



SECP
INSURANCE DIVISION
Islamabad

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Before Fida Hussain Samoo, Commissioner (Insurance)

In the matter of

Dadabhoy Insurance Company Limited

Show Cause Notice Issue Date: December 24, 2012 (*Returned Undelivered*)
June 19, 2014 (*Returned Undelivered*)
March 24, 2015 (*Delivered at Personal Addresses of the Respondents*)

Date of Hearing: May 22, 2015 at 11:00 a.m.
July 6, 2015 at 2:30 p.m.

Attended By: None

Date of Order: August 10, 2015

ORDER

Under Section 309(b) Read With Section 305 of the Companies Ordinance, 1984 and
Section 143 of the Insurance Ordinance, 2000

.....

This Order shall dispose of the proceedings initiated for grant of sanction for winding up of M/s. Dadabhoy Insurance Company Limited (the "Company") in terms of Section 309(b) of the Companies Ordinance, 1984 (the "Ordinance of 1984") and Section 143 of the Insurance Ordinance, 2000 (the "Ordinance of 2000"), based on the grounds as stipulated under Section 305 of the Ordinance of 1984 and Section 143 of the Ordinance of 2000. The Company, its chief executive and directors shall be collectively referred to as the "Respondents" hereinafter.

A. Background

2. The Company was incorporated as a public limited company in the city of Karachi on November 16, 1982 to undertake non-life insurance business. The Company was listed on the Karachi Stock Exchange.
3. The Commission, vide its order dated June 10, 2008, issued direction under Section 63(1) of the Ordinance of 2000 to the Company to cease entering into new contracts of insurance effective July 10, 2008. The said direction was issued to the Company on the basis of the following non-compliances of the Ordinance of 2000:-

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- a. that the Company had failed to meet the minimum paid up capital requirements of Rs. 120 million prescribed under Section 28 read with 11(1)(a) of the Ordinance of 2000 by December 31, 2007;
 - b. that the Company had failed to meet the requirements of Section 11(1)(b) read with Section 29 of the Ordinance of 2000 relating to the minimum statutory deposit to be kept with the State Bank of Pakistan, which was Rs.5 million at that time;
 - c. that the Company had failed to submit the reinsurance treaty arrangements for the years 2006, 2007 and 2008, thereby violating the provisions of Section 11(1)(d) read with Section 41(1) of the Ordinance of 2000; and
 - d. that the Company had failed to pay to the Commission, on or before 15th day of January in each calendar year, an amount of Rs.298,862/- as applicable annual supervision fee for the years 2001, 2003 and 2004 thereby violating the provisions of Section 11(3) of the Ordinance of 2000.
4. The Company held its last Annual General Meeting on April 10, 2007, as reflected in the annual accounts for the year 2006. However, the Company did not file minutes of the said Annual General Meeting with the Commission in violation of Section 54 of the Ordinance of 2000.
5. It was observed that the Company suspended its business and did not take steps to comply with the mandatory requirements of the Ordinance of 2000. The Company, through M/s. Adam Law Associates filed its accounts for the years 2000 to 2006 on July 24, 2008. Thereafter, the Company did not file the annual accounts and the regulatory returns. A summary of non-filing of the requisite documents & returns as required by the relevant provisions of the Ordinance of 2000 and the Ordinance of 1984 is as under:

S No.	Description	Section	Ordinance	FY2013	FY2012	FY2011	FY2010	FY2009	FY2008	FY2007
1	Annual Accounts	46(1) & 51(1)	Insurance Ordinance, 2000	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
		233(5)	Companies Ordinance, 1984	-	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
2	Regulatory Returns	46(1) & 51(1)	Insurance Ordinance, 2000	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
3	Statement of Assets & Liabilities of 1st Quarter Accounts of 1st Quarter	46(2) & 51(2)	Insurance Ordinance, 2000	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
		245	Companies Ordinance, 1984	-	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
4	Statement of Assets & Liabilities of 2nd Quarter Accounts of 2nd Quarter	46(2) & 51(2)	Insurance Ordinance, 2000	-	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
		245	Companies Ordinance, 1984	-	-	Not filed	Not filed	Not filed	Not filed	Not filed
5	Statement of Assets & Liabilities of 3rd Quarter Accounts of 3rd Quarter	46(2) & 51(2)	Insurance Ordinance, 2000	-	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
		245	Companies Ordinance, 1984	-	-	Not filed	Not filed	Not filed	Not filed	Not filed
6	Statement of Assets & Liabilities of 4th Quarter	46(2) & 51(2)	Insurance Ordinance, 2000	-	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
7	Notice of AGM & Newscutting thereof	158	Companies Ordinance, 1984	-	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
8	Minutes of AGM	54	Insurance Ordinance, 2000	-	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed

* The Company has been delisted from the Karachi Stock Exchange on August 1, 2012, hence, S245 of CO1984 may not be applicable on the due date.

6. Therefore, keeping in view the above, Show Cause Notices dated December 24, 2012 and June 19, 2014 were issued to the Company under Section 309(b) read with Section 305 of the Ordinance of 1984 at its address i.e. 5 - Lal Mohammad Chaudhary Road, K.M.C.H.S, Shahrah-e-Faisal, Karachi - Pakistan, and 251-B,

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P.E.C.H.S Block 6, Shahra-e-Faisal, Karachi – Pakistan, respectively. These Show Cause Notices were received back undelivered.

7. The Commission issued another Show Cause Notice under Section 309(b) read with Section 305 of the Ordinance of 1984, and Section 143 of the Ordinance of 2000 on March 24, 2015, which was served at the known personal address of the Respondents i.e. 35 – Khayaban-e-Janbaz, Phase V, D.H.A., Karachi and also on the registered address of the Company i.e. 251-B, P.E.C.H.S Block 6, Shahra-e-Faisal, Karachi – Pakistan. The said Show Cause Notice was received at the abovementioned personal address of the Respondents. As per the online TCS tracking system, the said consignment was received by Mr. M. Saleem under tracking no. 23015480588 on March 27, 2015 at the abovementioned personal address of the Respondents.

8. The contents of the Show Cause Notice of March 24, 2015 are reproduced below:

SUBJECT: Show Cause Notice under Section 309(b) Read With Section 305 of the Companies Ordinance, 1984 and Section 143 of the Insurance Ordinance, 2000.

WHEREAS, M/s Dadabhoy Insurance Company Limited (the "Company") was incorporated as a public insurance company (non-life) in the city of Karachi on November 16, 1982. The Company was listed on Karachi Stock Exchange.

2. AND WHEREAS, effective July 10, 2008, the Company was disallowed to enter into new contracts of insurance vide the Commission's Direction under Section 63(1) of the Insurance Ordinance, 2000 (the "Ordinance of 2000") dated June 10, 2008, based on the various non-compliances of the Ordinance of 2000, which amongst others were:

- a. that the Company's paid up share capital was not in line with the requirements of Section 11(1)(a) read with Section 28 of the Ordinance of 2000, which was required to be Rs.120 million as on December 31, 2007;
- b. that the Company had failed to meet the requirements of Section 11(1)(b) read with Section 29 of the Ordinance of 2000 relating to the minimum statutory deposit to be kept with the State Bank of Pakistan, which was Rs.5 million at that time;
- c. that the Company had failed to submit the reinsurance treaty arrangements for the years 2006, 2007 and 2008, thereby violating the provisions of Section 11(1)(d) read with Section 41(1) of the Ordinance of 2000; and
- d. that the Company had failed to pay to the Commission, on or before 15th day of January in each calendar year, an amount of Rs.298,862/- as applicable annual supervision fee for the years 2001, 2003 and 2004 thereby violating the provisions of Section 11(3) of the Ordinance of 2000.

3. AND WHEREAS, the Company has not taken steps to comply with the mandatory requirements of the Ordinance of 2000 so that the direction under Section 63(1) of the



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Insurance Ordinance, 2000 might have been revoked, thus, the Company has suspended its business since more than a year's time.

4. AND WHEREAS, on July 24, 2008, M/s Adam Law Associates, on behalf of the Company, filed the Company's accounts for the years 2000 to 2006. Thereafter, no accounts were submitted by the Company.

5. AND WHEREAS, last Annual General Meeting was held on April 10, 2007, as reflected in the annual accounts for the year 2006. However, the minutes of the said Annual General Meeting were not filed, which are required under Section 54 of the Ordinance of 2000.

6. AND WHEREAS, the Company has been violating various filing requirements of the Ordinance of 2000 and the Companies Ordinance, 1984 (the "Ordinance of 1984"). Following is the summary of filing / non-filing of the requisite documents along with relevant sections of the Ordinance of 2000 and the Ordinance of 1984:

S No.	Description	Section	Ordinance	FY2013	FY2012	FY2011	FY2010	FY2009	FY2008	FY2007
1	Annual Accounts	46(1) & 51(1)	Insurance Ordinance, 2000	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
		233(5)	Companies Ordinance, 1984	-	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
2	Regulatory Returns	46(1) & 51(1)	Insurance Ordinance, 2000	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
3	Statement of Assets & Liabilities of 1st Quarter Accounts of 1st Quarter	46(2) & 51(2)	Insurance Ordinance, 2000	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
		245	Companies Ordinance, 1984	-	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
4	Statement of Assets & Liabilities of 2nd Quarter Accounts of 2nd Quarter	46(2) & 51(2)	Insurance Ordinance, 2000	-	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
		245	Companies Ordinance, 1984	-	-	Not filed	Not filed	Not filed	Not filed	Not filed
5	Statement of Assets & Liabilities of 3rd Quarter Accounts of 3rd Quarter	46(2) & 51(2)	Insurance Ordinance, 2000	-	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
		245	Companies Ordinance, 1984	-	-	Not filed	Not filed	Not filed	Not filed	Not filed
6	Statement of Assets & Liabilities of 4th Quarter	46(2) & 51(2)	Insurance Ordinance, 2000	-	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
7	Notice of AGM & Newsclipping thereof	158	Companies Ordinance, 1984	-	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed
8	Minutes of AGM	54	Insurance Ordinance, 2000	-	Not filed	Not filed	Not filed	Not filed	Not filed	Not filed

* The Company has been delisted from the Karachi Stock Exchange on August 1, 2012, hence, S245 of CO1984 may not be applicable on the due date.

7. AND WHEREAS, as per the website of Karachi Stock Exchange, the Company was delisted on August 1, 2012.

8. AND WHEREAS, Section 143 of the Ordinance of 2000 states that:

"Winding up by the Court.- (1) The Court may order the winding up in accordance with the Companies Ordinance, 1984 (XLVII of 1984), of any insurance company and the provisions of that Ordinance shall, subject to the provisions of this Ordinance, apply accordingly.

(2) The Court may, provided that it is satisfied that such order is in the interests of the policy holders of the company, order the winding up of an insurance company:

(a) on the grounds set out in section 305 of the Companies Ordinance 1984 (XLVII of 1984), but subject always to the provisions of this Ordinance;

(b) ...

(c) if the Commission, who is hereby authorised to do so, applies in this behalf to the Court on any of the following grounds, namely:-

(i) that the company having failed to comply with any requirement of this Ordinance has continued such failure or having contravened any provision of this Ordinance has continued such contravention for a



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- period of three months after notice of such failure or contravention has been conveyed to the company by the Commission;
- (ii) that it appears from the returns furnished under the provisions of this Ordinance, or from the results of any investigation made thereunder, or from a report made by any Administrator appointed thereunder that the company is insolvent; or
 - (iii) that the continuance of the company is prejudicial to the interests of the policy holders.

(3) An insurance company in respect of which a winding up order is made shall immediately cease to enter into new contracts of insurance, whether in life or non-life insurance.

(4) All contracts of non-life insurance issued by an insurer which are in force at the date of an order for the winding up of the insurer, shall stand cancelled as at the date of the order or at such later date as may be specified in the order."

9. AND WHEREAS, in addition to the grounds as stated above, the Company appears to have violated various provisions of the Ordinance of 1984 and the Ordinance of 2000, which lay sufficient grounds to initiate winding up of the Company, as envisaged under Section 305 of the Ordinance of 1984, which provides that:

"A company may be wound up by the Court-

- ...
- (b) if default is made in delivering the statutory report to the registrar or in holding the statutory meeting or any two consecutive annual general meetings;
- (c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- ...
- (f) if the company is-
 - ...
 - (iii) conducting its business in a manner oppressive to any of its members or persons concerned with the formation or promotion of the company or the minority shareholders;
 - ...
 - (v) managed by persons who refuse to act according to the requirements of the memorandum or articles or the provisions of this Ordinance or fail to carry out the directions or decisions of the Court or the registrar or the Commission given in the exercise of powers under this Ordinance;
- (g) if, being a listed company, it ceases to be such company;"

10. AND WHEREAS, Section 309 (b) of the Ordinance provides that the Registrar shall not be entitled to present a petition for the winding up of a company unless the previous sanction of the Commission has been obtained to the presentation of the petition.

11. AND WHEREAS, Section 309(b) of the Ordinance of 1984 states that:



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"Provisions as to applications for winding up.- An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), or by any contributory or contributories, or by all or any of the aforesaid parties, together or separately, or by the registrar, or by the Commission or by a person authorised by the Commission in that behalf:

...
(b) *the registrar shall not be entitled to present a petition for the winding up of a company unless the previous sanction of the Commission has been obtained to the presentation of the petition:*

Provided that no such sanction shall be given unless the company has first been afforded an opportunity of making representation and of being heard;..."

12. AND WHEREAS, in view of the foregoing paras hereof, the Joint Registrar of Companies of the Companies Registration Office at Karachi has approached the Commission for grant of sanction in terms of Clause (b) of Section 309 of the Ordinance of 1984 for presenting petition in the Honorable High Court of Sindh for winding up of the Company due to the following defaults:

- a. The Company has failed to hold two consecutive Annual General Meetings i.e. last Annual General Meeting was held on April 10, 2007, as per the Annual Accounts for the year 2006;
- b. The Company has suspended its business for more than one year, as it has not taken measures to comply with the mandatory requirements of the Ordinance of 2000 so that the Direction under Section 63(1) of the Ordinance of 2000 could have been revoked;
- c. The Company is conducting its business in a manner oppressive to its members; and
- d. The Company has been delisted from the Karachi Stock Exchange with effect from August 1, 2012.

13. AND WHEREAS, it prima facie appears to the Commission that the Company has failed to hold two consecutive Annual General Meetings, the Company has suspended its business for the last many years, the Company is conducting its business in a manner oppressive to its members, the Company has failed / refused to act in accordance with the Ordinance of 1984 & the Ordinance of 2000, and that the Company has been delisted from the Karachi Stock Exchange with effect from August 1, 2012. Moreover, the existence of the Company is or may be prejudicial to the interests of the policyholders / potential policyholders and / or its members.

14. AND WHEREAS, in view of the above, it appears that winding up of the Company may be sanctioned in terms of Section 309(b) of the Ordinance of 1984 on the basis of the grounds as stated hereinabove, which correspond to the triggers, as given under Section 305 of the Ordinance of 1984.



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15. AND WHEREAS, it would be pertinent to state that the Commission had issued similar Show Cause Notices, i.e. Show Cause Notice under Section 309(b) read with Section 305 of the Ordinance of 1984 on December 24, 2012, and Show Cause Notice under Section 309(b) Read With Section 305 of the Ordinance of 1984 and Section 143 of the Ordinance of 2000 on June 19, 2014, which were returned undelivered from the address i.e. 5 - Lal Mohammad Chaudhary Road, K.M.C.H.S, Shahr-e-Faisal, Karachi - Pakistan, and 251-B, P.E.C.H.S Block 6, Shahr-e-Faisal, Karachi - Pakistan, respectively.

NOW THEREFORE, you are hereby called upon to show cause in writing within fourteen (14) days of the date of this notice as to why appropriate action may not be taken against you under the law for the aforesaid contravention. If you intend to appear in person or through your counsel to clarify the queries raised herein, you may inform the undersigned in writing within a week of the date of this notice. In case, however, you don't wish to be heard in person or through your counsel and instead want the case to be decided on the basis of your written representation, you may indicate the same in your written reply.

Please acknowledge receipt of this show-cause notice through return fax.

Sd/-

Fida Hussain Samoo
Commissioner - Insurance

9. The Respondents did not make any written submission in response to the above quoted Show Cause Notice of March 24, 2015.

B. Opportunities of Hearing Provided

10. Thereafter, the Commission vide letter no. ID/Enf/Dadabhoy/2015/1118 dated May 12, 2015, scheduled a hearing for May 22, 2015 at 11:00 a.m. at the Head Office of the Commission in Islamabad to provide an opportunity of being heard to the Respondents. However, on the given date and time, no one appeared for the hearing.

11. Subsequently, the Commission vide letter no. ID/Enf/Dadabhoy/2015/1361 dated June 24, 2015, scheduled another hearing for July 6, 2015 at 02:30 p.m. at the Head Office of the Commission in Islamabad to provide an opportunity of being heard to the Respondents. In both the hearing notices, it was also clearly stated that in case of failure to attend the scheduled hearing, the Commission shall proceed to pass an *ex parte* order on the basis of the material available on record. However, on the given date and time, no one appeared for the hearing.

12. It would, however, be pertinent to state that both the abovementioned hearing notices were issued to the Respondents on their aforementioned known



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personal address i.e. 35 - Khayaban-e-Janbaz, Phase V, D.H.A., Karachi and also on the registered address of the Company i.e. 251-B, P.E.C.H.S Block 6, Shakra-e-Faisal, Karachi - Pakistan. The said hearing notices received at the abovementioned personal address of the Respondents, as evident from the TCS tracking facility available online at the TCS's website.

C. Issues

13. The Company was required to convene its Annual General Meetings, regularly. Moreover, the Company should have taken immediate remedial steps to ensure compliance with the provisions of the law on the basis of which the Company was directed to cease entering into new contracts of insurance, as mentioned earlier. The Company should also have taken all necessary measures to ensure compliance with the provisions of the Ordinance of 1984 as well as the Ordinance of 2000, in general, including the filing requirements. Also, the Company should have taken necessary steps to sustain its listing on which it was listed i.e. the Karachi Stock Exchange.

14. The Joint Registrar of Companies of the Companies Registration Office at Karachi has approached the Commission for grant of sanction in terms of Clause (b) of Section 309 of the Ordinance of 1984 for presenting petition in the Honorable High Court of Sindh for winding up of the Company due to the following defaults:

- a. The Company has failed to hold two consecutive Annual General Meetings i.e. last Annual General Meeting was held on April 10, 2007, as per the Annual Accounts for the year 2006;
- b. The Company has suspended its business for more than one year, as it has not taken measures to comply with the mandatory requirements of the Ordinance of 2000 so that the Direction under Section 63(1) of the Ordinance of 2000 could have been revoked;
- c. The Company is conducting its business in a manner oppressive to its members; and
- d. The Company has been delisted from the Karachi Stock Exchange with effect from August 1, 2012.

15. In addition to the above, the existence of the Company is or may be prejudicial to the interests of the policyholders / potential policyholders and / or its members.

16. The Respondents were afforded ample opportunity of being heard in the instant matter, however, no response ever, both in the written form or in the form of the verbal arguments during the course of hearings scheduled by the Commission was received and recorded.



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17. Thus, in view of the above, winding up of the Company may be sanctioned in terms of Section 309(b) of the Ordinance of 1984 on the basis of the grounds as stated hereinabove, which correspond to the triggers, as given under Section 305 of the Ordinance of 1984.

D. Conclusions in respect of each issue

18. As mentioned earlier, no written as well as verbal response of the Respondents in the instant matter was ever received and recorded, hence, it may be inferred that the allegations and contentions stipulated in the aforesaid Show Cause Notices were correct due to which the Commission may proceed to grant sanction for winding up of the Company.

E. Overall Order

19. I have carefully examined the ground facts of the case, and have also referred to the provisions of the Ordinance, the Rules made thereunder and/or other legal references; I am of the view that the Commission may proceed to grant sanction for winding up of the Company.

20. However, before proceeding further, I find it relevant to discuss the duties of the directors who are, 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 by proactively acting towards the solvency requirements i.e. by taking appropriate measures (including injection of additional capital) to meet the minimum solvency requirements as laid down under the Ordinance and Rules made thereunder. As the directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirements.

F. Penalties and Directions

21. In exercise of the power conferred on me under Section 309(b) of the Ordinance, I hereby grant sanction to the Joint Registrar of Companies of the Company Registration Office at Karachi in terms of Clause (b) of Section 309 of the Ordinance of 1984 for presenting petition in the Honorable High Court of Sindh for winding up of the Company.

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22. This Order is issued without prejudice to any other action that the Commission may initiate in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Fida Hussain Samoo
Commissioner (Insurance)

