



INSURANCE DIVISION
Islamabad

Before Fida Hussain Samoo Commissioner (Insurance)

In the matter of

PICIC Insurance Limited

Show Cause Notice No. and ID/Enf/PICIC/2017/ 8601 Dated February 24,
Issue Date: 2017

Date of Hearing: May 5, 2017

Attended By: Mr. Zeeshan Abdullah
Rabbani & Ansari, Advocates
(on behalf of the Respondents)

Date of Order: May 31, 2017

ORDER

Under Regulation 2(2) of Insurance Companies (Sound and Prudent Management) Regulations 2012, Section 11(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. PICIC Insurance Company Limited (the "Company") and the Chief Executive and Directors for alleged contravention of Regulation 2(2) of Insurance Companies (Sound and Prudent Management) Regulations 2012 (the "Regulations"), Section 11(f), Section 12(1)(b) 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. It was observed that the Company did not obtain approval of the Commission for appointment of its Directors, namely; Mr. Abdul Sultan, Mr. Manzoor Ali Natha, Mr. Shahnawaz Madhani and Syed Zaigham Raza, in terms of Regulation 2(2) of the the Regulations, which states that any proposed Director or chief executive or principal officer of the insurer shall not assume charge until their appointment has been approved by the Commission.

4. In response to the application seeking approval for appointment of the Directors, the Commission vide letter dated September 6, 2016 advised the



Company to submit the affidavits in respect of conflict of interest and financial soundness from each of the proposed Directors. Further, the Commission vide letters dated November 14, 2016, November 29, 2016 and email dated December 20, 2016 reminded the Company to submit the deficient documents.

5. The Company filed another application dated December 23, 2016 for approval of appointment of a proposed Director i.e. Syed Zaigham Raza, in response to which the Commission again advised the Company vide letter dated December 30, 2016 to submit requisite information/ documents as highlighted in the aforesaid letter. In this regard, two reminders were issued to the Company, vide letters dated January 16, 2017 and January 26, 2017, but no reply was received despite expiry of an ample time.

6. The Company therefore, *prima facie* failed to meet the mandatory requirements under Regulation 2(2) of the Regulations, Section 11(f), Section 12(1)(b) of the Insurance Ordinance.

7. Regulation 2(2) of the Regulations states that:

"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."

8. The relevant provisions of Section 11 (f) of the Ordinance state that:

"An insurer registered under this Ordinance shall at all times ensure that 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;"

9. Section 12(1)(b) of the Ordinance states 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:*

(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;"

10. 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 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."

11. 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."

12. Therefore, a Show Cause Notice (SCN) ID/Enf/PICIC/2017/ 8601 dated February 24, 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 60 of the Ordinance may not be issued for the aforementioned alleged contraventions of the law.

13. Subsequently, the Company vide letter dated March 13, 2017 submitted its response to the SCN, which is reproduced below:

"...The show cause is misleading and misconstrued since it incorrectly concludes that the proposed Directors, namely Mr. Abdul Sultan, Mr. Manzoor Ali Natha, Mr. Shahnawaz Madhani and Mr. Syed Zaigham Raza have assumed charge as Directors of the Company.

Regulation 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations 2012 states that:

"A proposed director or chief executive or principal officer of the insurer shall not assume charge of office until their appointment has been approved by the commission"

Mr. Abdul Sultan, Mr. Manzoor Ali Natha, Mr. Shahnawaz Madhani and Mr. Syed Zaigham Raza have been appointed by the Board as Directors of the Company to fill the casual vacancies in compliance with the Companies Ordinance 1984 and Code of Corporate Governance.



However, they did not assume charge since their application for Sound and Prudent Management is pending before the Commission for which various correspondences have taken place and as such none of them attended any Board Meetings.

There is no violation of Regulation 2(2) as the regulation bars person assuming charge, not their appointment.

The regulation itself provides that "until their appointment has been approved by the Commission".

2. In response to the Commission's letter dated November 29,2016, the company submitted the deficient documents pertaining to the appointment of Mr. Abdul Sultan, Mr. Manzoor Ali Natha, Mr. Shah Nawaz Madhani vide the company's letter dated December 22,2016 (Please refer enclosed Annexure A).

3. The company had initially submitted all related documents pertaining to the appointment of Mr. Syed Zaigham Raza vide the company's letter dated December 23,2016 (Please refer enclosed Annexure B). In the meanwhile Mr. Syed Zaigham Raza submitted his resignation on December 21, 2016.

We would like to reiterate that there is no violation of Regulation 2(2), Section 11(1)(f) and Section 12(1)(b) of the ordinance as Mr. Abdul Sultan, Mr. Manzoor Ali Natha, Mr. Shah Nawaz Madhani and Mr. Syed Zaigham Raza did not assume charge as Directors of the company.

We assure you that the nominated Directors will take charge as Directors only after receiving sound and prudent management approval by The Commission...."

14. Thereafter, the Commission vide letter no. ID/ENF/PICIC/2017/9065 dated March 31, 2017, scheduled a hearing for April 17, 2017 to provide an opportunity of being heard to the Respondents. However, Mr. Zeeshan Abdullah hereinafter referred to as (the "Authorized Representative") of the Respondents requested the Commission to reschedule the hearing. The request was acceded to and accordingly the hearing was rescheduled on April 26, 2017. On the request of the Respondents, the said hearing was again rescheduled on May 5, 2017 at 3:00 p.m.

15. The hearing was held on the scheduled date and time at Head Office of the Commission in Islamabad, connecting Commission's Karachi Office through video link. Authorized Representative appeared on behalf of the Respondents in the instant matter.

16. During the hearing, the Authorized Representative reiterated that the proposed Directors have not assumed the charge as required under Regulation 2 (2) of the Regulations. He claimed that the required declaration as sought by the Commission has already been provided. The Authorized Representative was clarified that deficient information such as per "Annexure C" was not submitted till date of the hearing. The Authorized Representative was advised to furnish evidence i.e. minutes of the Board Meetings to prove that the proposed Directors have not assumed the charge.



17. The Respondents were required to ensure compliance with the mandatory provisions of Regulation 2(2) of the Regulations, Section 11(f), Section 12(1)(b) of the Insurance Ordinance.

18. It is to be noted that the deficient information/documents i.e. affidavit as per "Annexure C" notified through Gazette Notification vide SRO NO. 1165(I)/2016 dated December 22, 2016, in respect of applications for approval of appointment of the four proposed Directors were not submitted despite issuance of reminders dated December 30, 2016, January 16, 2017 and January 26, 2017 and unnecessary delays were made to respond to the Commission's letters.

19. Clause VII of the Code of Corporate Governance for Insurers, 2016 provides condition for Qualification and Eligibility to Act as a Director:

"No person shall be appointed, elected or nominated as a director of an insurer unless his appointment has been approved by the Securities and Exchange Commission of Pakistan under the Insurance Companies (Sound and Prudent Management) Regulations, 2012. This requirement cannot be relaxed in exercise of the powers conferred by this Code."

21. As advised by the Commission, the Authorized Representative vide letter dated May 25, 2017, has submitted minutes of the Board's 80th, 81st and 82nd Meetings, whereby it has been confirmed that the proposed Directors neither attended the meetings nor assumed the charge.

22. 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 Regulation 2(2) of the Regulations, Section 11(f), Section 12(1)(b) of the Insurance Ordinance is not established. However, the Respondents are hereby directed to expedite the submission of deficient documents for approval of the proposed Directors.

23. This Order is issued without prejudice to any other action that the Commission may initiate against the Directors 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)

