



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Shaheen Insurance Company Limited

Show Cause Notice Issue Date: May 2, 2013

Date of Hearings: October 28, 2013

Attended By: Mr. Farhan Janjua
Chief Financial Officer & Company Secretary
Mr. Sohel N. Kidwai
Chief Operating Officer
Mr. Aijaz Ali Khan
Head of Operation
Mr. Imran Hussain
Legal Advisor

Date of Order: February 4, 2014

ORDER

(Under Section 45 read with Section 156 of the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s Shaheen Insurance Company Limited (herein referred to as "the Company") for not complying with the provisions of Section 45 of the Insurance Ordinance, 2000 ("the Ordinance").

Background Facts

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

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SECURITIES & EXCHANGE
COMMISSION OF PAKISTAN

Insurance Division, State Life Building-2
4th Floor, Wallace Road, Karachi. Pakistan

Tel: +92-21-32461053, +92-21-32465469 Fax: +92-21-32423248 Web: www.secp.gov.pk



3. The relevant provision of Section 45 of the Ordinance states that:

"Books and records.- (1) Every insurer, in respect of all insurance business transacted by him, and in the case of an insurer incorporated in a jurisdiction outside Pakistan in respect of the insurance business transacted by the insurer in Pakistan, shall maintain proper books and records.

(2) Books, accounts and records in respect of insurance business transacted in Pakistan shall be maintained in Pakistan and in either the English or the Urdu language.

(3) For the purposes of this Ordinance, proper books and records shall include without limitation:

- (a) a register or record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice;*
- (b) a register or record of claims, in which shall be entered every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds therefor; and*
- (c) such other books and records as may from time to time be prescribed.*

(4) For the purposes of this Ordinance, the expression "books" includes –

- (a) a register;*
- (b) accounts or accounting records, however compiled, recorded or stored;*
- (c) a document; and*
- (d) any other record of information.*

(5) A book that is required by this Ordinance or the Companies Ordinance, 1984 to be kept or prepared by an insurer may be kept or prepared

- (a) by making entries in a bound or loose leaf book;*
- (b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or*
- (c) in any other manner approved by the Commission.*

Provided that the matters recorded or stored are capable, at any time, of being reproduced in a written form or a reproduction of those matters is kept in a written form approved by the Commission.

(6) An insurer shall take all reasonable precautions, including such precautions, if any, as may be prescribed, for guarding against damage to, destruction of or falsification of



or in, and for discovery of falsification of or in, any book or part of a book required to be kept or prepared by an insurer."

4. November 27, 2012, the Commissioner (Insurance) ordered an onsite inspection of the Company, in exercise of the powers conferred under Section 59A of the Insurance Ordinance, 2000. However the Company, vide its letter dated December 6, 2012, requested the Commission to extend the date of commencement of onsite inspection, which was acceded to by the competent authority vide letter dated December 7, 2012, and hence, onsite inspection commenced on December 17, 2012 instead of December 10, 2012 as mentioned in inspection order dated November 27, 2012.

5. During the course of the onsite inspection of the Company, the inspection team asked the Company to provide 146 claim files relating to Miscellaneous class. These files pertained to settlement with Worldcall group for offsetting of the outstanding premium with outstanding claims. Total amount of these claims was observed to be Rs. 6.4 million. However, only 79 claim files were provided to the inspection team, constituting a total claim amount of Rs. 2 million whereas the remaining 67 claim files having total amount of Rs. 4.3 million were unavailable in the Company's record. The Company vide its email dated January 30, 2013 gave no material grounds for unavailability of these files.

6. Unavailability of these files raised serious doubts on genuineness and authenticity of all these claim settlements. Moreover, this also indicates the inappropriate maintenance of records by the Company. It is also pertinent to mention that Section 230 of the Companies Ordinance, 1984 requires a company to maintain proper books of accounts for a period of 10 years from the end of related year.

7. In view of the abovementioned facts, it appeared that the Company had failed to maintain proper books and records relating to the claims settlements and thus, it appeared that the Company has contravened the provisions of Section 45 of the Ordinance, for which the penal action as provided under Section 156 of the Ordinance may be taken against the Company, its Directors.

Show Cause Notice

8. Accordingly, the Show Cause Notice was issued on May 2, 2013 under Section 45 with Section 156 of the Ordinance to the Chief Executive and Directors of 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 45 of the Ordinance.



Company's Response to the Show Cause Notice

9. In response to the said Show Cause Notice, the Company, vide their letter of May 15, 2013 requested to allow two week time for submission of the written reply of the said notice, which was allowed via letter dated May 20, 2013. In response, the Company, vide their letter of July 19, 2013, stated that:

".....in this respect we have to submit that 67 files referred in the report could not be provided to the Inspection Team due to the fact that the all files pertain to a specific client of Lahore City and the mail Branch in Lahore was shifted to Shaheen Complex Lahore in 2012 and during that shifting over to new place the indexing of storage facility was over loaded with data which caused the delay to providing these files.

However, subsequently these files have been collected and are available with us....."

10. The reply of the Company revealed that the 67 claim files reported in the notice were missing at the time of Inspection Team conducted its Inspection and the Company could not make these files available to them even not satisfied Inspection Team with material facts of unavailability of these files. It revealed that the default under of section 45 of the Ordinance is established and the directors of the Company have made themselves liable for a fine under section 156 of the Ordinance.

Hearings of the Case & Subsequent Developments

11. The hearing in the matter was scheduled on October 28, 2013 at 3:45 P.M., accordingly, the said hearing was attended by Mr. Farhan Janjua, Chief Financial Officer & Company Secretary, Mr. Sohel N. Kidwai, Chief Operating Officer, Mr. Aijaz Ali Khan, Head of Operation and Mr. Imran Hussain, Legal Advisor (they will be referred to as the "Company's representative" hereinafter).

12. Brief proceedings of the hearing of October 28, 2013 are as follows:

- a. The case was briefed by the Deputy Director with the instruction of the Director Insurance, and asked the Company to clarify their position;
- b. The Company's representative, while clarifying their position accepted the default and restated their earlier reply submitted to the Commission in response of the Show Cause Notice. They also stated that due to the shifting the files could not be provided to the Inspection Team, now the files are available with the Company;



- c. Director Insurance argued that the Company would keep and make available to its records as per the law, The Company's representative responded that these files pertain to our Lahore City main branch and now available and we can show you all the records;
- d. Director Insurance stated that our Inspection Team will visit the Company to verify these records mentioned in the notice.

13. December 31, 2013 Commission Inspector visited the Company premises for verification of the 67 claim files and relevant records and found that the 67 claim files and relevant records i.e. loss voucher signed and stamped by the Company. Survey reports, statement of happening, letter of acceptance, claim form, copies of insurance policy, preliminary loss advice, claim intimation pro-forma and pictures etc were available with the Company and also found that these claims were adjusted against premium receivable from M/s World Call Limited.

Consideration of Company's Submissions

14. 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 Company's representative have also admitted this as well and showed the commitment of the Company to fulfill the requirement and will protect the records of the Company as per law and will make them available always in future.

15. 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 45 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.

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

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Conclusion

17. 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 45 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.

18. 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, 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

19. 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 become compliant and make the records them available for verification and also ensure that all such records are kept with the Company as per law. The facts produced to me during the hearing and subsequently provided with Commission also endorsed that no such excuses will be taken in future and also showed their willingness to adopt the provision of section 45 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.

20. 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