



INSURANCE DIVISION
Islamabad

Before Shaukat Hussain, Commissioner (Insurance)

In the matter of

Trafco Insurance Company Limited

Show Cause Notice No. and ID/Enf/Trafco/2019/801
Issue Date: dated May 27, 2019

Date of Hearing: July 11, 2019

Attended By: 1. Mr. Sajjad H Rizvi, Authorized Representative
2. Mr. Zahid Imran Authorized Representative

Date of Order: July 22, 2019

ORDER

Under S.R.O. 245 (I)/2019 read with Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997

.....

This Order shall dispose of the proceedings initiated by Securities and Exchange Commission of Pakistan (SECP) against M/s. Trafco Insurance Company Limited (the "Company"), its Chief Executive and Directors for alleged contravention of S.R.O. 245 (I)/2019 (the "directive") read with Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the "Act"). The Company and its Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Insurance Ordinance, 2000 (the "Ordinance") to carry on the business of non-life insurance in Pakistan.

3. As per the directive, all regulated persons are required to submit compliance report on statutory regulatory orders issued by the Ministry of Foreign Affairs on United Nations Security Council Resolutions and intimation from the National Counter Terrorism Authority/Ministry of Interior regarding updates in the list of proscribed persons under the Anti-Terrorism Act, 1997, within three days of receiving the same, through email to aml.dept@secp.gov.pk by authorized officer of the regulated person. However, the Company failed to submit the compliance report in three days, in the following instances:-

i. Commission's email dated March 20, 2019 in respect of the National Counter Terrorism Authority (NACTA)'s letter No. F. No. 04/94/2014(Ops)-8205 dated March 18, 2019 for 'Legal action regarding persons on the IVth Schedule'. Furthermore, the Commission also issued reminder vide email dated April 10, 2019 to submit the compliance report.

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COMMISSION OF PAKISTAN
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- ii. Commission's email dated March 21, 2019 in respect of the National Counter Terrorism Authority (NACTA)'s letter No. F. No. 1/28/2017/DD(Ops & Imp) dated March 19, 2019 for 'Deletion of Persons from the List of IVth Schedule of ATA, 1997 of Khyber Pakhtunkhwa'. Furthermore, the Commission also issued reminder vide email dated April 10, 2019 to submit the compliance report.
- iii. Commission's email dated March 21, 2019 in respect direction of the Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa, vide Notification No. SO(POLICE-I)/HD/11-2/2018/Vol-XXIII dated March 13, 2019 for 'retention of person on Schedule IV of Anti Terrorism Act 1997'. Furthermore, the Commission also issued reminder vide email dated April 10, 2019 to submit the compliance report.
- iv. Commission's email dated March 25, 2019 in respect direction of the Ministry of Foreign Affairs vide S.R.O 402 (I)/2019 dated March 23, 2019 for 'travel restrictions, arms embargo and to freeze the funds and other financial resources of certain individuals and entities'. Furthermore, the Commission also issued reminder vide email dated April 10, 2019 to submit the compliance report.
- v. Commission's email dated April 1, 2019 in respect of 'submission of Compliance report on AMLD list of banned/proscribed entities'. Furthermore, the Commission also issued reminder vide email dated April 10, 2019 to submit the compliance report.
- vi. Commission's email dated April 8, 2019 in respect of direction of the Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa, vide Notification No. SO(POLICE-I)/HD/11-2/2017/Vol-XXI dated March 26, 2019 for 'removal of persons from the list of Schedule IV of Anti Terrorism Act, 1997'. Furthermore, the Commission also issued reminder vide email dated April 10, 2019 to submit the compliance report.
- vii. Commission's email dated April 10, 2019 in respect of 'submission of compliance report on penal action in case of non-compliance with the notification on UNSCR listing'.
- viii. Commission's email dated April 15, 2019 in respect of direction of the Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa, Notification No. SO(POLICE-I)HD/11-2/2017/Vol-XXI for 'removal of persons from the list of Schedule IV of Anti Terrorism Act, 1997'.
- ix. Commission's email dated April 16, 2019 in respect of the Ministry of Foreign Affairs, Islamabad vide SRO No. 407(I)/2019 dated March 23, 2019 regarding 'amendments in 1267 ISIL (Da'esh) Sanctions Committee's List'. Furthermore, the Commission also issued reminder vide email dated April 23, 2019 to submit the compliance report.
- x. Commission's email dated April 16, 2019 in respect of the National Counter Terrorism Authority (NACTA)'s letter No. F.No. 04/94/2014(Ops)-8205 dated April 12, 2019 for 'legal action regarding persons on IV Schedule'.



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Furthermore, the Commission also issued reminder vide email dated April 23, 2019 to submit the compliance report.

xi. Commission's email dated April 23, 2019 in respect of the Ministry of Foreign Affairs SRO No. 471(I)/2019 dated April 18, 2019 regarding 'amendment of one entry from UN 1989 Al-Qaeda/Da'esh Sanctions Committee's List'.

xii. Commission's email dated May 2, 2019 in respect of Ministry of Foreign Affairs vide SRO 500(I)/2019 dated May 1, 2019 issue direction to 'apply travel restrictions, arms embargo and to freeze the funds and other financial resources of certain individuals and entities'.

xiii. Commission's email dated May 2, 2019 in respect of the Ministry of Interior's Notification dated April 18, 2019 for 'proscribed organization under First Schedule of the Anti Terrorism Act, 1997'.

xiv. Commission's email dated May 2, 2019 in respect of the National Counter Terrorism Authority (NACTA)'s letter dated F.No. 04/94/2014(Ops)-8205 dated April 30, 2019 regarding 'retention of the persons in Schedule IV of Anti Terrorism Act, 1997'.

4. In this respect, the Commission issued reminder letter dated May 9, 2019 to the Company to comply with the above-mentioned emails within three (03) days of the date of receipt of the letter, through email to ins.aml.dept@secp.gov.pk by authorized officer of the Company. Moreover, reminder was also sent through email dated May 9, 2019 on the email addresses of the Company i.e. ceo@trafcoinsurance.com.pk, cs@trafcoinsurance.com.pk and cfo@trafcoinsurance.com.pk. However, the Company failed to submit any response to the emails / reminder letter or email dated May 9, 2019 until the date of the Show Cause Notice.

5. In view of the above, it appeared that the Company failed to comply with S.R.O.245(I)/2019 for which, the Company and its Board of Directors were liable to be penalized under Section 40A of the Act.

6. S.R.O 245(I)/2019 ("the directive") dated February 22, 2019 provides that:

"iii. Compliance report on statutory regulatory orders issued by the Ministry of Foreign Affairs on United Nations Security Council Resolutions and intimation from National Counter Terrorism Authority/Ministry of Interior regarding updates in list of proscribed persons under the Anti-Terrorism Act, 1997, shall be submitted within three days of receiving the same, through email to aml.dept@secp.gov.pk by authorized officer of the Regulated Person.

Any person to whom this directive applies and who contravenes or fails to comply with the requirements of this directive or submits a return which is false in material respect or where under a misstatement is made shall be liable to imposition of penalty under section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), which may extend to ten million rupees and where such contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues."



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7. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/Trafco/2019/801 dated May 27, 2019 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Section 40A of the Act should not be imposed on them for the aforementioned alleged contraventions of the law.

8. Thereafter, Mr. Khurram Javed, Company Secretary/CFO submitted comments vide letter dated June 10, 2019 on behalf of the Respondents, which are reproduced below:-

"This is for your kind information that non-compliance with emails mentioned in the above mentioned show cause notice is due to fact that said emails have not been delivered to our company yet, therefore non-compliance is neither willful nor intentional.

You are requested to update the following email address of the company in your records and email us on said address whereby timely reply will be filed.

Compliance@trafcoinsurance.com.pk

As the non-compliance was due to non-receipt of emails therefore you are requested to withdraw the show cause notice and drop the proceedings. We will make sure in future that each email is timely replied.

We would appreciate your positive response in this regard."

9. The Commission, vide its notice No. ID/Enf/Trafco/2019/950 dated June 24, 2019, scheduled the hearing for July 11, 2019 at the Commission's Head Office. The Company opted to appear for hearing via video link from Lahore. The hearing of July 11, 2019 was attended by the Authorized Representatives of the Respondents namely Mr. Sajjad H. Rizvi and Mr. Zahid Imran representing the Respondents before the Commission in the instant matter.

10. During the hearing, the Authorized Representatives reiterated written comments submitted by the Company vide letter dated June 10, 2019. The Authorized Representatives maintained that the Company did not receive emails and letter sent by the Commission to the Company for submission of compliance report in line with S.R.O. 245 (I)/2019. They requested the Commission to take lenient view as the Company intends to comply with the requirements by providing the information sought by the Commission. The Respondents provided another email address and requested the Commission to update its record accordingly. They further requested to provide record of aforesaid emails sent to the Company.

11. In terms of the clause (iii) of the directive, the Company was required to submit Compliance report on statutory regulatory orders issued by the Ministry of Foreign Affairs on United Nations Security Council Resolutions and intimation from National Counter Terrorism Authority/Ministry of Interior regarding updates in list of proscribed persons under the Anti-Terrorism Act, 1997, within three days of receiving the same, through email to aml.dept@secp.gov.pk by authorized officer of the regulated person. However, the Company failed to respond to 14 emails that were sent to the



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Company. Furthermore, copies of the aforesaid emails were also forwarded to the Company through letter dated May 9, 2019 but no response from the Company was received.

12. Respondents main argument regarding non-receipt of emails is not tenable due to the following grounds:-

- i. Firstly, the email addresses of the Company i.e. ceo@trafcoinsurance.com.pk, cs@trafcoinsurance.com.pk and cfo@trafcoinsurance.com.pk were valid emails of the Company, where the original emails as well as reminders were sent by the Commission.
- ii. Secondly, even if the emails address were changed/suspended then the Company should have communicated the valid email address to the Commission immediately.
- iii. Thirdly, the Company only communicated the change of email address through its reply dated June 10, 2019 i.e. after issuance of the SCN.
- iv. Fourthly, an email dated May 28, 2019 was received from the Company whereby Company provided updated email address to the Commission for future correspondence. Contents of the aforesaid email is reproduced below;

"Please send us your emails on following emails instead of usman.arif@trafcoinsurance.com.pk.

1- info@trafcoinsurance.com.pk
2- cs@trafcoinsurance.com.pk
... .."
- v. This email evidenced the fact that change of email address was reported after issuance of the SCN and it included the email address (cs@trafcoinsurance.com.pk) where emails were already sent by the Commission. It also validated this fact that said email of the Company was functional and the Company received the emails sent by the Commission but it failed to respond.
- vi. Moreover, the signatures of the emails of the Company received recently by the Commission were perused which enlisted the same email address where earlier emails / reminders were sent by the Commission for compliance. Snapshot of the signature of one such email address of the Company Secretary is reproduced below:-



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Khurram Javed
Company Secretary/CFO



Trafco House,
1-C-1, Canal Bank Road,
Canal Park, Gulberg-II, Lahore, Pakistan.

Tel # : +92 - 42 - 111 872 326
Fax # : +92 - 42 - 35871167
Email: cs@trafcoinsurance.com.pk
cfo@trafcoinsurance.com.pk
Web: www.trafcoinsurance.com.pk

vii. Lastly, copies of all emails were again forwarded to the Company through letter dated May 9, 2019, which leaves no ambiguity or question regarding non-receipt of emails. The aforesaid letter was self-explanatory and contained the following direction;

"

4. *The Company is hereby reminded to submit the compliance report of above-mentioned emails within 7 days from the date of this letter without fail.*

This direction shall be without prejudice to the penal and civil consequences of the defaults on the part of the Company and its management in making compliance within the period laid down in SRO 245(I)/2019."

13. The directive dated February 22, 2019 provides that, any person to whom this directive applies and who contravenes or fails to comply with the requirements of this directive or submits a return which is false in material respect or where under a misstatement is made shall be liable to imposition of penalty under section 40A of the Act, which may extend to ten million rupees and where such contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues.

14. 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 Regulations, S.R.O.245(I)/2019 and/or other legal references. I am of the view that the violation of S.R.O.245(I)/2019, is clearly established, for which the Respondents may be penalized in terms of Section 40A of the Act.

15. Section 40A of the Act states that:

"Penalty for violation of rules, regulations, directives and notifications. - (1)
Any person who contravenes or fails to comply with any provision of rule made under section 39 or regulation made under section 40 or directive or notification issued under this Act shall be liable to pay by way of penalty a sum which may extend to ten million rupees and where the contravention is a continuing one, with a further penalty which



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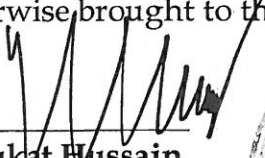
may extend to one hundred thousand rupees for every day after the first during which such contravention continues.

(2) A penalty under sub-section (1) shall be imposed by the Commission after providing a reasonable opportunity of being heard to the party."

16. In exercise of the power conferred on me under Section 40A of the Act, I, take a lenient view and do not impose fine on Board of Directors of the Company due to the fact that Company has subsequently submitted compliance reports of all emails on July 12, 2019, reporting the status as 'nil'. However, I impose a fine of Rs. 100,000/- (Rupees one Hundred Thousand only) on the Company under the said provision of the Act, due to the established non-compliances, as mentioned hereinabove. Moreover, the Respondents are hereby warned and directed to ensure strict compliance with the directive in future.

17. 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 SECP for information and record.

18. This Order is issued without prejudice to any other action that the SECP 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 SECP.



Shaukat Hussain
Commissioner (Insurance)

