



SECP  
Insurance Division  
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

*In the matter of*

The Credit Insurance Company Limited

Show Cause Notice Issue Date: March 22, 2013

Date of Hearing: 1. April 25, 2013;  
2. May 17, 2013; and  
3. June 10, 2013.

Attended By: No representative of the Company appeared

Date of Order: September 20, 2013

**ORDER**

(Under Section 174 and Section 180 Read with Section 186 and Section 189 of the Companies Ordinance, 1984)

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This Order shall dispose of the proceedings initiated against M/s The Credit Insurance Company Limited ("the Company") for alleged non-compliance of the provisions of Section 174 and Section 180 of the Companies Ordinance, 1984 (the "Ordinance").

**Background Facts**

2. The provisions of Section 180 of the Ordinance state that:

"Term of office of directors.- (1) A director elected under section 178 shall hold office for a period of three years unless he earlier resigns, becomes disqualified from being a director or otherwise ceases to hold office.

(2) Any casual vacancy occurring among the directors may be filled up by the directors and the person so appointed shall hold office for the remainder of the term of the director in whose place he is appointed." (Undertlined to put emphasis)

SECURITIES & EXCHANGE  
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3. On perusal of the record available with the Commission, it appeared that the last election of Directors were held on November 1, 2008, which was evident from Form 29 dated September 29, 2012, and on the expiration of three years' term as stipulated under Section 180 of the Ordinance, the Company was required to hold election of Directors, which was due on November 1, 2011.

4. It appeared that the Company has not held the election of Directors during the year 2011, and hence, in the light of the provisions of Section 180 of the Ordinance, it also appeared that there has been no Director on the Board of the Company thereby the provisions of Section 174 of the Ordinance have been contravened.

5. However, the provisions of Section 174(1) of the Ordinance regarding minimum number of Directors state that:

*"Minimum number of directors.- (1) Notwithstanding anything contained in any other law for the time being in force,-*

- (a) every single member company shall have at least one director;*
- (b) every other private company shall have not less than two directors; and*
- (c) every public company other than a listed company shall have not less than three directors,*

*appointed and elected in the manner provided in this Ordinance.*

*..." (Underlined to put emphasis)*

6. Moreover since, the Company had shown the retired Directors as "Directors" of the Company in its Annual Audited Accounts for the year ended December 31, 2011, therefore, it appeared that these persons have been holding the office of Directors beyond the expiry of their three years' term, thereby the provisions of Section 180 of the Ordinance have been contravened.

7. In view of the foregoing paras, it appeared that the Company has failed to comply with the requirements of Section 174 and Section 180 of the Ordinance, which attract penal provisions as provided under Section 186 and Section 189 of the Ordinance.

### Show Cause Notice

8. Accordingly, the Show Cause Notice was issued on March 22, 2013 under Section 174 and Section 180 read with Section 186 and Section 189 of the Ordinance to the Company and the retired persons acting as the "Chief Executive" and the



“Directors” of the Company, calling upon them to show cause as to why the penalty, as provided under Section 186 and Section 189 of the Ordinance, should not be imposed upon them for not complying with provisions of Section 174 and Sections 180 of the Ordinance.

### Company’s Response to the Show Cause Notice

9. As per the abovementioned Show Cause Notice, the Company was required to submit its response to the contents of the Show Cause Notice within 14 days from the date thereof; however, the Company had itself assumed that the written reply to the Show Cause Notice may be submitted after the onsite inspection is over. Here, it is to be noted that no extension in submission of reply to the Show Cause Notice was sought from the Commission, and that the Company appeared to have taken the contents of the Show Cause Notice casually, as the Company, vide its letter no. Gen/035/13 dated April 3, 2013 blatantly stated that:

*“...we are busy with your inspection team, as soon we will be free from this inspection process we will send you reply for your abovementioned Letter...”*

### Hearings of the Case & Subsequent Developments

10. Although, the Company had neither submitted a proper reply to the Show Cause Notice nor has it requested for a hearing in the matter, the Commission, on its own motion, had initially scheduled the hearing in the matter for April 25, 2013 at 11:30 a.m., which was communicated to the Company via the Commission’s hearing notice no. ID/ENF/Credit/2013/16334 dated April 12, 2013.

11. In response to the abovementioned hearing notice, the Company, vide its letter no. Gen/ 060 /13 dated April 22, 2013, informed the Commission that the election of Directors were held on November 1, 2011, and the copy of the minutes of the general meeting of November 1, 2011 along with a copy of Form 29 dated April 1, 2013 was enclosed therewith.

12. On perusal of the minutes of the general meeting of November 1, 2011 and Form 29 dated April 1, 2013, it appeared that the minutes of the said general meeting have been made after the issuance of the Show Cause Notice, as the same were not filed before the Commission within a period of thirty days from the date of the meeting in pursuance of Section 54 of the Insurance Ordinance, 2000, and filing of Form 29 in 2013 also compliments that.

13. In terms of the provisions of Section 205 of the Ordinance, the Company was essentially required to file Form 29 within a period of 14 days from the date of the



appointment / election of the Company's Directors i.e. in the general meeting of November 1, 2011, which means that the said Form 29 was required to be filed latest by November 15, 2011.

14. Therefore, in view of the documents filed by the Company, it appeared that the Company has tried to produce evidences which never existed before the Show Cause Notice was served.

15. Moreover, the Company, vide its letter no. Gen/ 061 /13 dated April 23, 2013, had requested the Commission to withdraw the Show Cause Notice.

16. However, before proceeding further, the Commission offered another hearing opportunity to the Company and the hearing in the matter was then scheduled for May 17, 2013 at 3:00 p.m., which was communicated to the Company through the Commission's hearing notice no. ID/ENF/Credit/2013/16464 dated May 2, 2013.

16. Thereupon, the Company had requested for an appointment to have a meeting with the Hon'ble Commissioner (Insurance) at the Commission's Lahore office, vide its letter no. GEN/068/13 dated May 8, 2013.

17. Subsequently, the Company, vide its letter no. Gen/073/13 dated May 15, 2013, had again requested the Commission to withdraw the Show Cause Notice.

18. It would be pertinent to state that no representative of the Company appeared for the hearing before the Commission, which was scheduled for May 17, 2013. Therefore, in order to provide a final hearing opportunity, hearing notice no. ID/ENF/Credit/2013/16671 dated May 24, 2013 was issued to the Company whereby the final hearing in the matter was scheduled for June 10, 2013 at 3:30 p.m.

19. Vide letter no. Gen/077/13 dated June 6, 2013, which was received by the Commission on June 10, 2013 via facsimile transmission, the Company stated that they have already submitted the supporting evidences, however, no specific deficiency in these documentary evidences have been reported by the Commission.

20. Again, no representative of the Company appeared for the hearing before the Commission, which was scheduled for June 10, 2013.

21. However, in order to conclude the matter at hand, the Commission, vide its letter no. ID/Enf/Credit/2013/17235 dated August 5, 2013, had asked the Company to provide documentary evidence of dispatch of notice of the aforementioned general meeting to all of its members along with the list of participants of the said meeting, which was replied by the Company vide its letter no. Gen/137/13 dated August 22, 2013.

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22. On perusal of the documents / information submitted by the Company vide its letter of August 22, 2013, it was quite clear that the Company had actually filed fabricated information and documents. The notice of the general meeting of November 1, 2011 in its agenda item no. 1 states as follows:

*"To confirm the minutes of the last meeting held on 8<sup>th</sup> May 2013" (Underlined to put emphasis)*

Whereas, the opening para of the said notice states that:

*"Notice is hereby given that Extra Ordinary General Meeting of "The Credit Insurance Company Ltd" ("the Company") will be held at Registered office of the Company at 68-Mozang Road, Lahore on November 1, 2011 at 10:00 AM to transact the following business." (Underlined to put emphasis)*

23. In addition to this, the evidence of dispatch / service of the notice of the general meeting of November 1, 2011 were also not provided by the Company, vide its letter dated August 22, 2013, rather a folio number-wise list of members which have been demonstrated to have participated in the general meeting of November 1, 2011 was provided.

24. Hence, in view of the foregoing paras hereof, the documents and information provided by the Company lay sufficient grounds for the Commission to believe that these documents and information were produced to defend the allegations leveled through the Show Cause Notice, and as such, no general meeting was ever convened on November 1, 2011.

### Consideration of Company's Submissions

25. I have carefully examined and given due consideration to the written submissions of the Company, and have also referred to the provisions of the Ordinance, I am of the view that there has been an established default of Section 174 and Section 180 of the Ordinance, as the Company's retired Directors were required to hold election of Directors on expiration of their three years' term, and until then, the retired Directors were not supposed to demonstrate themselves to be the "Directors" of the Company. Moreover, as stated earlier, the documents submitted by the Company appear to have been fabricated after the issuance of the Show Cause Notice, and hence, the penalties as provided under Section 186 and Section 189 of the Ordinance can be imposed onto the demonstrated Directors of the Company.

26. However, before proceeding further, I find it relevant to discuss the duties of the Directors. The Directors, 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

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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 in respect of holding timely elections of Directors. Moreover, since the Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Section 174 and Section 180 of the Ordinance, therefore, it could be legitimately inferred that the default was committed followed by massive misstatements.

### Conclusion

27. 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 174 and Section 180 of the Ordinance is established. Therefore, the penalties as provided under Section 186 and Section 189 of the Ordinance can be imposed onto the Company and/or its demonstrated Directors.

28. Section 186 of the Ordinance states that:

*“Penalties. - Whoever knowingly and willfully contravenes or fails to comply with any of the provisions of sections 174 to 185 or is a party to the contravention of the said provisions shall be liable to a fine which may extend to ten thousand rupees and may also be debarred by the authority which imposes the fine from becoming or continuing a director of the company for a period not exceeding three years.”*

29. Section 189 of the Ordinance states that:

*“Penalty for unqualified person acting as director, etc.- If a person who is not qualified to be a director or chief executive or who has otherwise vacated the office of director or chief executive describes or represents himself or acts as a director or chief executive, or allows or causes himself to be described as such, he shall be liable in respect of each day during which he so describes or represents or acts, or allows or causes himself to be described, as such, to fine which may extend to two hundred rupees.”*

### Order

30. In exercise of the power conferred on me under Section 186 and Section 189 of the Ordinance, I hereby debar the following persons describing themselves as Directors of the Company from becoming and continuing as the Directors and / or the Chief Executive Officer of the Company for a period of three years from the date

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Insurance Division

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hereof, and also impose a fine of Rs. 10,000/- (Rupees Ten Thousand Only) on each of the following seven persons:

S.No	Name of the Person	Penalty Imposed
1	Mr. Muhammad Ikhlaq Butt	Rs. 10,000/-
2	Mr. Amjad Javed Butt	Rs. 10,000/-
3	Mr. Basalat Dar	Rs. 10,000/-
4	Mr. Muhammad Ishaq	Rs. 10,000/-
5	Mr. Muhammad Zahid Noor	Rs. 10,000/-
6	Mr. Rajab Abbasi	Rs. 10,000/-
7	Mr. Zahid Akhtar	Rs. 10,000/-
<b>TOTAL AMOUNT OF PENALTY</b>		<b>Rs. 70,000/-</b>

31. Therefore, each of the above-named persons are hereby directed to deposit the aforesaid fine of Rs. 10,000/- (Rupees Ten Thousand Only) each, totaling to an amount of Rs. 70,000/- (Rupees Seventy 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 furnish receipted vouchers issued in the name of Commission for information and record.

32. Also, the Company is hereby advised to hold fresh election of Directors in order to appoint the persons other than those mentioned hereinabove, on the Board of the Company, to ensure smooth running of the Company's affairs. Concurrently, the compliance of Regulation 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012 must also be ensured and should not be compromised at all.

33. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the retired "Chief Executive Officer" and "Directors" of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

**Tariq Hussain**  
Director