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INSURANCE DIVISION
Islamabad

Before Fida Hussain Samoo, Commissioner (Insurance)

In the matter of

Continental Insurance Company Limited

Show Cause Notice No. and Issue Date: ID/Enf/Continental/2017/12628 dated
November 3, 2017

Date of Hearing: December 5, 2017

Syed Nayyar Hasnain Haider
Managing Director
M/s. Continental Insurance Company
Limited

Attended By: Mr. Zubair Ali Khan
Chief Accountant
M/s. Continental Insurance Company
Limited

Date of Order: December 12, 2017

ORDER

Under Section 41(1) read with Section 11(1)(d), Section 63 and Section 156 of the
Insurance Ordinance, 2000

.....

This Order shall dispose of the proceedings initiated against M/s. Continental Insurance Company Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Section 41(1) read with Section 11(1)(d) of the Insurance Ordinance, 2000 (the "Ordinance"). 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 for the year ended December 31, 2015, it was noted that the Company did not maintain adequate reinsurance arrangements for its exposure in respect of individual contracts accepted and in respect of aggregate losses arising out of individual events as required under Section 41(1) of the Ordinance.



3. Review of statement of premiums for the year ended December 31, 2015 revealed that total premium written by the Company under the credit and suretyship class of business was amounting to Rs. 153.565 million, out of which only Rs. 4.5 million (2.9%) was ceded to the reinsurers.

4. Statutory auditors of the Company also raised their concern regarding inadequate reinsurance arrangements in the audit report and management letter for the year ended December 31, 2015. In response, the management of the Company stated that:

"Management is making all possible efforts to arrange required reinsurance arrangement locally and internationally. The reason for the delay in this process stringent requirements for reinsurance by beneficiary - IATA, namely that the reinsurer must be internationally "A " rated reinsurance company, local insurer must cede 100% to reinsurance and the most unusual requirement of executing a separate "Cut-Through Agreement" between reinsurer and IATA, thereby by-passing the local insurer in certain circumstances. The requirements are found excessive by the prospective reinsurers and was accordingly rejected by all the reinsurers approached by the Company. However, company is considering all possible options to cope with the reinsurance requirement".

5. Furthermore, in note 1.2 of the Annual Audited Accounts for the year ended December 31, 2015, it was revealed by the statutory auditors that:

".... The company has not maintained reinsurance arrangement for credit and surety class of insurance during this year. Instead the Directors of the Company have secured Company's and insured risk via irrevocable letter of credit and created sufficient reserves to meet any future claims....."

6. Reinsuring the risk through irrevocable letter of credit and reserves cannot be treated as an alternate arrangement for the purposes of compliance with Section 41(1) of the Ordinance given that the company is only engaged in the credit and suretyship class of business.

7. In view of the above, it appeared that the Company and the CEO & Directors violated the provisions of Section 41(1) read with Section 11(1)(d) of the Ordinance.

8. Section 11(1)(d) of the Ordinance requires that:

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

....

(d) the provisions of this Ordinance relating to the obtaining of reinsurance arrangements are complied with;

...."

9. Section 41(1) of the Ordinance provides that:



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“Requirement to effect and maintain reinsurance arrangements.- (1) An insurer shall effect and shall at all times maintain such reinsurance arrangements as are, in the opinion of the directors (or such other person or body responsible for conducting the management and business of the insurer), formed on reasonable grounds, having regard to the exposures of the insurer in respect of individual contracts accepted and in respect of aggregate losses arising out of individual events, adequate to ensure continuing compliance by the insurer with the provisions of this Ordinance relating to solvency.”

10. Therefore, a Show Cause Notice (SCN) ID/Enf/Continental/2017/12628 dated November 3, 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 and/or direction under Section 63 of the Ordinance may not be given for the aforementioned alleged contraventions of the law.

11. The Company vide letter dated November 7, 2017 requested the Commission to grant 15 days to collate the requisite information and appear for hearing in person. The Commission vide its letter dated November 20, 2017 scheduled the hearing on November 27, 2017. However, on November 27, 2017, the Company submitted request to reschedule the hearing to any another date. The request of the Company was acceded to and hearing was reschedule on December 5, 2017.

12. The hearing of December 5, 2017 was held at the Head Office of the Commission in Islamabad, which was attended by Syed Nayyar Hasnain Haider, Managing Director of the Company, who appeared for hearing in his personal capacity as well as representing other members of the Board. He was accompanied by Mr. Zubair Ali Khan, Chief Accountant of the Company as an Authorized Representative, representing the Respondents before the Commission in the instant matter.

13. During the hearing, the Authorized Representatives apprised the Commission that the Company approached several reinsurers to secure reinsurance arrangements, however, it could not find prospective reinsurer due to the requirement of "Cut-Through Agreement" between reinsurer and IATA. Therefore, all the reinsurers contacted by the Company refused to offer reinsurance arrangements and thus Company had no option but to make alternate arrangement. The Authorized Representatives submitted evidence of correspondence exchanged with the reinsurers in support of the Company's efforts to obtain reinsurance arrangements. They requested the Commission to take lenient view in the matter.

14. The Company was required to maintain at all times reinsurance arrangements for its exposure in respect of individual contracts accepted and in respect of aggregate losses arising out of individual events as per Section 41(1) read with Section 11(1)(d) of the Ordinance. However, the Respondents failed to comply with the aforesaid provisions of law. During the hearing, the Authorized Representatives stated that the Company has obtained alternate arrangement i.e. reinsuring the risk through irrevocable letter of credit and reserves. Nevertheless, this irrevocable letter



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of credit cannot be treated as an alternate arrangement for the purposes of compliance with Section 41(1) of the Ordinance

15. 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, I am of the view that the default of Section 41(1) read with Section 11(1)(d) of the Ordinance is established and the Company has also accepted its default. Therefore, punitive action under Section 63 and Section 156 of the Ordinance can be taken against the Company and/or its Directors & Chief Executive Officer.

16. Section 63 of the Ordinance provides that:

"Power of Commission to issue direction to cease entering into new contracts of insurance.- (1) The Commission may issue a direction to cease entering into new contracts of insurance 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."

17. Section 156 of the Ordinance 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."

18. 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, however, the Directors have failed to perform their duties with due care and prudence. As the Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of the Section 41(1) read with Section 11(1)(d) of the Ordinance, therefore, it could be legitimately inferred that the default was committed knowingly and willfully.

19. In exercise of the power conferred on me under Section 156 of the Ordinance read with S.R.O. 750(I)/2017 dated August 2, 2017, I, instead of imposing the maximum fine as provided under the said provisions, impose a fine of Rs. 300,000/- (Rupees Three Hundred Thousand Only) on the Company due to the default of



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Section 41(1) read with Section 11(1)(d) of the Ordinance, as mentioned in the above paras hereof. However, I do not take action against the Company under Section 63 of the Ordinance due to the special circumstances faced by the Company. The Respondents are hereby warned to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission 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 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)

