



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Mr. Shahid Nasim, Executive Director (Insurance)

In the matter of

M/s EFU General Insurance Limited

Date of Show-Cause Notice: July 24, 2012
Date of Hearing: September 12, 2012
Attended by: Mr. Altaf Qamruddin Gokal
Chief Financial Officer & Company Secretary
Date of Order: September 28, 2012

ORDER

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

This Order shall dispose of the proceedings initiated against M/s EFU General Insurance Limited (hereinafter referred to as ("the Company")) for making a default in complying with the requirements of Section 45 of the Insurance Ordinance, 2000 ("the Ordinance").

Background Facts

The relevant facts for the disposal of this case are briefly stated as under:

1. 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:



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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 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."

2. An onsite inspection of the Company was conducted under the Order of the Executive Director of the Insurance Division dated July 5, 2011, in exercise of the powers conferred under Section 59A of the Ordinance.

3. During the course of the said Onsite Inspection, the inspection team was not given access to various claim files relating to motor claims, which were misplaced during the shifting of the Company's corporate branch from Business Plaza to EFU House, Karachi, as reported by the Company.

These files pertained to the claims paid to the workshops namely Saleem Autos, Mahmood Autos and Fine Autos. The amount of claims paid to these

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workshops were aggregating to more than Rs.1,869,384/- (Excluding coinsurance share). Furthermore, Survey reports of aforementioned claims were also not available on the Company's Intranet portal. It is important to mention that paid claim files were kept in logical sequence in different bunches. However, when the inspection team requested the Company to provide some of the claim files on a random sampling basis, the same were not provided although follow ups were also made by the inspection team during the period starting from October 2011 to February 2012. It was found out that 54 claim files related to Saleem Autos for the years 2009 and 2010, 26 claim files related to Fine Autos for the year 2010, and 36 claim files related to Mahmood Autos for the years 2009 and 2010 were missing from the record of the Company.

Further that the account opening records of the bank accounts of the abovementioned workshops, in which the respective claim payments were transferred, were also reviewed by the inspection team, which indicated that all these workshops were inter-related in the manner that Mr. Mahmood, the owner of Mahmood Autos is also the partner in Saleem Autos and is brother-in-law and next of kin of Mr. Muhammad Amir, who was found to be the owner of Fine Autos.

4. The misplacement of entire claim record of three particular workshops raises serious doubts on genuineness and authenticity of all these claim payments. Furthermore, missing of 116 files signals inappropriate maintenance of records by the Company.

5. In view of the above, it appeared that the Company violated the provisions of Section 45 of the Ordinance.

Show-Cause Notice

6. On July 24, 2012, a Show-Cause Notice under Section 45 read with Section 156 of the Ordinance was served to the Directors and Chief Executive of the Company, whereby the Company was asked to clarify their position as to why the penalty under Section 156 of the Ordinance may not be imposed on them for the negligence on part of the management of the Company in respect of the aforesaid contravention of Section 45 of the Ordinance.

Company's Reply

7. The Company, in response to the Show-Cause Notice vide its letter of August 6, 2012, argued as under:



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"During the inspection of our company various accounting and other records and documents were required by your inspection team at our various branches and head office which were provided. However in our corporate branch few claim files were not available as the files were lost during the shifting of branch. Other than those few files all records and documents demanded from us were timely provided to your team. However, to solve the issue of those particular misplaced files and to help the inspection team to verify the claims paid we extracted and produced related records from our computer system.

We have to inform you that complete system of maintaining records is in place and effectively working.

We deal with all the workshops where our customers wish to get their vehicles repaired. These could be cases where two or more workshops are owned by family members or their close relatives.

Regarding the effective role of internal auditor this is to state that being a very large volume of claim the internal audits are being done on the basis of selection of data. The claim cases mentioned in your report were not under the selection of our internal auditor due to its immaterial nature as compared to the amount of claim in Corporate Division.

The non availability of supporting documents of claims amounting to only Rs. 1.9 million out of the total claims paid amounting to Rs. 10,687 million during the years 2009 and 2010 should not raise doubts on the genuineness of the total claim payments." (Underlined to put emphasis)

8. The reply of the Company revealed that the internal audit function was unaware of the fact that some of the claims' files were missing from the Company's record, as these cases of missing files were not amongst the sample that the Company's internal audit function has made for the purpose of conducting internal audits.
9. The management of the Company has also admitted that these claim files were missing and they believe that the respective claims aggregate to an immaterial amount when compared to the amount of the total claims paid by the Company during the years 2009 and 2010.
10. The Company in their letter of August 6, 2012 also showed their intention to plead their case / stance in person before the Commission. Therefore, the hearing in the matter was rescheduled for September 12, 2012 at 03:00 p.m., which was communicated to the Company vide Commission's letter dated August 27, 2012.



Proceedings of the Hearing

11. At the commencement of the hearing (which was held on September 12, 2012), the Company's representatives presented a "General Power of Attorney" duly authorizing Mr. Altaf Qamruddin Gokal, the Chief Financial Officer & Company Secretary of the Company to be the true and lawful attorney of the Company in the name.

12. The Company vide their letter of September 10, 2012 authorized Mr. Altaf Qamruddin Gokal, Chief Financial Officer & Company Secretary of the Company to appear in person in the hearing in the matter before the Executive Director (Insurance).

13. Following arguments were made by the Company's representatives during the course of the hearing:

- a. The Company's representative confirmed their earlier stance that due to the shifting of the branch of EFU House, the record was lost.
- b. The Company's representative also admitted that they came to know about the missing of these claims' files during the course of inspection, when the inspection team asked for these files.
- c. Upon seeking surety from the Company's representative about the availability of all other claims' files in the Company's record, the Company's representative felt reluctant to assure that all the other claims' files were available with the Company.
- d. The Company's representative also requested the Commission to take a lenient view while keeping in view the immateriality of the missing files and the amount of claims involved.

Consideration of the Submission

14. Before proceeding further, I find it relevant to discuss the duties of the Directors. The Directors 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. 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 put in-place proper mechanism of maintenance of all books and record of the Company. Misplacement of 54 claim files relating to Saleem Autos, 26 claim files related to Fine Autos and 36 claim files pertaining to Mahmood Autos was confirmed by the Company in writing and



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was admitted by the Company's representative during the hearing. The inspection team had picked up only a random sample from all the claim cases of the Company and found that a total of 116 claim files (as detailed above) for claims of about Rs. 1.9 million related to the aforementioned three workshops were missing. The Company's representative has also felt reluctant to assure that no other claim files are missing from the Company's record.

Conclusion

15. 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 the Company has also accepted its default. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed on the Company, 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, 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

16. In exercise of the powers conferred upon the undersigned Section 156 of the Ordinance, instead of imposing the maximum penalty, I impose a fine of Rs. 500,000/- (Rupees Five Hundred Thousand Only) due to the fact that the Company had not complied with the provisions of Section 45 of the Ordinance, by not maintaining proper books and records of the Company relating to the claims.

The Company is also directed to thoroughly probe into the issue of missing files and genuineness of the claims paid, and to take immediate measures for the recovery of those missing files and any other files that may be missing from the Company's record and send us confirmation within 90 days from the date of this order that the company is fully compliant with the requirements of Section 45 of the Ordinance.

17. *M/s. EFU General Insurance Limited* are hereby directed to deposit the aforesaid fine of Rs. 500,000/- (Rupees Five Hundred Thousand Only) 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

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the receipt of this Order and furnish receipted vouchers issued in the name of Commission for information and record.

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

Shahid Nasim
Executive Director