



SECP  
INSURANCE DIVISION  
Islamabad

Before Hasnat Ahmad, Director (Enforcement)

In the matter of

National Insurance Company Limited

Show Cause Notice No. and Issue Date: ID/Enf/NICL/2019/453  
Date April 11, 2019

Date of Hearing: May 28, 2019

Attended By: Mr. Farrukh Majeed Qureshi  
Company Secretary  
M/s. National Insurance Company  
Limited

Ms. Nazia Hanjrah Advocate  
Authorized Representative

Date of Order: July 30, 2019

**ORDER**

**Under Section 45 read with Section 156 of the Insurance Ordinance, 2000 and  
Section 248 read with Section 252 of the Companies Act, 2017**

.....

This Order shall dispose of the proceedings initiated against M/s. National Insurance Company Limited (the "Company") and its Board of Directors for alleged contravention of Section 45 of the Insurance Ordinance, 2000 (the "Ordinance") and Section 248 of the Companies Act, 2017 (the "Act"). The Company and its Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Ordinance to carry on non-life insurance business in Pakistan.

3. The Statutory Auditors of the Company, M/s. Grant Thornton Anjum Rahman (the "Auditor") in the Audit Reports on the Regulatory Returns for the years ended December 31, 2010, 2011, 2012, 2013 and 2014 highlighted the following observations:

i. *We were unable to obtain sufficient appropriate audit evidence about the numbers and facts as appearing in the statements of claim analysis as at and for the year ended December 31, 2010, 2011, 2012, 2013 and 2014 because the management had not prepared related workings/schedules. Consequently, we are unable to form an opinion on the numbers and facts appearing in that statement.*



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ii. The Company has claimed amounts of Rs. 687 million (2014), Rs.491 million (2013), Rs. 566 million (2012), Rs.1.032 billion (2011) and Rs. 2.094 (2010) as admissible amounts of 'premium due but unpaid' in the computation of assets for solvency purposes. The management has asserted that the amounts have not been due for a period of more than three months. However, we have not been provided with relevant details to substantiate this assertion. Consequently, we are unable to assess the impact of management's assertion on these regulatory returns.

iii. We are unable to confirm whether the Company remained compliant at all times during the year ended December 31, 2010, 2011, 2012, 2013 and 2014 with requirements of section 36 of the Ordinance and Rule 10 of the Securities and Exchange Commission (Insurance) Rules, 2002 in respect of the provision of minimum solvency requirements, since related workings for the quarter have not been shared with us.

4. An explanation was sought from the Company vide letter dated February 14, 2019 to which the Company replied vide letter dated February 20, 2019 and stated that:-

*"The NICL extended full cooperation to the external auditors with respect to provision of all available records and provided them with unrestricted access to information to evaluate the post-balance sheet date events. One such instance (i.e. Letter No. ('NICL-SZ)-05/2017 dated May 29,2017) along with receiving of the same by the representative of the external auditor has been attached.*

*The Company remained solvent at all times during the years from December 31, 2009 to 2014. The statistical working of the same has been enclosed herewith."*

5. The Auditor did not consider the explanation/information provided by the Company as adequate, which was communicated by the Auditor to the Board of Company vide Board Letters for the years ended December 31, 2011,2012,2013 and 2014 dated December 21,2017 .

6. In view of the above, it appeared that the Company did not comply with the mandatory provisions of Section 45 of the Ordinance and Section 248 of the Act, by not providing the requisite information to the Auditor and not maintaining proper books of accounts.

7. Section 45 of the Ordinance requires 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:***

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(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 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."

8. Section 248 of the Act provide that:

"248. Auditors' right to information. - (1) An auditor of a company has a right -

(a) of access at all times to the company's books, accounts and vouchers (in whatever form they are held); and

(b) of access to such copies of, an extracts from, the books and accounts of the branch as have been transmitted to the principal office of the company;

(c) to require any of the following persons to provide him with such information or explanations as he thinks necessary for the performance of his duties as auditor -

(i) any director, officer or employee of the company;

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- (ii) any person holding or accountable for any of the company's books, accounts or vouchers;
- (iii) any subsidiary undertaking of the company; and
- (iv) any officer, employee or auditor of any such subsidiary undertaking of the company or any person holding or accountable for any books, accounts or vouchers of any such subsidiary undertaking of the company.

9. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/NICL/2019/453 dated April 11, 2019 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Section 156 of the Ordinance and Section 252 of the Act, should not be imposed on them for the aforementioned alleged contraventions of the law.

10. Thereafter, the Respondents submitted the reply vide letter dated April 29, 2019 on behalf of the Respondents, which is reproduced hereunder:

" .....

*In this regard, the contents of our previous letters dated 20.02.2019 are reiterated herewith including the fact that National Insurance Company Limited ("NICL") has at all times provided its auditors with unrestricted access to any and every information that was required by them for the purposes of their workings and opinion.*

*Additionally, it is submitted that NICL's Board and Management have always acted in good faith with regard to statutory requirements and other ancillary rules and directions of the SECP; however, due to practical difficulties faced by NICL during the past, certain factors have been beyond the control of the Board and Management of NICL.*

*As your office would appreciate that due to the chequered history of the Company, during the period of 2010 to 2015 it largely functioned without a Board of Directors. Consequently, the audits of the Company could not be carried out and the same greatly interfered with its smooth functioning as it created a backlog of numerous issues including the instant one as the process of auditing is a sequential one. Regardless, the Management of NICL did all it could in its capacity, to provide the auditors with all the necessary information that was required by them and the same is illustrative of its good faith.*

*Furthermore, it is submitted that during the period covered under the Show Cause notice the current Board of Directors were not in charge of the management of NICL and that the onus of any business and decisions undertaken during the covered period does not fall upon them as they were neither knowingly or wilfully a part of the management of NICL during that point in time. Hence, the necessary component of mens rea for the imposition of any penalty whatsoever on the current Board of Directors of the Company stands unfulfilled.*

*In fact, the current Board of Directors who convened their first meeting subsequent to its constitution, and 44<sup>th</sup> Meeting of the Audit Committee on 23.04.2019, expressed their concern with the past functioning of the Company and have firmly resolved to conclude the backlog of all the issues that emanate from its history. In this regard, they also made*

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*a number of important decisions including the appointment of M/s. Grant Thornton Anjum Rehman, Chartered Accountants (GTAR) for the development of a comprehensive Internal Audit Manual and Internal Audit Charter.*

*In view of the foregoing, your office is requested that all these extenuating circumstances may be accounted for as the same were beyond the control of the current Board of Directors as well as the Management of NICL. Consequently, any strict application of the law would be inequitable and would further create hindrances in the conclusion of the pending backlog of issues. Hence, the above referred show cause notice and/or any imposition of a penalty thereunder may be deemed to be unjustified and the said show cause notice may kindly be withdrawn.*

*We hope the above meets your requirements and trust that the information provided will bring the matter at hand to a conclusion."*

11. The Commission, vide its notice No. ID/Enf/NICL/2019/712 dated May 16, 2019, scheduled the hearing for May 28, 2019 at the Head Office of the Commission in Islamabad. The Respondents opted to appear for the hearing via video link from the Commission's Company Registration Office (CRO) at Karachi.

12. The hearing of May 28, 2019 was attended by the Authorized Representatives of the Respondents namely Mr. Farrukh Majeed Qureshi, Ms. Nazia Hanjrah, Mr. Hasan Ali Aamir and Mr. Zulfiqar Ali representing the Respondents in the instant matter.

13. During the hearing, the Authorized Representatives reiterated that all the required information was provided to the Auditor. They maintained that the Auditor had access to all the accounts and records of the Company. The Authorized Representatives were of the view that the Auditor issued a qualified report due to cautious approach. They further claimed that the materiality of the observation highlighted by the Auditor is less than 1%.

14. The Auditor was not provided workings/schedules of the statements of claim analysis. Hence, the Auditor could not ascertain the figures stated in the statements of claim. Regarding admissible amounts of 'premium due but unpaid' in the computation of assets for solvency purposes, the Company did not substantiate its assertion to the Auditor that the amounts had not been due for a period of more than three months.

15. Similarly, the Auditor was not provided working related to minimum solvency requirements that could confirm whether the Company remained compliant at all times during the years ended December 31, 2010, 2011, 2012, 2013 and 2014 with requirements of Section 36 of the Ordinance and Rule 10 of the Securities and Exchange Commission (Insurance) Rules, 2002.

16. The Respondents have argued that the Company at all times provided its Auditor with unrestricted access to any and every information that was required by them for the purposes of their workings and opinion. However, the Auditor was not satisfied with the explanation/information provided by the Company which was communicated by the Auditor to the Board of Directors vide Board Letters for the years

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ended December 31, 2011, 2012, 2013 and 2014 dated December 21, 2017. Had the assertions of the Respondents were substantiated with evidence, the Auditor would not have included the same observations in its final reports.

17. In the absence of the record that was required by the Auditor, it can be inferred that the Company did not maintain proper books and records. Therefore, it can be concluded that proper books and record were not maintained in terms of Section 45 of the Ordinance. Moreover, in terms of Section 248 of the Act, an auditor of a company has a right of access at all times to the company's books, accounts and vouchers. They have a right to access such copies of, an extract from, the books and accounts of the branch as have been transmitted to the principal office of the company. They are required to be provided with such information or explanations as the auditor thinks necessary for the performance of his duties as Auditor. In the instant case, the Auditor has explicitly stated that required information was not provided in the issues highlighted above. Thus, the Respondents have also contravened Section 248 of the Act.

18. The Respondents have argued that the current Board of Directors is not responsible for the regulatory non-compliances mentioned in the Show Cause Notice as they did not participate in the functioning of the Company during the period specified in the said Show Cause Notice. Therefore, the current Board of Directors and the management can be exonerated from direct responsibility of the regulatory non-compliances mentioned in the Show Cause Notice. The Company however, being a separate legal entity, may be penalized for the regulatory non-compliances under the provisions of the Ordinance.

19. The Respondents have also apprised this Office that in order to strengthen/improve the internal controls, they have appointed M/s. Grant Thornton Anjum Rehman, Chartered Accountants and in this regard, work has been initiated with the approval of the Board.

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, the Rules made thereunder and/or other legal references, I am of the view that the defaults of Section 45 of the Ordinance and Section 248 of the Act are established. Therefore, the fine as provided under Section 156 of the Ordinance and/or Section 252 of the Act can be imposed onto the Respondents i.e. the Company and its Board of Directors.

21. Section 156 of the Ordinance provides 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*

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additional fine which may extend to ten thousand rupees for every day during which the default continues."

22. Section 252 of the Act states that:

**252. Penalty for non-compliance with provisions by companies.**— Any contravention or default in complying with requirements of sections 246, 247, 248 and 250 shall be an offence liable to a penalty of level 3 on the standard scale.

23. Penalty of level 3 is provided under Section 479 of the Act which states that:

**"479. Adjudication of offences and standard scale of penalty.** – (1) There shall be a standard scale of penalty for offences under this Act, which shall be known as —the standard scale\.

(2) The standard scale consists of – Level	Limit of penalty	Per day penalty during which the default continues
1	Upto Rs.25,000	Upto Rs.500
2	Upto Rs.500,000	Upto Rs.1,000
3	Upto Rs.100 million	Upto Rs.500,000

....."

24. In exercise of the power conferred on me under Section 156 of the Ordinance and Section 252 of the Act, I, instead of imposing the maximum fine as provided under the said provisions, impose a fine of Rs. 100,000/- (One hundred thousand Only) on the Company due to the defaults of Section 45 of the Ordinance and Section 248 of the Act, as mentioned in the above paras hereof. However, I take a lenient view on the Management of the Company due to their willingness and commitment to ensure compliance with the requirements of the law. The Respondents are hereby warned to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

25. 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 Commission for information and record.

26. This Order is issued without prejudice to any other action that the Commission 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 Commission.

**Hasnat Ahmad**  
Director/HoD (Enforcement)

