



SECP
INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director (Insurance)

In the matter of

The Pakistan Mutual Insurance Company (Guarantee) Limited

Show Cause Notice Issue Date: February 21, 2014

Date of Hearing: March 11, 2015

Attended By:

1. Ch. Abdul Karim
Chief Executive
M/s. Pakistan Mutual Insurance Co. (Gte.) Ltd;
2. Mr. Awais
M/s. Pakistan Mutual Insurance Co. (Gte.) Ltd;
3. Mr. Hafiz M. Farooq
M/s. Pakistan Mutual Insurance Co. (Gte.) Ltd.
4. Mr. Irfan Ilyas, FCA
Partner
M/s. Ilyas Saeed & Co., Chartered Accountants;

Date of Order: March 30, 2015

ORDER

Under Section 160(2)(b) read with Section 160(8) of the Companies Ordinance, 1984.

.....

This Order shall dispose of the proceedings initiated against the chief executive and directors of M/s. The Pakistan Mutual Insurance Company (Guarantee) Limited ("the Company") for alleged contravention of Section 160(2)(b) read with Section 160(8) of the Companies Ordinance, 1984. (the "Ordinance"). The chief executive and directors of the Company shall be referred to as the "Respondents" hereinafter.

A. Background

2. An onsite inspection of the Company was conducted on the order dated April 23, 2013, under Section 59A of the Insurance Ordinance, 2000, during which,

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it was observed that the Company held its election of directors in the Annual General Meeting (AGM) of April 14, 2011, in which seven directors were elected.

3. In view of Section 2(xxxix) of the Insurance Ordinance, 2000 and Section 160(6) of the Ordinance, all policyholders of a mutual insurance company, having no share capital, are the members of that company. And, at the time of convening of the AGM of April 14, 2011, there were 762 Qisas and Diyat policyholders of the Company, who were essentially the members of the Company.

4. Given the minimum quorum of a general meeting, as laid down under Section 160(2)(b) of the Ordinance, at least 190 members should have been present in the aforesaid AGM of April 14, 2011 in order to meet the minimum quorum requirement of twenty-five percent of the total members.

5. The findings of the onsite inspection as well as the minutes of the AGM of April 14, 2011 depict that only 29 members were present in that AGM, so the requirement relating to the minimum quorum was not met for the AGM in which election of the directors was held.

6. In view of the foregoing paras hereof, it appeared that the Company violated provision of Section 160(2)(b) of the Ordinance, as aforesaid, for which the Commission may take penal action against the Respondents in terms of Section 160(8) of the Ordinance.

7. Accordingly, the Show Cause Notice was issued on February 21, 2014 under Section 160(2)(b) read with Section 160(8) of the Ordinance to the Respondents, calling upon them to show cause as to why the fine, as provided under Section 160(8) of the Ordinance should not be imposed for non-compliance with Section 160(2)(b) of the Ordinance.

8. In response to the said Show Cause Notice, the Respondents, vide their letter no. A/121/14 dated March 6, 2014, stated that:

"...we intend to be heard through a counsel, who will appear on our behalf on the date of hearing as and when fixed by this Hon'ble forum.

...

The company held its AGM on April 14, 2011 in which the election of directors was held. Response to the observation on election of directors has been duly furnished to your office in response to Notice no. ID/Enf/PMICL/2014/18969, dated February 21, 2014.

With reference to the quorum of the meeting, it is submitted that the quorum of the members is governed under Article 14 of Articles of Association of the company, read with the sub clause (b) of clause (2) of section 160 of the Companies Ordinance,, 1984.





We understand that section 160 (2) (b) provides for a quorum of the general meeting (representing not less than 25 percent of voting power) or unless the articles of the company provide for a large number.

In our case, Article 14 of the Articles of Association of the company provides the quorum of a minimum of 5, ascertained at the meeting as follows (that is to say):

PARTICULARS	QUORUM
Members do not exceed 10	5
Exceeding 10 members up to 100	1 for every 10 additional members
Exceeding 100 members up to 1000	1 for every 100 additional members
Members exceeding 1000	2 for every 1000 additional members

Our quorum from 1,844 members is to be computed as under:

Particulars	Cumulative Number	Quorum Strength
10 members	10	5
90 members	100	9
900 members	1,000	9
844 members	1,844	2
TOTAL		23

According to our interpretation the quorum was complete.

Without prejudice to the above, we submit that if restricted to 25 percent of voting power for the quorum, the law would not have provided the alternate in the form of the provision envisaged in the Articles of Association. It is further submitted that the presence of members to make up 25 percent of voting power is virtually impossible, especially in case of a mutual company, where its member does not hold any financial commercial interest. Member who has voting right has to satisfy the conditions of Article 4 of the Articles of Association of the company wherein he is required to pay membership fee along with his membership application, and he has to be a holder of a valid insurance policy issued by the company.

It is well settled proposition of law, that the law does not require a person to do what is not possible for him to do. For a mutual company the number of members exceeds thousands, it is not possible for the company to even ensure the presence of 25 percent of its members at one time, in one place or city, where the company intends to hold its AGM.

Without prejudice to foregoing, keeping in view the practicability, we understand that if Articles of Association provide larger number of members, the quorum shall be governed as per Articles of Association. In the light of the given submission it is humbly prayed that there is no default regarding the quorum of AGM dated April 14, 2011."





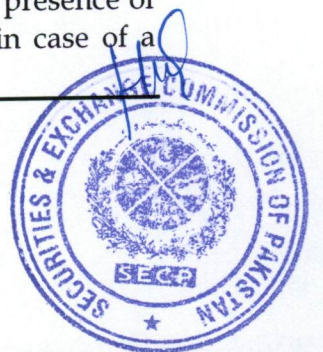
B. Hearings

9. Through the abovementioned response, the Respondents requested for a hearing to defend their stance, and accordingly the Commission, vide its notice no. ID/ENF/PMICL/2014/21233 dated November 6, 2014, scheduled the hearing for November 13, 2014 at 12:30 p.m. The said hearing was adjourned on the request of the Respondents and therefore was rescheduled for January 13, 2015 at 2:45 p.m. via hearing notice no. ID/Enf/PMICL/2014/21641 dated January 1, 2015. The hearing was attended by Mr. Irfan Ilyas - Partner, M/s. Ilyas Saeed & Co., Chartered Accountants, Mr. Mubashir Raza - Manager, M/s. Ilyas Saeed & Co., Chartered Accountants, Ch. Abdul Karim - Chief Executive of the Company and Mr. Hafiz M. Farooq Afzal - Manager Finance of the Company, for and on behalf of the Respondents.

10. The Respondents gave their arguments to defend the proceedings of the Show Cause Notice during the hearing of January 13, 2015. However, the matter could not be decided on the basis of the arguments and submissions made by the Respondents. Therefore, another opportunity was provided to the Respondents, vide notice no. ID/Enf/PMICL/2015/393 dated February 26, 2015, through which hearing was scheduled for March 11, 2015 at 11:30 a.m. through video link connecting the Head Office with the Lahore Office of the Commission. The hearing was attended by Ch. Abdul Karim - Chief Executive of the Company, Mr. Hafiz M. Farooq Afzal - Manager Finance of the Company, Mr. Owais and Mr. Irfan Ilyas - Partner, M/s. Ilyas Saeed & Co., Chartered Accountants, for and on behalf of the Respondents.

11. Brief proceedings of the hearing of March 11, 2015 were as follows:

- a. Prior to the start of the hearing proceedings, the Respondents handed over the Power of Attorney in favor of M/s. Ilyas Saeed & Co., Chartered Accountants to the Commission;
- b. The Respondents were asked to present their stance, to which they stated that the Respondents have already submitted their contention before the Commission vide their letter dated March 6, 2014;
- c. The Respondents further stated that quorum of the members in general meeting is governed by Article 14 of Articles of Association of the Company read with Section 160(2)(b) of the Companies Ordinance, 1984;
- d. The Respondents also stated that if the Company is restricted to twenty-five percent of voting power for the quorum, the law would not have provided the alternate in the form of the provision envisaged in the Articles of Association;
- e. It was further argued by the Respondents that to ensure the presence of more than thousand members is not possible particularly in case of a





mutual company where the members do not hold any interest and are large in number;

- f. The Respondents stated that they acted in pursuance of the provisions of Section 160(2)(6) of the Ordinance, which allows the Company to identify the quorum of its general meeting through its Articles of Association if the minimum quorum is to be more than 2 members; and
- g. Thereupon, the Respondents were made to understand that the intent of the requirements of Section 160(2)(b) of the Ordinance require a minimum quorum of 2 members or such larger number as specified in the Articles of a company, forming at least twenty-five percent of the total voting power, either of their own account or as proxies. And, since all policyholders of the Company are members of the Company, in terms of Section 2(xxxix) of the Insurance Ordinance, 2000 and Section 160(6) of the Ordinance, at least twenty-five percent of the total number of members forms the minimum quorum for a general meeting of the Company. It was also stated that the purpose of the notices served to the members for convening of any general meetings is to allow them and empower them to participate in the decisions taken on account of any ordinary or special business to be transacted by the Company.

C. Issues

13. The Respondents were required to ensure compliance with Section 160(2)(b) read with Section 160(6) of the Ordinance and Section 2(xxxix) of the Insurance Ordinance, 2000.

Section 160(2)(b) of the Ordinance provides that:

“(2) The quorum of a general meeting shall be--

...

(b) in the case of any other company, unless the articles provide for a larger number, two members present personally who represent not less than twenty-five per cent of the total voting power, either of their own account or as proxies; and

And, Section 160(6) of the Ordinance states:

“(6) In the case of a company limited by guarantee and having no share capital, every member thereof shall have one vote.”

Section 2(xxxix) of the Insurance Ordinance, 2000 also states:

““mutual insurance company” means an insurer, being a company incorporated under the law of Pakistan or any country or state other than Pakistan, which has no share capital and of which, by its constitution, only and all policy holders are members;”





14. And, for any contravention of Section 160 of the Ordinance, every officer of the company who knowingly or willfully fails to comply with any of the provision, shall be liable to pay the fine as provided under Section 160(8) of the Ordinance. And, the provisions of Section 160(8) of the Ordinance state that:

“(8) Every officer of the company who knowingly or willfully fails to comply with any of the provisions of this section shall be liable,-

(a) if the default relates to a listed company, to a fine which may extend to fifty thousand rupees and in the case of a continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues; and

(b) if the default relates to any other company, to a fine not exceeding ten thousand rupees and in the case of a continuing default to a further fine which may extend to two hundred rupees for every day after the first during which the default continues.”

D. Summary of Arguments and Conclusions in Respect of Each Issue

15. Primarily, it is pertinent to state that Article 4 of the Articles of Association of the Company regarding the membership of the Company clearly contradicts to how the Insurance Ordinance, 2000 has defined the membership of a mutual insurance company i.e. a company not having any share capital. As per the said definition, only and all policyholders are the members of a mutual insurance company. The imposition of any additional condition on policyholders i.e. requirement to pay membership fee along with membership form to become a member of the Company, as laid down under Article 4 of the Articles of Association of the Company, is *ultra vires* and illegal. Moreover, the Respondents' understanding that the members of the Company do not have any financial / commercial interest is based on a false self-assumption, as all the policyholders are the members of the Company and only they are the owners of the Company by virtue of Section 2(xxxix) of the Insurance Ordinance, 2000 and Section 160(6) of the Ordinance.

16. However, the mere argument on which the Respondents relied was that if Articles of Association provide larger number of members, the quorum shall be governed as per Articles of Association. The Respondents were of the view that the Company was required only to observe the quorum as given in Articles of Association of the Company or to observe a minimum voting power of twenty-five percent. According to the Respondents, they complied with the provisions of Section 160(2)(b) of the Ordinance by following Article 14 of the Articles of Association of the Company.

17. The Respondents computed the minimum quorum as provided in Article 14 of the Articles of Association of the Company, as follows:





PARTICULARS	QUORUM
Members do not exceed 10	5
Exceeding 10 members up to 100	1 for every 10 additional members
Exceeding 100 members up to 1000	1 for every 100 additional members
Members exceeding 1000	2 for every 1000 additional members

The quorum from 1,844 members was computed as under:

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18. The Respondents were further of the opinion that it would not be possible for them to ensure presence of at least twenty-five percent of the total number of members at any general meeting.

19. The plain reading of Section 160(2)(b) of the Ordinance clearly stipulates that the minimum quorum for a general meeting of an unlisted public company would at least be two members who represent not less than twenty-five percent of the total voting power, either of their own account or as proxies, or such **larger** number of members as provided under the Articles of Association of a company. The purpose is to ensure that a sizable voting power (i.e. at least twenty-five percent of the overall voting power) is present at the time of convening of the general meeting. The Articles do not have an overriding effect on the provisions of the Ordinance. The provisions of the law have to be complied with as required therein. The quorum laid down under the Articles of Association of a company would take precedence if it surpasses the quorum laid down under Section 160(2)(b) of the Ordinance, however, the baseline voting power has to be greater than or equal to twenty-five percent of the overall voting power, and this is what the intent of the law is. Thus, in this view, the Respondents have failed to ensure compliance with the provisions of Section 160(2)(b) of the Ordinance.

E. Overall Conclusion

20. 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 and other legal references, I am of the view that the default of Section 160(2)(b) read with Section 160(6) of the Ordinance is established. Therefore, the fine as provided under Section 160(8) of the Ordinance can be





imposed onto the Respondents i.e. the chief executive and directors of the Company.

21. 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. 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 Section 160(2)(b) read with Section 160(6) of the Ordinance, therefore, it could be legitimately inferred that the default was committed knowingly and willfully.

F. Penalties and Directions

22. In exercise of the power conferred on me under Section 160(8) of the Ordinance, I impose a fine of Rs. 10,000/- (Rupees Ten Thousand Only) on each of the Respondents, due to the willful default of Section 160(2)(b) of the Ordinance, as mentioned hereinabove. The Respondents are further directed to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

23. Hence, all the Respondents are 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 Commission for information and record.

24. Failure to comply with this Order would compel the Commission to initiate proceedings under Section 472, Section 473 and/or Section 495 of the Ordinance. However, in case of any misstatements in the submissions made by the Respondents, the Commission shall initiate proceedings under Section 492 of the Ordinance.

25. 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.

Hasnat Ahmad
Director

