



SECP  
Insurance Division  
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

*In the matter of*

Habib Insurance Company Limited

Show Cause Notice Issue Date: September 26, 2013

Date of Hearings: January 06, 2014

Attended By: Mr. Shabbir Gulamali, Company Secretary  
Mr. Zeeshan Raza, Chief Operating Officer

Date of Order: May 5, 2014

**ORDER**

(Under Section 166 read with Section 156 of the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s Habib Insurance Company Limited and others (herein referred to as "the Respondent") for not complying with Section 166 read with Section 156 of the Insurance Ordinance, 2000 ("the Ordinance").

**Background Facts**

2. M/s Habib Insurance Company Limited ("the Company") is a public limited company, incorporated under the Companies Ordinance, 1984 ("the Companies Ordinance"), and its shares are quoted on Karachi and Lahore Stock Exchanges.

3. The relevant provision of Section 166 of the Ordinance states that:

*"Insurance of public property.- (1) This section applies to direct nonlife insurance of public property.*

*(2) In this section –*

SECURITIES & EXCHANGE  
COMMISSION OF PAKISTAN

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Insurance Division

Continuation Sheet 1

- (a) "Company" means the National Insurance Company Limited;  
(b) "public property" means:

(i) any property, movable or immovable, which belongs to, or the safety of which is the legal responsibility of, -

(A) the Federal Government, a Provincial Government or a local authority or statutory corporation; or

(B) any company, firm, undertaking, institution, organisation or other establishment which is managed or controlled by the Federal or a Provincial Government or local authority or statutory corporation or in which such Government, by itself or jointly with a local authority or corporation or company managed or controlled by it, holds a controlling financial share or interest or which is specified by the Federal Government for the purposes of this clause; and

(ii) a project financed out of an external loan, or with external aid until it reaches:

(A) in the case of an industrial project, the stage at which it is capable of commencing normal production; and

(B) in the case of any other project, the stage at which it is capable of being put to the use for which it is intended; and

(c) "statutory corporation" means a body corporate, other than a company, established or set up by the Federal Government or a Provincial Government in pursuance of any law.

(3) Subject to the provisions of sub-sections (4) and (5), all insurance business relating to any public property, or to any risk or liability appertaining to any public property, shall be placed with the Company only and shall not be placed with any other insurer:

*Provided that marine, aviation and transport insurance relating to goods the import of which is financed out of an external loan, or with external aid, may, at the option of the importer, be placed with any insurer authorised to carry out such insurance business in the country giving the loan or aid.*

(4) The Federal Government may -

- (a) by order in writing exempt from compliance with subsection (3) any property or liability to which that subsection applies; or  
(b) by notification in the official Gazette exclude from the application of sub-section (3) such property or liability as is specified in that notification.

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(5) If the Company declares in writing that it is not able, by virtue of the operation of a provision of this Ordinance or for any other reason, to enter into a contract of insurance to which sub-section (3) refers, the property or liability which is the subject of that proposed contract of insurance shall be exempted from the provisions of sub-section (3) to the extent of the insurance proposed to be obtained by means of that contract of insurance.

(6) Any person who insures, and any insurer which accepts insurance of, any property or liability, knowing such insurance to be in contravention of sub-section (3), shall be guilty of an offence:

*Provided that no person shall be in contravention of sub-section (3) by reason only of that sub-section becoming applicable to property or liability to which it was not applicable at the time that a contract of insurance in respect of that property or liability was taken out."*

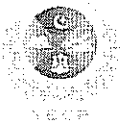
4. The Commission in receipt of the Order dated June 29, 2012, which was passed by the Federal Insurance Ombudsman in the matter of Complaint No. 89 of 2011 i.e. Special Communications Organization vs. M/s Habib Insurance Company Limited (the "Company"), relating to non-settlement of the insurance claim for replacement of 49 call booths installed on Lahore-Islamabad Motorway (M-2).

5. Further, it would be pertinent to state that the Special Communications Organization (M/s 62-Composite Signal Battalion) was looking after the operations and maintenance of 337 emergency call booths installed on the Lahore-Islamabad Motorway (M-2), and in order to protect these emergency call booths against damages from accident, a Fire Insurance Policy bearing No. 01/10.15/4051 dated November 3, 2010 was purchased from the Company for the period from November 3, 2010 to November 3, 2011 with a total sum insured of Rs. 151,650,000/- with annual premium of Rs. 1,785,219/-.

6. An additional coverage of Terrorism was also obtained against an additional premium of Rs. 179,779/- of the replacement of 337 emergency call booths.

7. As per the aforementioned Order of the Federal Insurance Ombudsman, these emergency call booths were public property as defined under Section 166(1) of the Ordinance, which had to be got insured from M/s National Insurance Company Limited (NICL) in terms of Section 166(3) of the Ordinance unless an exemption was obtained from the Federal Government under Section 166(4) of the Ordinance for getting the said emergency booths insured from any other insurer. Accordingly, the Hon'ble Federal Insurance Ombudsman vide his Order dated June 29, 2012 had urged the Commission to take cognizance of the non-compliance of Section 166 of the Ordinance.

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8. In pursuance of the matter, the Commission, vide its letter no. ID/Lit/Order Ins Omb/12/13937 dated July 3, 2012, had asked the Company to provide its comments on the observations made by the Federal Insurance Ombudsman as envisaged in his Order of June 29, 2012, to which the Company vide its letter dated July 14, 2012 had sought a further extension of 20 days to file its reply to the said letter of the Commission stating the reason that the concerned person was on leave. However, thereafter the Company vide its letter dated August 9, 2012 stated that the insured (M/s 62 Composite Signal Battalion, Motorway (M-2) Misrial Complex, Misrial Road, Rawalpindi) had approached the Company's Bank Square, Lahore Branch vide their letter dated July 1, 2010 for insuring the emergency call booth along the Lahore - Islamabad Motorway (M-2), and the said Branch had requested the said insured for the exemption as required under Section 166(4) of the Ordinance to which the insured assured them that they have the same and were insuring the said property from another insurer as well. The insured then provided the copy of the policy previously issued by that particular insurer.

9. The Commission, vide its letter no. ID/Lit/complaint-65/2012/14375 dated August 28, 2012, had asked the Company to provide the copy of the exemption letter issued by the Federal Government for insuring the aforesaid property with an insurer other than M/s National Insurance Company Limited. The Company was given a timeframe of 14 days to provide the said exemption letter. However, the Company, vide its letter of September 10, 2012, had stated that the Company had written a letter dated September 3, 2012 to the insured requesting them for a copy of the exemption certificate as required under Section 166(4) of the Ordinance, which will be forwarded to the Commission as soon as it is received by the Company.

10. The Commission, vide its letter no. ID/Lit/I V 65/2012/14627 dated October 19, 2012, again asked the Company to furnish the exemption letter within 14 days from the receipt of the Commission's letter, which was responded by the Company's letter dated November 2, 2012, whereby the Company had sought further extension of 20 days, as the concerned Director Development of M/s 62-Composite Signal Battalion, Col. Muhammad Waseem has been transferred and Col. Sial had taken the charge from him, who is not well versed with the matter, and therefore, needs some more time to study the case. Thereafter, the Company was again asked to provide the exemption letter, vide the Commission's letter no. ID/Lit/IV 65/2012/15208 dated January 3, 2013.

11. The Company, vide its letter of January 21, 2013, had stated that that despite of all efforts has not been able to obtain the required exemption certificate from the Director Development of M/s 62-Composite Signal Battalion, and that the Company had underwritten the policy on the basis of the insured's assurance that they have the requisite exemption certificate and that they have been getting the property insured from other private sector insurer as well. Vide the same letter, the Company had

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mentioned that the policy was issued unknowingly that such underwriting will constitute non-compliance of Section 166(3) of the Ordinance.

12. The Commission, vide its letter no. ID/ENF/Habib-Ins/2013/15306 dated January 21, 2013, had asked the Company to disclose the number of times the Company had issued the policies to the public sector organizations covering the public properties with or without the sanction / permission from the Federal Government under Section 166 of the Ordinance, to which the Company, vide its letter of January 29, 2013, had requested for an extension of two weeks' time to enable them to gather the information from the concerned departments and branches of the Company. Later on, the Company, vide its letter of February 11, 2013, stated that the Company has not issued any other insurance policy to any public sector organization in respect of any public property covered under Section 166 of the Ordinance.

13. In view of the abovementioned facts, it appeared that the Respondent have failed to ensure compliance with the provisions of Section 166 of the Ordinance, for which the penal action as provided under Section 156 of the Ordinance may be taken against them.

#### Show Cause Notice

14. Accordingly, the Show Cause Notice was issued on September 26, 2013 under Section 166 read with Section 156 of the Ordinance to the Chief Executive and Directors and the Company, calling upon them to show cause as to why the penalty, as provided under Section 156 of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with provisions of Section 166 of the Ordinance.

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

15. The Company vides its letter dated October 10, 2013, submitted reply to the Show Cause Notice, whereby they had stated that:

*".....It is not denied that M/s. 62-Composite Signal Battalion comes within the definition of public property as defined in Section 166(2) of the Insurance ordinance .it is also not denied that M/s. 62-Composite Signal Battalion was looking after the operations and maintenance of 337 emergency call booths installed on the Lahore-Islamabad motorway (M2) and it is further not denied that fire insurance in respect of the said 337 emergency call booths was accepted by Habib insurance Co. Ltd*

*It is however, submitted that the said risk was accepted on the assurance of M/s. 62-Composite Signal Battalion that they have the required exemption which assurance was fortified by the fact that they provided to us a previous insurance policy issued by M/s. Universal Insurance Company Ltd., relating to the same insured property, however, in spite of our best efforts they have failed to provide to us the said exemption*

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*It is further submitted that the said M/s.62-Composite Signal Battalion have after expiry of our policy, obtained another policy from a private insurance co. but are still not providing us the required exemption.*

*It will not be out of place to mention that in terms of sub-section 6 of the section 166 of the Insurance Ordinance both the "person who insures and any insurer who accepts insurance of any property or liability knowing such insurance to be in contravention of sub-section(3), shall be guilty of an offence". We had accepted the insurance on the clear understanding of the insured that they had the required exemption which will be provided to us and further on the evidence that previously also the property was insured with a private insurance company. In the circumstances you will appreciate that we did not issue the policy knowingly that the same was in contravention of Sub-Section(3) of Section 166 of the Insurance Ordinance as we were given to understand that Ms. 62-Composite Battalion had the required exemption*

*On the query from the Securities and Exchange Commission of Pakistan (Insurance Division ) we checked our entire record and had already confirmed that beside the said lapse Habib Insurance Co. Ltd., had not assumed any risk in respect of public property as defined in Section 166 (2) of the Insurance Ordinance 2000.*

*The insurance of the policy in dispute was on the basis of miss-representation made by the said M/s. 62-Composite Signal Battalion and was not a deliberate act as the company had no intension of violating Section 156 and 166 of the Insurance Ordinance. This being a first mistake of its nature committed by the company it is humbly submitted that a lenient view may be taken in the matter*

*The Company's representative would like to be present when the matter is taken up for hearing to reply to any queries which may be raised by the Commission at the time of hearing .....*

### Hearings of the Case & Subsequent Developments

16. The hearing in the matter was scheduled on January 6, 2014 at 3:00 P.M., accordingly, the said hearing was attended by Shabbir Gulamali, Company Secretary and Mr. Zeeshan Raza Chief Operating Officer of the Company, on behalf of the Company, the Chief Executive, and Directors of the Company (herein referred to as "the Representative).

17. Brief proceedings of the hearing of January 6, 2014 are as follows:

- a. The case was briefed by the Deputy Director with the instruction of the Director Insurance, the Representative replied, the Company in 2010 underwrite this business by our Lahore business unit. They further stated that it is our mistake that we wrote this business however, our intention was not mala fide. They further stated that NOC or exemption certificate would be provided but not given by us by the client;
- b. The Representative further stated that we wrote only one time, but mistakenly write this public property un intentionally, and we request the Commission that the Commission condone us on this matter;

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- c. They also told that the Company checked it's all records for last three to four years and did not find any single business of public property were underwrite;
- d. They ensured that the Company should be very careful and will not repeat in future, and also ensure to comply the adherence of the laws and rules in its letter and spirit.

### Consideration of Company's Submissions

18. I have carefully examined and given due consideration to the written and verbal 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 under the relevant provision of the Ordinance. The Representative of the notice has also admitted this as well and showed the commitment of the Company to fulfill the requirement and will not repeat the wrong practice in future.

19. 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 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 over looked and 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 166 of the Ordinance i.e. the Directors of the Company were required to follow the laws in letter and spirit at any cost, therefore, it could be legitimately inferred that the default was committed.

20. The Company, being a listed concern, should have a better and proactive approach towards compliance of the applicable laws.

### Conclusion

21. 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 166 of the Ordinance is established, and to a greater extent, the Company has also accepted its default. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed on the Company.

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22. 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 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**

23. In exercise of the power conferred on me under Section 156 of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, condone the Company due to fact that the Company was follow the wrong market practice and ensure that such practice will not repeat in future and at the time of hearing of the show cause notice the Respondent has endorsed that no public property were ever underwrite by the Company as records were checked of last four years and also showed their willing ness to adopt the provision of section 166 of the Ordinance in letter and spirit.

Also, the Company is hereby issued a **stern warning** that in case of similar non-compliance in future a stronger action against the Company will be taken.

24. 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.

  
Tariq Hussain  
Director

05/05/2014