



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Mr Shahid Nasim, Executive Director (Insurance)

*In the matter of*

M/s New Hampshire Insurance Company

Date of Show-Cause Notice: 17 October 2011

Date of Hearing: 14 December 2011

Attended by: - Mr Mujib Khan, Country Manager  
- Mr Hasan Dossani, Chief Financial Officer  
- Mr Malik Murad, Compliance Officer

Date of Announcement: 4 January 2012

## ORDER

(Under Section 11(1)(f) read with Section 12 (1)(e) and Section 99(4)  
and Section 156 of the Insurance Ordinance 2000)

This Order shall dispose of the proceedings initiated against M/s New Hampshire Insurance Company (hereinafter referred to as "the Company") for contraventions committed against the requirements under Section 11(1)(f) read with Section 12 (1)(e) and Section 99(4) and Section 156 of the insurance Ordinance 2000 ("the Ordinance").

### **Background Facts**

The relevant facts for the disposal of this case are briefly stated, as under:

1. Section 11(1)(f) of the Ordinance, states that:

*"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;"*

2. The provisions of Section 12 of the Ordinance state that:

*"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:*



*(a) the business of the insurer or applicant is carried on with integrity, due care and the professional skills appropriate to the nature and scale of its activities;*

*(e) the insurer or applicant maintains adequate systems of control of its business and records."*

3. An onsite inspection of the Company was conducted vide Order of the Executive Director dated 15 December 2010, in exercise of the powers conferred under Section 59A of the Ordinance.

4. The Onsite Inspection revealed violation of sub-Section (4) of Section 99 of the Ordinance, which states:

*It shall be unlawful for an agent to deduct from premiums paid by and received from a policy holder any sums on account of commission due to the agent.*

There were several evidences of travel insurance policies in which the premium being received by the Company was net off commission retained by travel agents performing the function of issuance of the travel insurance policies.

#### **Show-Cause Notice**

5. On 17 October 2011, a Show-Cause Notice under Section 11(1)(f) read with Section 12(1)(e) and Section 99(4) and Section 156 of the Insurance Ordinance 2000) was served to the Principal Officer & the Company, whereby the Company was asked to clarify its position as to why the penalty under Section 156 of the Ordinance may not be imposed on them for various negligence on part of the management of the Company in respect of the weak internal control system of the Company, thereby making contraventions of the provisions of Section 12 and Section 99(4) read with Section 11(1)(f) of the Ordinance.

#### **Company's Reply**

6. The Company, in response to the Show-Cause Notice vide its letter of 14 November 2011 requested for an opportunity to be heard. Accordingly, a hearing was scheduled for 14 December 2011 at 1130hrs, which was communicated vide the Division's letter dated 21 November 2011.

#### **Proceedings of the Hearing**

7. The hearing was attended by Mr Mujib Khan, Country Manager, Mr Hasan Dossani, Chief Financial Officer and Mr Malik Murad, Compliance Officer.

8. During the course of hearing the following transpired:

- a. The Country Manager stated that the regulatory intervention through the recent on-site had provided a valuable insight for improving the internal controls; pertinent to highlight was the appointment of a dedicated Compliance Officer.





As regards the observations raised in the Inspection Report, the Company was endeavouring to address and remove those discrepancies.

- b. Without digressing or defending its stance, the Company admitted the violation committed which was purely unintentional. The Company provided a demographic representation reflecting that 91 per cent of the business had been streamlined in accordance with the provisions of sub-Section (4) of Section 99 and for the remainder part i.e. 9 per cent, the Company requested for a grace period of three months due to the fact that it involved numerous small business producers. The Company also prayed that the Commission should take a lenient view of the contravention.
- c. The Commission emphasized on the rationale for providing this extension as sufficient time; approximately six months, had elapsed since the issuance of the Onsite Inspection Report. The Company again requested that all major business producers were convinced on future settlements however there are numerous small producers and entering into dialogues with each one would entail time. In the event, that the Commission would not exceed to their request for extension they would have no other option but to terminate the business.
- d. Executive Director (Insurance) appreciated the efforts and corrective measures adopted by the Company viz. the appointment of a Compliance Officer which was in line with the provisions of the impending "Sound & Prudent Management Regulations 2011". Also, the Executive Director, conveyed that, in principle, the extension shall be granted however being the apex regulator the Commission has to ensure fairness and transparency in the supervision of insurance industry, accordingly an Order shall be announced, in due course.

#### Consideration of the Submission

9. Before proceeding further, I find it relevant to discuss the duties of the management of the Company. The management of the Company, 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 and breach of these statutory duties will usually be a criminal offence, punishable by fine or imprisonment. 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 12 read with Section 11(1)(f) of the Ordinance, therefore, it could be legitimately inferred that the default was committed knowingly and willfully.



### Conclusion

10. After carefully examining the arguments and studying the facts and findings of the case as mentioned in the above paras of this Order, the default of Section 12 and Section 99(4) read with Section 11(1)(f) of the Ordinance is established and the Company has also accepted its default. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed on the Company, which 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, 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."*

### Order

11. In exercise of the power conferred on me under Section 156 of the Ordinance, instead of imposing the maximum penalty, I impose a nominal fine of Rs.100,000/- (Rupees One Hundred Thousand Only).

Furthermore, the Company is hereby allowed three months time to clear the discrepancy. During mid-March 2012 the Company should apprise the Commission on the progress in the matter.

Also, the Company is hereby sternly warned that in case of any non-compliance in future more punitive action against the Company will be taken.

12. **M/s. New Hampshire Insurance Company** is hereby directed to deposit the aforesaid fine of Rs. 100,000/- (Rupees One Hundred Thousand Only) 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 receipt of this Order and evidence thereof should be furnished to the Commission.

Shahid Nasim  
Executive Director (Insurance)