



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/2019/451 dated
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 46(6) of the Insurance Ordinance 2000 read with Section 156 of the Insurance Ordinance, 2000

.....

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 46(6) of the Insurance Ordinance, 2000 (the "Ordinance"). 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 Company failed to submit the statement of compliance for the years ended on December 31, 2011, 2012, 2013 and 2014 as per requirement of Section 46(6) of the Ordinance. The Commission, vide letter dated May 14, 2018, advised the Company to provide reason for non-submission of the said statement. The Company, vide letter dated June 28, 2018, provided a copy of minutes of 4th emergent meeting of the Board of Directors held on November 25, 2017. Relevant paragraph of the minutes is reproduced below:-

"It was further stated that Section 227 of the Companies Act, 2017 and Section 46(6) of the Insurance Ordinance, 2000 require that the directors shall make out a Directors' Report and Statement of Compliance to be attached to the financial statements. In this

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regard, it was decided, that no Directors reports and Statements of Compliance shall be issued by the current Board on the accounts for the year ended December 31, 2012, 2013 and 2014 given that the decision taken at the tripartite meeting held on November 30, 2016 under the chairmanship of the secretary commerce wherein the officials of the Ministry of Commerce and SECP participated."

4. Minutes of the meeting held at the Ministry of Commerce on November 30, 2018 state that;

"After detailed deliberations, it was concluded by the chair that signing of the accounts was responsibility of the Board of Directors and shareholders could not assume this role. He further clarified that though BOD is empowered to sign the accounts, it could not, however be held responsible for any liability arising from any wrongdoing in the past."

5. In view of the above, it appeared that the Company did not comply with the mandatory provisions of Section 46(6) of the Ordinance.

6. Section 46(6) of the Ordinance requires that:

"(6) The statements referred to in sub-section (1) shall be signed, in the case of a company, by the chairman, if any, and two directors and the principal officer of the company, or in the case of an insurer incorporated in a jurisdiction outside Pakistan, by its principal officer in Pakistan and any two directors (or the closest comparable officer equivalent thereto) and shall be accompanied by a statement containing the names and descriptions of the persons in charge of the management of the business during the period to which such accounts and statements refer; by a report by such persons on the affairs of the business during that period; and a statement by such persons signed by the same persons who have signed the accounts that

(a) in their opinion the annual statutory accounts of the insurer set out in the forms attached to the statement have been drawn up in accordance with the Ordinance and any rules made thereunder;

(b) the insurer has at all times in the year complied with the provisions of the Ordinance and the rules made thereunder relating to paid-up capital, solvency and reinsurance arrangements; and

(c) as at the date of the statement, the insurer continues to be in compliance with the provisions of the Ordinance and the rules made thereunder relating to paid-up capital, solvency and reinsurance arrangements."

7. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/NICL/2019/451 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 should not be imposed on them for the aforementioned alleged contraventions of the law.

8. Thereafter, the Acting Chief Executive Officer, submitted the reply vide letter dated April 29, 2019 on behalf of the Respondents, which is reproduced hereunder:



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".....we write with reference to your show cause notice bearing reference no. ID/Enf/NICL/2019/451 pursuant to the above captioned provisions of law.

In this regard, we would like to draw your kind attention to the fact that a statement of compliance under Section 46(6) of the Insurance Ordinance, 2000 entails a declaration of the following:

(a) In their opinion the annual statutory accounts of the insurer set out in the forms attached to the statement have been drawn up in accordance with the Ordinance and any rules made thereunder;

(b) The insurer has at all time in the year complied with the provisions of the Ordinance and the rules made thereunder relating to paid up capital, solvency and reinsurance arrangement; and

(c) As at the date of the statement, the insurer continues to be in compliance with the provisions of the Ordinance and the rules made thereunder relating to paid up capital, solvency and reinsurance arrangements.

As your office is well aware that the Suo Moto Notice of the Supreme Court of Pakistan bearing No. 18 of 2010 necessitated an overhaul of the Company and as a consequence thereof, for a significant amount of time, specifically the period covered under the instant show cause notice i.e. years ended December 31, 2011, 2012, 2013 and 2014 the Company was by and large, functioning without a duly constituted body of the Board of Directors. Therefore, due to the climate of unpredictability and uncertainty in the functioning of the Company the requisite statement of compliance and ancillary functions could not be performed.

However, as you mention in your notice, the matter Ministry of Commerce on 30.11.2016 (not 2018 as inadvertently mentioned in the show cause notice) wherein it was stated that, " After detailed deliberations, it was concluded by the chair that signing of the accounts was responsibility of the Board of Directors and shareholders could not assume this role. He further clarified that though BOD is empowered to sign the accounts, it could not, however be held responsible for any liability whatsoever arising from any wrong doing in the past."

Be that as it may, your office would appreciate the fact that issuance of the said Statement of Compliance by the current Board of Directors would even though prima facie meet the requirement of the applicable laws. However, there is a glitch, in so far as the same would tantamount to a misstatement as the current Directors were neither present during the period to which the said accounts relate nor were the Directors aware of the compliance status of the Company during that period. Consequently, such confirmation would be in breach of the Director's fiduciary duty towards the Company and its shareholders and also violate the Public Sector (Corporate Governance) Rules, 2013.

Moreover, a professional legal advice was obtained during the year 2016 as per which, the superior courts have consistently held that in the event that the approval of the Board of Directors is required for a transaction under section 196 of the Companies Ordinance, 1984, the same must be taken prior to subject transaction. In other words, retrospective approval of the Board of Directors is unlawful. Hence, it may be inferred that the current Board of Directors were not competent to sign and issue any such

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statement of compliance for the period during which they were not on the Board of NICL. Accordingly, the Board as well as the shareholders considered it expedient to not issue any statement of compliance for the years ended 2011, 2012, 2013 and 2014 and the said decision was taken in the 4th Emergent Meeting of the Board of Directors held on 25.11.2017, the relevant extract of which is reproduced hereunder.

“RESOLVED THAT in the light of the decision taken at the tripartite meeting held on November 30,2016 under the Chairmanship of the Secretary Commerce wherein the officials of the Ministry of Commerce and SECP participated, the annual audited accounts for the years 2012,2013 and 2014 stand approved in their existing forms (i.e. together with declaration of dividends @25% (i.e.Rs.2.5 per share) for the years 2012, 2013 & 2014 and the qualifications given by the external auditors of NICL) for placement before the shareholders in the 13th Annual General Meeting to be held on Friday, December 22,2017 at 11.00. a.m. at the NICL’s Head Office, Karachi, subject to approval of SECP in terms of Section 146 of the Companies Act, 2017.”

It is, therefore, requested that the abovementioned factual position and practical as well as legal difficulties in the execution of the statement of compliance may be taken into account and a lenient view may be taken in the best interest of justice...”

9. The Commission, vide its notice No. ID/Enf/NICL/2019/713 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.

10. The hearing of May 28, 2019 was attended by the Authorized Representatives of the Respondents namely Mr. Farrukh Majeed Qureshi and Ms. Nazia Hanjrah representing the Respondents before the Commission in the instant matter.

11. During the hearing, the Authorized Representatives made the following submissions;

- i. The current Board of Directors were not competent to sign and issue any such statement of compliance for the period during which they were not on the Board of the Company.
- ii. Directors cannot confirm through declaration of statement of compliance required to be prepared under Section 46(6) of the Ordinance that whether the financial statements were in compliance with Section 11 & 12 of the Ordinance.
- iii. As per the decision taken at the tripartite meeting held on November 30, 2016 attended by the officials of the Ministry of Commerce and the Commission, the Respondents were only required to approve annual audited accounts and compliance statement cannot be termed as account.

12. The hearing of May 28, 2019 was held at the Company Registration Office of the Commission at Karachi, which was attended by the Authorized Representative of the Respondents namely Mr. Farrukh Majeed Qureshi, Company Secretary, Ms. Nazia

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Hanjrah Advocate Mr. Hasan Ali Aamir and Mr. Zulfiqar Ali representing the Respondents in the instant matter.

13. During the hearing, the Representatives stated that the current directors were not present during the period to which the said accounts relate to and they were not aware of the compliance status of the Company at that time. He further reiterated that it would have been misstatement had the current directors submitted the statement of compliance. The Representatives were clarified that during the meeting held on November 30, 2016 at Ministry of Commerce, it was already communicated that current directors would not be held liable and therefore any such statements could have been provided with disclaimer.

14. In terms of Section 46(6) of the Ordinance, the Company was required to submit statement of compliance to the Commission, which the Company failed to submit for the years ended on December 31, 2011, 2012, 2013 and 2014.

15. The Respondents have argued that the current Board may not issue the said statement of compliance, as the Board was not aware of the status of compliance during the preceding years. Furthermore, they are of the view that any such statement of compliance would tantamount to misstatement therefore, compliance in terms of Section 46(6) of the Ordinance could not be made.

16. The Company should have complied with the requirements of Section 46(6) of the Ordinance. There is no exemption available in the Ordinance under which the Company may be allowed, not to submit the said statement of compliance. Not only the Company has contravened the provision of Section 46(6) of the Ordinance but also in essence violated the basic condition imposed on registered insurers. Section 11(h) of the Ordinance explicitly states that :

“Conditions imposed on registered insurers.-(1) An insurer registered under this Ordinance shall at all times ensure that:

(h) the insurer is, and is likely to continue to be, able to comply with such other of the provisions of this Ordinance as are applicable to it.”

17. In light of the above, the response of the Company is not tenable. It is mandatory for the Company to comply with the provisions of the Ordinance. Refusal to provide compliance certificate tantamount to the violation of Section 46(6) of the Ordinance. It would not have been difficult exercise for the Company to verify compliance and submit compliance report to the Commission accordingly. Furthermore, as per the meeting with MOC, current board would not be held liable for the action/inaction of the past directors. Excerpt from the meeting minutes of November 30, 2016 is reproduced hereunder:

“.....signing of the accounts was the responsibility of the Board of Directors and shareholders could not assume this role. He further clarified that though BOD is



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empowered to sign the accounts, it could not, however, be held responsible for any liability arising from any wrong doing in the past..."

18. 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 default of Section 46(6) of the Ordinance is established. Therefore, the fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents.

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

20. In exercise of the power conferred on me under Section 156 of the Ordinance I, instead of imposing the maximum fine as provided under the said provision, impose a fine of Rs. 100,000/- (One hundred thousand only) on the Company due to the default of Section 46(6) of the Ordinance, as mentioned in the above paras hereof. The Respondents are directed to submit Statement of Compliance for the years ended on December 31, 2011, 2012, 2013 and 2014 as per requirement of Section 46(6) of the Ordinance. Moreover, the Respondents are hereby warned to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

21. 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.

22. 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)

