



INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director (Insurance)

In the matter of

The Credit Insurance Company Limited

Show Cause Notice Issue Date: August 13, 2015

Date of Hearing: September 16, 2015
September 29, 2015

Attended By: None

Date of Order: October 8, 2015

ORDER

Under Section 46(1)(b) Read with Section 51(1) and Section 156 of
the Insurance Ordinance, 2000.

.....
This Order shall dispose of the proceedings initiated against M/s. The Credit Insurance Company Limited (the "Company"), for alleged contravention of Section 46(1)(b) and Section 51(1) of the Insurance Ordinance, 2000 (the "Ordinance").

A. Background

2. It was observed that the Company did not submit its Audited Annual Accounts and Regulatory Returns for the year ended December 31, 2014 by April 30, 2015. The Company, vide its letter dated April 9, 2015, requested for an extension in submission of the said Audited Annual Accounts and Regulatory Returns, which was acceded to and an extension of up till May 31, 2015 was granted in terms of Section 51(1) of the Ordinance.

3. It was noted that the Company did not submit its Audited Annual Accounts and Regulatory Returns for the year ended December 31, 2014 even after the extended period lapsed, as required under Section 46(1)(b) read with Section 51(1) of the Ordinance.

4. Accordingly, for the alleged violation of Section 46(1)(b) read with Section 51(1) of the Ordinance, the Commission initiated proceedings against the Company by issuance of a Show Cause Notice bearing number

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ID/Enf/Credit/2015/1895 on August 13, 2015, thereby calling upon to show cause as to why the fine, as provided under Section 156 of the Ordinance should not be imposed for non-compliance with Section 46(1)(b) and Section 51(1) of the Ordinance. The contents of the Show Cause Notice have been reproduced below:

SUBJECT: SHOW CAUSE NOTICE UNDER SECTION 46(1)(b) READ WITH SECTION 51(1) AND SECTION 156 OF THE INSURANCE ORDINANCE, 2000

1. WHEREAS, the provisions of Section 46(1)(b) of the Insurance Ordinance, 2000 (the "Ordinance") require every insurer to prepare and deliver to the Commission the annual statutory accounts and regulatory returns duly audited by an approved auditor. The relevant provisions of Section 46(1)(b) are reproduced as under:-

"Accounting and reporting.- (1) Every insurer shall at the expiration of each year prepare and deliver to the Commission with reference to that year annual statutory accounts comprising the following statements duly audited by an approved auditor:

(b) in the case of a non-life insurer,

- (i) a statement of assets and liabilities;*
- (ii) a statement of profits and losses;*
- (iii) a statement of cash flows;*
- (iv) a statement of premiums;*
- (v) a statement of claims;*
- (vi) a statement of expenses;*
- (vii) a statement of investment income;*
- (viii) a statement of claims analysis;*
- (ix) a statement of exposures; and*
- (x) such other statements as may be prescribed by the Federal Government;*

each in such form as may be prescribed by the Commission and prepared in accordance with such regulations as are issued by the Commission from time to time in this behalf."

2. AND WHEREAS, Regulation No. 3(1) of Part – B of Annexure II of the Securities and Exchange Commission (Insurance) Rules, 2002 (the "Regulations") states that:

"The form of Regulatory Returns shall consist of the following which shall be submitted according to the published Forms annexed to these Regulations:

- Balance Sheet (Form GA), which shall be deemed to constitute the "Statement of Assets and Liabilities" required by S46(1)(b)(i) of the Ordinance.*
- Profit and Loss Account (Form GB), which shall be deemed to constitute the "statement of profits and losses" required by S46(1)(b)(ii) of the Ordinance.*



- Statement of Cash Flows (Form GC) required under S46(1)(b)(iii) of the Ordinance.
- Statement of Premiums (Form GD) required under S46(1)(b)(iv) of the Ordinance.
- Statement of Claims (Form GE) required under S46(1)(b)(v) of the Ordinance.
- Statement of Expenses (Form GF) required under S46(1)(b)(vi) of the Ordinance.
- Statement of Investment Income (Form GG) required under S46(1)(b)(vii) of the Ordinance.
- Statement of Claims Analysis (Form GH) required under S46(1)(b)(viii) of the Ordinance.
- Statement of Exposures (Form GI) required under S46(1)(b)(ix) of the Ordinance.
- Statement of Assets for Solvency Purposes (Form GJ) which is hereby prescribed under S46(1)(b)(x) of the Ordinance.
- Classified Summary of Assets in Pakistan (Form GK) which is hereby prescribed under S46(1)(b)(x) of the Ordinance."

3. AND WHEREAS, Section 51 (1) of the Ordinance states that:

"Submission of returns.- (1) The audited statements and report referred to in sub-sections (1) and (5) of section 46 and the report and statement referred to in section 50, including any report referred to in sub-section (7) of section 50, shall be furnished as returns to the Commission in such manner as may be prescribed by the Commission, but in any case including at least one printed copy, within four months from the end of the period to which they refer:

Provided that the Commission may on application by an insurer extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding one month."

4. AND WHEREAS, M/s. The Credit Insurance Company Limited (the "Company") was required to submit its Audited Annual Accounts and Regulatory Returns for the year ended December 31, 2014 by April 30, 2015 as required under Section 46(1)(b) read with Section 51(1) of the Insurance Ordinance, 2000.

5. AND WHEREAS, the Company vide its letter dated April 9, 2015, requested to extend the period for submission of the Annual Accounts and Regulatory Returns by one month, which was acceded to and an extension of up till May 31, 2015 was granted in terms of Section 51(1) of the Insurance Ordinance, 2000.

6. AND WHEREAS, it was also noted that the Company did not submit the Audited Annual Accounts and Regulatory Returns for the year ended December 31, 2014, despite lapse of the extended period.



7. AND WHEREAS, subsequently, a reminder letter dated June 2, 2015 was issued to the Company, whereby the Company was advised to submit the aforesaid Annual Audited Accounts and Regulatory Returns within a period of three days, failing which an appropriate action would be initiated against the Company. However, the Company failed to submit the returns.

8. AND WHEREAS, in the light of foregoing paras hereof, it appears that the Company has failed to file its Annual Audited Accounts and Regulatory Returns within the allowed timeframe, thereby violating the provisions of Section 46(1)(b) read with Section 51(1) of the Ordinance, for which the above-named Respondents are liable to be penalized under Section 156 of the Ordinance, which 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, 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.”

9. NOW, THEREFORE, you are hereby called upon to show cause in writing within ten (10) days from the date of receipt of this notice as to why penalty may not be imposed upon you for contravening the provisions of Section 46(1)(b) and Section 51(1) of the Ordinance, as aforesaid. In the event that you wish to be represented by a Representative, please ensure that the authorizing instrument (a board resolution or a power of attorney as may be appropriate) is submitted to this office along with your reply to this notice. In case you decide to opt for a hearing, you may appear in person or through a Representative. Please note that any reply submitted by a Representative without an appropriate authorizing instrument may not be taken into consideration for the purposes of the proceedings. All documents submitted by you in support of the reply must be duly authenticated. Please note that you will be liable under law for any concealment of any evidence or misstatement made in response of this show cause notice. We have video link facility available in the city in which you reside. In case you wish to avail this option please inform the undersigned in writing so that appropriate arrangements may be made in this regard.

Please acknowledge the receipt of this notice through return fax at the number provided in the letterhead.

-Sd/-
Hasnat Ahmad
Director (Insurance)

5. In response to the said Show Cause Notice, the Company, vide its letter no. ACCTS/130/15 dated September 2, 2015 stated that:



"...Management of the company changed as on 08th Day of December 2014 and new management found too many discrepancies while complying with legal formalities therefore new management resolve all issues but it requires time therefore new management decided to extend the date of AGM so that all issues should be resolved before AGM but With the grace of Allah, who enabled us to hold the meeting on exact date that was April 30, 2015.

It is further explained that new management completed audit of the Company before 2nd April 2015 and obtained audit report, Cover Letter and Draft Accounts as on April 07 2015, but due to difference of opinion between us and auditor regarding signatures on Accounts took time and it enabled us to submit accounts as on 07-07-2015 vide TCS No. 46726356 (copies) attached.

In our opinion we took management of the company 29 days before the close of financial year therefore accounts should be signed off by previous management whereas auditor was insisted that we should sign the financial statements in this regard we arranged many meetings with old management and auditor which resulted to submit accounts on 07-07-2015 with our signatures.

You are therefore requested to ignore this delay and being the new management of the Company, we ensure you that in future we shall comply all legal formalities in time."

B. Hearings

6. The Commission, vide its notice no. ID/Enf/Credit/2015/2188 dated September 4, 2015, scheduled the hearing for September 16, 2015 at 10:00 a.m. in which no one appeared to represent the Company.

7. Hence, in order to provide another opportunity of hearing to the Company, the Commission, vide its notice no. ID/Enf/Credit/2015/2325 dated September 17, 2015, rescheduled the hearing for September 29, 2015 at 11:00 a.m., It was also stated in the said hearing notice that an *ex parte* order shall be passed in case of failure to attend the hearing either in person or through their representative. Again, no one appeared to attend the hearing.

C. Issues

8. It would be pertinent to state that the provisions of Section 46(1)(b) of the Ordinance require every insurer to prepare and deliver to the Commission, the annual statutory accounts / regulatory returns duly audited by an approved auditor. And, as per Section 51 (1) of the Ordinance, such returns shall be furnished to the Commission within four months, and even after the expiry of the extended period, from the end of the period to which they refer. However, the Company submitted the Annual Statutory Accounts and Regulatory Returns for



the year ended December 31, 2014 on July 08, 2015 without submitting the Statement of Claims Analysis (Form GH) as required under Section 46(1)(b)(vii) of Ordinance.

D. Summary of arguments and conclusions in respect of each issue

9. The Company stated in its response letter of September 2, 2015 that the management of the Company changed on December 8, 2014, and the new management noted many discrepancies while complying with legal formalities. The audit process was completed before April 2, 2015; however, the accounts could not be finalized in time due to difference of opinion between the management and the auditor regarding signatures on the accounts. Subsequently, the accounts were signed and submitted to the Commission on July 7, 2015.

10. Hence, in view of the foregoing paras hereof, it can be inferred that the Company has failed to comply with the requirements of Section 46(1)(b) and Section 51 of the Ordinance, by not filing the Audited Annual Accounts and Regulatory Returns for the year ended December 31, 2014 within the timeframe as stipulated under Section 51(1) of the Ordinance. The Company also failed to submit the Statement of Claims Analysis (Form GH). Therefore, in view the aforesaid violations, the Company is liable to be penalized under Section 156 of the Ordinance.

E. Overall conclusion

11. I have carefully examined and given due consideration to the written submissions of the Respondents, and have also referred to the provisions of the Regulation, the Ordinance and other legal references, I am of the view that the default of Section 46(1)(b) and Section 51 is established. Therefore, the fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents i.e. the Company and the so-called directors of the Company.

12. 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 so-called directors have failed to perform their duties with due care and prudence. As the persons associated with the Company as "directors" are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Section 46(1)(b) and Section 51 of the Ordinance, therefore, it could be legitimately inferred that the default was committed. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed onto the Company and the respondent directors of the Company.

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F. Penalties and directions

13. In exercise of the power conferred on me under Section 156 of the Ordinance read with S.R.O. 221(I)/2015 dated March 11, 2015, I, instead of imposing the maximum fine as provided under the said Section, impose a fine of Rs. 100,000/- (Rupees One Hundred Thousand Only) on the Company, due to the default of Section 46(1)(b) and Section 51 of the Ordinance, as mentioned hereinabove. The Company and its management is further directed to immediately file the requisite Statement of Claims Analysis (Form GH) as on December 31, 2014 along with the audit report thereon. However, in case of similar non-compliance in future, the Commission shall take stronger action against the Company and its management. Further, the Company and its management is hereby directed to observe strict compliance of the provisions of the Ordinance, Rules and Regulations in future.

14. 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.

15. 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

