section 156 of the Insurance Ordinance, 2000

This Order shall dispose of the proceedings initiated against M/s. Chubb Insurance Pakistan Limited (the "Company") and its Chief Executive Officer for alleged contravention of Rule 18 of the Insurance Rules, 2017¹ (the "Rules") read with Para 4 of Circular 22 of 2013 (the "Circular"). The Company and its Chief Executive shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Insurance Ordinance, 2000 (the "Ordinance") to carry on the business of non-life insurance in Pakistan.

3. During inspection of the Company conducted under Section 59A of Ordinance vide Order dated January 5, 2017, it was noted that the Company issued a Fire and Property policy to Karachi International Container Terminal (KICT) both in the years 2014 and 2015. This risk was subsequently reinsured facultatively through M/s. Pakistan Reinsurance Company Limited (PRCI).

¹ Rule 7 of Insurance Rules, 2002



4. In accordance with the Rules, the facultative reinsurance business in Pakistan is only allowed to be placed abroad after it has been determined that it cannot be suitably placed within the Country. The intention of the Rule is to ensure that all insurance business that can be suitably reinsured in Pakistan, be retained locally. Accordingly, any company desirous of placing its facultative reinsurance business abroad, first offers it to all the local insurance and reinsurance companies. Once the local insurance/reinsurance companies accept or reject the risk, the company then approaches the Commission with all details of the risk and the documentary evidence of acceptance/rejection from all local companies. The Commission then issues permission to the company to place the risk outside Pakistan.

5. In the instant case, the Company offered the entire risk to the PRCL without retaining any of the risk itself. The Company further instructed PRCL to retain 5% of the risk and retrocede the remaining 95% to ACE Hong Kong. Thus, the Company effectively acted as an agent rather than an insurer, fronting the risk without retaining any risk itself and instructing PRCL to retrocede 95% of the risk outside Pakistan. As per the communication between the Company and ACE Hong Kong, it is evident that the Company was merely fronting the risk without any retention on its own account.

6. While the Company did not directly place the risk abroad and argued that this was a case of local reinsurance, it *prima facie* violated Rule 18 of the Rules with the intention to place 95% of the risk with ACE Hong Kong and using PRCL as a channel to achieve this end and circumvent the requirements of the said Rule by neither circulating the risk in the market nor obtaining permission of the Commission.

7. The Company also *prima facie* violated Para 4 of Circular 22 of 2013 in the subject case since the offer made by the Company to PRCL was not an open offer. The Company offered PRCL 5% of the share while instructing it to retrocede the remaining to ACE Hong Kong.

8. The relevant provisions of Rule 18 of the Rules state that:

"Reinsurance outside Pakistan. – (1) For the purposes of sub -section (5) of section 41 of the Ordinance, no insurer shall reinsure facultatively outside Pakistan any insurance business or any part thereof underwritten by it in Pakistan without the permission of the Commission.

(2) The Commission may, grant permission under sub - rule (1) in any of the following circumstances, namely:

(a) The insurance or any part thereof is in excess of the insurer's treaty arrangements, and the Commission is provided with documentary evidence that such excess cannot be reasonably placed within Pakistan;



(b) the insurance business, although covered by a treaty arrangement shall be desired to be reinsured facultatively for protecting the treaty or for any other special reason, subject to satisfaction of the Commission;
Provided that such facultative reinsurance shall not run contrary to subsisting contractual obligations under the treaty; and

(c) the insurance business is of special nature and there are no treaty arrangements for it.
.....”

9. Para 4 of the Circular 22 of 2013 states that:

“The offer made to local insurers/reinsurer shall be an open-ended offer such that it shall not be bounded in terms of an absolute or relative basis of pre-allocation of the portion of sum insured...”

10. Therefore, a Show Cause Notice (SCN) bearing No. ID/Enf/Chubb/2017/9746 dated May 30, 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 for the aforementioned alleged contraventions of the law.

11. Subsequently, the Company vide letter dated June 8, 2017, submitted its comments as under:

....The property policy issued to Karachi International Container Terminal Limited (KICT) - a member company of CK Hutchison Holding Limited (CK Hutchison) was part of the global property program for CK Hutchison. This is a specialized risk underwritten by Chubb through its offices in Hong Kong. The policy provides cover for property, business interruption, crime, terrorism, vessel impact and transit risks with total insured values of PKR 24.9 Billion. Due to technicality of the cover, we were not in a position to retain this risk locally. PRCL being a state reinsurer and having extensive experience in underwriting such risks was approached by us and the risk was shown to them.

In our discussions with PRCL, they noted that whilst they would be in a position to accept the risk, they would determine their retention prior to retrocession. Since the global property program of CK Hutchison Holding Limited was being managed by Chubb Hong Kong we proposed to PRCL to consider Chubb Hong Kong as their main retrocessionaire.

As already mentioned in our response to the SECP On-site inspection team, in compliance of Rule 18 of Insurance Rules 2017 (Rule 7 of Insurance Rules, 2002), the risk was offered to PRCL who accepted a 100% Fac RI line.

It was noted by the Inspection team in their report that 'while this transaction may appear to be in compliance with the provisions of rule 7, in the opinion of the



inspection team it subverts the spirit of the Rule and such practices need to be discontinued forthwith'. We wish to submit that the intention of the Company was not to violate the spirit of any applicable laws. We will ensure that such a situation does not arise going forward and in this instance we request condonation from the Commission."

12. Thereafter, the Commission vide letter no. ID/Enf/Chubb/2017/9957 dated June 12, 2017, scheduled a hearing for June 21, 2017 at 12:30 p.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. Humzah Chaudhri, Chief Financial Officer and Mr. Gohar Rashid for and behalf of the Respondents via video link from the Commission's Karachi Office.

13. During the hearing of June 21, 2017, the Respondents reiterated the response submitted vide letter dated June 8, 2017. The Respondents stated that due to specialized nature of risk, the Company was not in a position to retain the risk in the local market. They maintained that the Company had discussion on the subject with PRCL and it was upto PRCL to decide. However, the Respondents admitted the mistake and assured that in future, the Company would not place the risks with conditional offer to PRCL. The Respondents requested the Commission to condone the Show Cause Notice as the Company has taken this case as a learning experience for future. To a question, the Respondents stated that PRCL accepted 100% of the risk therefore, the risk was not offered to other insurance companies. The Respondents insisted that the Company had no intention to circumvent the requirements of Rule 18 of the Rules.

14. The Respondents were required to ensure compliance with the mandatory provisions of Rule 18 of the Rules read with Para 4 of the Circular.

15. While the Company claims that it placed its risk locally with PRCL and did not reinsure abroad and thus did not violate Rule 18 of the Rules, I am of the view that the Company knowingly subverted the spirit of Rule 18 of the Rules by placing the risk with PRCL and then instructing it to retain a certain portion and retrocede the remaining to a specific reinsurer (in this case a group company of Chubb Pakistan). The intention of Company in this case was to place the risk with ACE Hong Kong, however, due to Rule 18 of the Rules, the Company used PRCL as a channel to route the risk. Had the Company not used PRCL, it would have to offer the risk to all the insurance companies in the local market and also obtain permission of the Commission to place the subject risk abroad. Further, without explicit instructions from the Company, PRCL would have been free to retrocede the risk with a Company of its choosing. Therefore, the Company also influenced the decision making of PRCL. It is also pertinent to mention that the reinsurance contract between the Company and PRCL also included a cut through clause which allows the reinsured to directly deal with the retrocessionaire (ACE Hong Kong) in case the reinsurer (PRCL) becomes insolvent.



16. It transpires that the Company has violated Rule 18 of the Rules since it is apparent that its intention was to place 95% of the risk with ACE Hong Kong and it only used PRCL as a channel to achieve this end and circumvent the requirements of Rule 18 of the Rules of circulating the risk in the market and obtaining the permission of the Commission.

17. The Company also violated the requirement of Para 4 of the Circular in the subject case since the offer made by the Company to PRCL was not an open offer. The Company offered PRCL 5% of the share while instructing it to retrocede the remaining to ACE Hong Kong. The Company has thus violated the provisions of the said circular. Content of relevant Para of the Company's offer letter to PRCL dated August 5, 2014 is reproduced below:

"...As per the expiring arrangement between PRCL and ACE Pakistan, we are pleased to offer PRCL a 5% of 100% participation on the above risk. For the remaining 95% of the risk, PRCL will retrocede to ACE Hong Kong- the producing ACE entity on the account...."

On receipt of the facultative cession from ACE Pakistan, PRCL would retain 5% and retrocede the remaining 95% as stated above, to ACE Insurance Limited (Hong Kong). On receipt of binding from ACE Hong Kong, ACE Pakistan would cede the premium to PRCL for onward remittance to the designated ACE Hong Kong account within 7 days of receipt of premium locally, in equivalent foreign currency...."

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, the Rules made thereunder and/or other legal references, I am of the view that the default of Rule 18 of the Rules read with Para 4 of the Circular is established. Therefore, the fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents.

19. Section 156 of the Ordinance:

"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."

20. 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



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Rs. 50,000/- (Rupees Fifty Thousand Only) on to the Company. Furthermore, the Respondents are hereby warned and directed to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

21. 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 received vouchers issued in the name of the Commission for information and record.

22. 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.

Fida Hussain Samoo
Commissioner (Insurance)

