SECP
INSURANCE DIVISION
Islamabad

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Before Fida Hussain Samoo, Commissioner (Insurance)

In the matter of

Premier Insurance Limited

Show Cause Notice No. and Issue Date:	ID/Enf/Premier/2017/9060 Dated March 31, 2017
Date of Hearing:	May 10, 2017
Attended By:	Mr. Rashid Sadiq (Authorized Representative on behalf of the Respondents)
Date of Order:	September 13, 2017

ORDER

Under Rule 13 of the Securities and Exchange Commission (Insurance) Rules, 2002 read with Section 11(1)(c), Section 36 and Section 156 of the Insurance Ordinance, 2000

....

This Order shall dispose of the proceedings initiated against M/s. Premier Insurance Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Rule 13 of the Securities and Exchange Commission (Insurance) Rules, 2002 (the "Rules") read with Section 11(1)(c), Section 36 of the Insurance Ordinance, 2000 (the "Ordinance"). The Company, its Chief Executive and Directors shall be collectively 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. The Company submitted its annual audited accounts and regulatory returns (the "financial statements") for the year ended December 31, 2015 in pursuance of the provisions of Section 46(1) and Section 51(1) of the Ordinance.

4. Review of financial statements for the year ended December 31, 2015 of the Company revealed that 'Provision for Outstanding Claims' as at December 31, 2015 was understated by an amount of Rs.312.752 million and the Company was *prima facie* insolvent in case of adequate provisioning.

5. Provision for Outstanding Claims' as at December 31, 2015 was booked at Rs. 572.143 million for the year 2015, which was substantially lower from the previous

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year's estimates. The final provisions for the years 2012, 2013 and 2014 were provided at Rs. 838.205 million, Rs. 873.783 million and Rs. 884.895 million respectively. As per claim development table given below, reserving pattern of the Company in prior years showed an increasing trend in the years 2012, 2013 and 2014. However, 'provision for Outstanding Claims' in the Audited Accounts for the year ended December 31, 2015 was decreased by an amount of Rs. 312.752 million.

6. The provision for Outstanding Claims was not adequately provided as elaborated in the following table:

Claims Development Table Analysis on Gross Basis	2010 and Prior	2011 and prior	2012	2013	2014	2015	Total
Estimate of Ultimate Claim Costs							
-At end of year	336,338	614,103	819,524	1,018,484	809,177	572,143	
-One year later	341,161	630,679	873,328	894,837	884,895		
-Two years later	354,795	632,340	844,340	873,783			
-Three years later	271,389	603,259	838,205				
-Four years later	290,959	621,240					
Estimate of Cummulative Claims	290,959	621,240	838,205	873,783	884,895	572,143	4,081,225
Cummulative Payments	(215,178)	(592,549)	(808,956)	(857,794)	(715,673)	(318,538)	(3,508,688)
Liability recognized in the balance	75,781	28,691	29,249	15,989	169,222	253,605	572,537

7. The excess solvency margin over minimum requirement of the Company for the year ended December 31, 2015 was Rs. 111.177 million, however, considering the impact of understatement of provision for Outstanding Claims amounting to Rs. 312.752 million, the net solvency margin of the Company was negative by Rs. 201.575 million.

(Rupees in million)

Excess Solvency Margin Over Minimum Requirement	111.177
Under Provisioning of Claims	(312.752)
Net Solvency	**(201.575)**

8. In view of the deficient provisioning, the Company, vide letter dated October 26, 2016 was advised to provide further information/clarification. In response, the Company submitted its reply vide letter dated November 21, 2016. However, the response of the Company was found to be unsatisfactory.

9. As per provisions of the Ordinance, an insurer incorporated in Pakistan, registered under the Ordinance is required to have at all times admissible assets in excess of its liabilities in Pakistan of an amount greater than or equal to the minimum solvency requirement.

10. The minimum solvency requirement (i.e. excess of admissible assets over liabilities) for the Company is Rs. 150 million. However, the Company's solvency margin vis-à-vis the minimum solvency requirements was short by an amount of Rs. 201.575 million. .

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11. The Company therefore, *prima facie* failed to meet the mandatory requirements relating to the minimum solvency as given under Rule 13 of the Rules read with Section 11(1)(c) and Section 36 of the Ordinance.

12. Section 11(1)(c) of the Ordinance states that:

> *"**Conditions imposed on registered insurers.** - (1) An insurer registered under this Ordinance shall at all times ensure that:*
>
> .....
>
> *(c) the provisions of this Ordinance relating to minimum solvency requirements are complied with;*
>
> ....."

13. The relevant provisions of Section 36 of the Ordinance state that:

> *"**Insurers of non-life insurance business to have assets in excess of minimum solvency requirement.** - (1) An insurer registered under this Ordinance to carry on non-life insurance business shall at all times have admissible assets in Pakistan in excess of its liabilities in Pakistan of an amount greater than or equal to the minimum solvency requirement.*
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> *(2) An insurer incorporated in Pakistan and registered under this Ordinance to carry on non-life insurance shall at all times have admissible assets in excess of its liabilities of an amount greater than or equal to the minimum solvency requirement.*
>
> *(3) For the purposes of this section, the minimum solvency requirement is the greatest of:*
>
> *(a) such required minimum amount as may be prescribed by the Commission;*
>
> *(b) such percentage as may be prescribed by the Commission of its earned premium revenue in the preceding twelve months, net of reinsurance expense subject to a maximum deduction for reinsurance of fifty per cent of the gross figure; and*
>
> *(c) such percentage as may be prescribed by the Commission of the sum of its liability for unexpired risk and its liability for outstanding claims, net of reinsurance subject to a maximum deduction for reinsurance in each case of fifty per cent of the gross figure:*
>
> *Provided that in the case of an insurer incorporated in a jurisdiction outside Pakistan the amounts set out in clauses (b) and (c) of this sub-section shall be calculated with reference to the earned premium revenue, unexpired risk liability and outstanding claims liability and related reinsurance balances of that insurer in respect of its insurance business in Pakistan only."*

14. The relevant provisions of Rule 13 of the Rules state that:

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*"**Solvency of non-life insurer.** - (1) For the purposes of clause (a) of subsection (3) of section 36 of the Ordinance, the following shall be the prescribed amount, namely:-*

(a) until 31 December 2011, fifty million rupees; and

(b) thereafter as per the following table:

On or After	*Rupees*
31 December 2012	*One hundred million*
31 December 2013	*One hundred and twenty five million*
31 December 2014	***One hundred and fifty million***

(2) For the purposes of clause (b) of sub-section (3) of section 36 of the Ordinance, the following shall be the prescribed percentage, namely: -

*(a) **In the case of an insurance company registered after the commencement date, twenty per cent; and***

(b) in the case of an insurance company registered at the commencement date-

(i). ten per cent until the 31st December, 2002;
(ii) fifteen per cent until the 31st December, 2004; and
*(iii) **thereafter the percentage as set out in clause (a) of this sub-rule.***

(3) For the purposes of clause (c) of sub-section (3) of section 36 of the Ordinance, the following shall be the prescribed percentage, namely: -

*(a) **In the case of an insurance company registered after the commencement date, twenty per cent; and***

(b) in the case of an insurance company registered at the commencement date-

(i) ten per cent until the 31st December, 2002;
(ii) fifteen per cent until the 31st December, 2004; and
*(iii) **thereafter the percentage as set out in clause (a) of this sub-rule."***

15. Section 156 of the Ordinance 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]16 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."*

16. Therefore, a Show Cause Notice (SCN) ID/Enf/Premier/2017/9060 Dated March 31, 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.

17. The Company, vide letter dated April 13, 2017, requested the Commission to extend the date for submission of written comments in response to the aforementioned SCN. Hence, request of the Respondents was acceded to and the Respondents vide Commission's letter no. ID/Enf/Premier/2017/9242 dated April 17, 2017, were allowed a further period until April 27, 2017 to submit their comments. However, RS Corporate Advisory (Pvt.) Limited hereinafter referred to as the Authorized Representative, vide letter dated April 27, 2017 sought further extension of two weeks. The Authorized Representative was allowed until May 10, 2017 to respond to the SCN.

18. Subsequently, the Authorized Representative vide letter dated May 13, 2017, submitted reply to the Show Cause Notice, which is summarized hereunder:

i. The notice revolves around one basic issue. It alleges that the Company has understated its 'Provision for Outstanding Claims' by an amount of Rs. 312.752 Million and, therefore, it does not meet the minimum solvency requirement as provided for in Section 36(1) of the Ordinance and considering the impact of understatement, as per your calculation, the net solvency margin of the Company becomes negative to the extent of Rs. 201.575 million.

ii. It is submitted that the accounting policies followed by the Company for the recognition and measurement of liabilities under the insurance contracts are based on the requirements of "Accounting Regulations for Non-Life Insurers of Part B of annexure II to the SECP (Insurance) Rules, 2002 (Accounting Regulations)" and comply with the provisions of IFRS 4 "Insurance Contracts" as applicable to the Company. The relevant accounting policies and the process of estimating claim liabilities are fully disclosed in notes 5.6 and 28.2 of the financial statements for the year ended 31 December, 2015.

iii. The claims development table ("CDT") has been developed on the basis of information disclosed by the Company in regulatory returns filed by the Company with the SECP. In our view, the mere comparison of provision with the amount worked out as per CDT to arrive at shortfall of Rs. 201.575 million would not be appropriate. Outstanding liabilities are calculated each year

iv. The Company is compiling the supporting documents for calculation of provision amounting to Rs. 572.143 million for the year ended 31 December, 2015 and the same shall be sent to you shortly.

v. Estimation of provisions for claim expense incurred during a specific year can only be based on the types and claim trend during the year and further after incorporating IBNR factors and, thus, to compare this with previous years is not appropriate as the claim experience may be influenced by different factors in a particular year.

vi. That the Company has made adequate provisions for outstanding claims and, therefore, the Company fully meets the minimum solvency requirement.

vii. You have compared the Company's excess solvency margin over minimum requirement with the understatement of provision of outstanding claims up to December 31, 2015. However, the financial data used from regulatory returns for the purposes of determining the "claims paid" and "outstanding claims" figures for losses incurred/reported up to December 31, 2015, is actually reflecting the claims paid and outstanding claims for policies issued in prior years.

viii. We submit that the financial statements of the Company where calculations of the 'Provisions for Outstanding Claims' have been made, reflect an accurate picture of the outstanding claims and that there is no shortfall in the solvency margin of the Company.

ix. In light of the submissions above we submit that no prima facie case for violation of the said provisions is made out and therefore any penalty sought to be imposed on the Company would be entirely unjustified.

19. The Commission vide letter dated June 2, 2017 advised the Company to provide details and supporting documents for calculation of provision amounting to Rs. 572.143 million. The Authorized Representative vide letter dated June 12, 2017 assured to submit the relevant documents within a week.

20. Thereafter, the Commission vide letter no. ID/ENF/Premier/2017/10002 dated June 14, 2017, scheduled a hearing for June 22, 2017 at 12:00 p.m. at the Head Office of the Commission in Islamabad to provide an opportunity of being heard to the Respondents. The Authorized Representative requested to adjourn the hearing due to prior commitment on that date. The Commission vide letter dated June 21, 2017 rescheduled the hearing on July 5, 2017 at 11:00 am. Meanwhile the Authorized Representative vide letter dated July 3, 2017 submitted the supporting documents for calculation of provision amounting to Rs. 572.143 million.

21. The hearing of July 5, 2017 was attended by Mr. Rashid Sadiq, Chief Executive of RS Corporate Advisory (Pvt.) Limited as an Authorized Representative for and behalf of the Respondents.

22. During the hearing, the Authorized Representative stated that details of provision amounting to Rs. 572.143 million has been submitted to the Commission for consideration. He argued that the estimation of provisions for claim expense during a specific year can only be based on the types and claims trend during the year and further after incorporating IBNR factor, thus it would not be appropriate to compare provision of current year with previous years. The Authorized Representative was clarified that as per Liability Adequacy Test performed by the Commission, the Company's provision for outstanding claims as on December 31, 2015 was understated by an amount of Rs. 299.491 million. Therefore, the Company

was still insolvent by an amount of Rs. 166.517 million after taking into account the IBNR and available solvency margin calculated as under:-

(Rupees in million)

1) Provisioning as at Jan 01, 2016	572.737
2) Total paid claims in 2016 but reported in the past years	255.160
3) Provisioning as at Dec 31, 2016 for claims reported in the past years	617.068
1)-2)-3) Run-off result	**(299.491)**
Run-off result in %	**-52%**
IBNR	**(21.797)**
Run off result (without IBNR)	**277.694**
Run-off result in %	**-48.5%**
Excess Solvency Margin Over Minimum Requirement	**111.177**
Under Provisioning of Claims	**(277.694)**
Net Solvency	**(166.517)**

23. The Authorized Representative through letter dated July 26, 2017 made additional submission which is reproduced below:

"....
3. Without prejudice to and in support of the arguments already advanced in Written Submissions, and to address your specific query raised at the time of hearing of this matter, we wish to submit that during the year ended 31 December, 2016, the Company provided additional provisioning inter alia for the following:

(a) PKR 255.350 million for the damage caused to the Air Indus Aircraft during terrorist attack at Karachi International Airport;

(b) PKR 240.303 million for claims of Affinity;

4. You will kindly appreciate that the above provisioning aggregated to PKR 495.653 million. This was the main reason for increase of provisioning during the year ended 31 December, 2016. If you need any further information or documents regarding this matter, we will be please to provide the same and will be available along with relevant officials of the Company to meet you and satisfy your concern regarding adequacy of the provisioning.

5. In this regard, the Company already provided you supporting documents for calculation of provision amounting to Rs. 572.143 million for the year ended 31 December, 2015. It is reiterated that the estimation of provisions for claim expense during a specific year can only be based on the types and claim trend during the year and further after incorporating IBNR factor and, thus, to compare the current year's provision with that of previous years may not be appropriate. On the basis of

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documents provided to you and the written and oral submissions, it is abundantly clear that the provision made by the Company for outstanding claims as of 31 December 2015 was adequate and the minimum solvency requirement as provided for in Section 36(1) of the Insurance Ordinance, 2000 (the "Ordinance") was fully satisfied.

6. We hope the above will adequately address your concern regarding provision for outstanding claims. We also reiterate that the Company is not in violation of Sections 11 or 36 of the Ordinance and, therefore, the provisions of Sections 156 of the Ordinance are not attracted.

7. We, therefore, request the Commission to kindly withdraw the Show Cause Notice without any adverse action against the Company/Directors in the interest of justice, fairness and for the purposes of uniformity as mandated under the SECP Act, 1997 and in light of available precedent of the Commission.
...."

24. Thereafter, the Authorized Representative of the Company was advised vide email dated July 31, 2017 to provide detail of the additional provisioning of Rs. 495.63 million made for the year ended December 31, 2016 as stated in the submission made above. Subsequently, the Authorized Representative vide letter dated August 3, 2017 made the following submission;

*"This is in reference to your email of 31 July, 2017 wherein you have required further information regarding provision made of Rs. 495.63 million for the year ended 31 December, **2016**. In the proceedings under the captioned show cause notice issued to the directors of M/s Premier Insurance Limited (the "**Company**") which relates to the year ended 31 December, 2015, the Company has already provided its clarifications and explanation in writing regarding adequacy of the provisions.*

*2. In the above proceedings, we represented the Company and its directors and made submissions on their behalf and also provided additional information as advised at the time of hearing of this case. The facts of the case and the legal grounds are contained in our reply dated 13 May, 2017 (hereinafter referred to as the "**Written Submissions**") and subsequent submissions vide letter dated 26 July, 2017. In the light of written and oral submissions, it was prayed to the Commission that no wrong-doing, whatsoever, has occurred on the part of the Company or its directors and they are not in violation of rule 13 of the Rules, Sections 11 or 36 of the Ordinance and, therefore, the provisions of Section 156 of the Ordinance are not attracted. It was, therefore, requested that the Commission may kindly withdraw the Notice without any adverse action against the Company/Directors.*

*3. Without prejudice to and in support of the arguments already advanced in Written Submissions, and to address your specific additional queries raised in your email of 31 July, 2017, we wish to submit that during the year ended 31 December, **2016**, the Company provided provisioning inter alia for the following:*

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(a) PKR 255.350 million for the damage caused to the Air Indus Aircraft during terrorist attack at Karachi International Airport;

*The company received the first communication for the claim vide communication dated **24 December, 2015** from the Broker regarding repair expenses of Air Indus Aircraft damaged at Karachi Airport on 09th June 2014. The total estimated repair expenses were US$ 1.3 million and /' the Company's share was 5.05% only. The Company fully provided the amount during the year ended **31 December, 2015**. During the year ended **31 December,2016** on 30 March, the Company received communication from the Broker following filing of the suit on **07 May, 2016** by the Air Indus for total claim of US$ 3.3 million out of which the Company's share was 5.05% only. The company fully provided the amount during the year ended **31 December, 2016.***

(b) PKR 240.303 million for claims of Affinity;

*There were total 24,876 **bonafide** claims aggregating to Rs. 240.303 million which were admitted by the Company during the year ended **31 December, 2016** under three different policies with **three Distributors**. The amount of claims were fully provided. During previous year ended 31 December, **2015**, the total claims were 2,780 aggregating to Rs. 30 million which were fully provided.*

4. *In this regard, the Company already provided SECP supporting documents for calculation of provision amounting to Rs. 572.143 million for the year ended **31 December, 2015**. It is reiterated that the estimation of provisions for claim expense during a specific year can only be based on the types and claim trend during the year and further after incorporating IBNR factor and, thus, to compare the current year's provision with that of previous years may not be appropriate. On the basis of documents provided to you and the written and oral submissions, it is abundantly clear that the provision made by the Company for outstanding claims as of 31 December 2015 was adequate and the minimum solvency requirement as provided for in Section 36(1) of the Insurance Ordinance, 2000 (the "Ordinance") was fully satisfied. We have also requested in our previous communication that if you need any further information or documents regarding this matter, we will be please to provide the same and will be available along with relevant officials of the Company to meet you and satisfy your concern regarding adequacy of the provisioning made during the year ended **31 December, 2015**.*

5. *We hope the above will adequately address your concern regarding provision for outstanding claims for the year **2015**. We also reiterate that the Company is not in violation of Sections 11 or 36 of the Ordinance and, therefore, the provisions of Sections 156 of the Ordinance are not attracted.*

6. *In the light of the Company's submissions, we humbly request the Commission to kindly withdraw the Show Cause Notice without any adverse action against the Company/Directors in the interest of justice, fairness and for the purposes of uniformity as mandated under the SECP Act, 1997 under its Section 20 (6) (c) and in light of available precedent of the Commission in similar matters which we would*

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like to present to make them part of our submissions for which we kindly request another opportunity of hearing in the interest of justice and fairness.
...."

25. The Respondents were required to ensure compliance with the mandatory provisions of Rule 13 of the Rules read with Section 11(1)(c) and Section 36 of the Ordinance.

26. The Company has provided the 'outstanding loss register' for various classes of insurance in support for calculation of provision amounting to Rs. 572.143 million for the year ended December 31, 2015.

27. Furthermore, as per the additional submission made by the Authorized Representative on July 26, 2017 and August 3, 2017, major claims i.e. Rs. 255.350 million for the damage caused to the Air Indus Aircraft during terrorist attack at Karachi International Airport in 2014 and Rs. 240.303 million for claims of Affinity with three distributors were reported in 2016. The provision for these unexpected events aggregates to Rs. 495.653 million. The Authorized Representative requested that Commission should give due consideration to these factors before arriving at the conclusion. However, it is noted that Air Indus aircraft was damaged on June 9, 2014 and the Company was aware of this fact that they have insured some risk of this aircraft, therefore, the Company should have made provisioning of its share of claim. The Company should have anticipated losses in line with the terms and conditions of the policy.

28. 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 opinion that the Company made provisions against the extra-ordinary claims in the year 2016 instead of the year 2015, therefore I warn the Respondents to be more vigilant in making adequate and timely provisions for the outstanding claims. Furthermore, the Respondents are hereby directed to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

29. 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)

SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
SECP