



SECP
INSURANCE DIVISION
Islamabad

Before Fida Hussain Samoo, Commissioner (Insurance)

In the matter of

Fairwater Risk Consultants & Insurance Brokers (Private) Limited

Date of Show Cause Notice : October 31, 2016
Date of Hearing: December 19, 2016
Attended By: 1. Mr. Asghar Imam Khalid, M/s. Khalid Imam & Company, Chartered Accountants
2. Mr. Riaz Haider, M/s. Khalid Imam & Company, Chartered Accountants
Date of Order: January 2, 2017

ORDER

Under Section 109 Read with Section 102(6) of the Insurance Ordinance, 2000.
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This Order shall dispose of the proceedings initiated against M/s. Fairwater Risk Consultants & Insurance Brokers (Private) Limited (the "Company"), for alleged contravention of Section 109 of the Insurance Ordinance, 2000 (the "Ordinance") read with Rule 27 of the Securities and Exchange Commission (Insurance) Rules, 2002 (the "Rules"). The Company, its Directors (including the Chief Executive Officer) and/or their authorized representatives shall be referred to as the "Respondents" hereinafter.

A. Background

2. The Company is registered with the Securities and Exchange Commission of Pakistan (the "the Commission") under the Ordinance to carry on business of direct insurance broking in Pakistan.

3. All licensed insurance brokers are required to submit the requisite report / accounts / financial statements to the Commission within four months of the close of the financial year in terms of Section 109 of the Ordinance and Rule 27 of the Rules. In this regard, the provisions of Section 109 of the Ordinance state that:

"Insurance brokers to report annually to Commission. - A licensed insurance broker shall make an annual report to the Commission. Such report shall include



audited accounts of the insurance broking business and such other information and statements as may be prescribed, each in such format as may be prescribed."

4. The provisions of Rule 27 of the Rules state that:

"Reporting by insurance brokers. - (1) Each year an insurance broker shall be required to provide to the Commission, as at the preceding 31st December, or in respect of the year then ended -

(a) a balance sheet of the company;

(b) a profit and loss account of the company;

(c) a statement of the insurance premium written through the broker, distinguishing between premium in respect of which the broker had an agency agreement with the insurer, subdivided by classes of insurance business, and premium in respect of which the broker did not have an agency agreement with the insurer; subdivided by classes of insurance business; and

(d) a statement of the commission or brokerage, by whatever name called, receivable by the broker, subdivided by classes of insurance business, distinguishing between commission earned on premium in respect of which the broker had an agency agreement with the insurer, and commission earned on premium in respect of which the broker did not have an agency agreement with the insurer.

(2) The Commission may, on the application of a broker, approve a date other than the 31st December, for the date as at which the statements shall be required to be made up for the purposes of sub-rule (1).

(3) The statements referred to in this rule shall be provided to the Commission not later than four months after the date to which they are made up."

5. It was noted that the Company changed its financial year from 31st December to 30th June without obtaining approval of the Insurance Division of the Commission (the "Insurance Division") in terms of Rule 27(2) of the Rules. Further, Rule 27(3) requires the insurance broker to provide the financial statements to the Insurance Division within four months from the date to which they are made up i.e. up to October 30, 2015, even if the year-end was considered to be June 30, 2015. However, the Company filed the financial statements for the year ended June 30, 2015 on April 19, 2016 along with its application for renewal of license, in dire contravention of Section 109 of the Ordinance. It was also noted that the Company did not provide the Statement of Premium Written and the Statement of brokerage/commission for the year ended June 30, 2015, as required under Rule 27(1)(c) and 27(1)(d) of the Rules.

6. The Insurance Division, vide letter dated August 04, 2016 advised the Company to provide a copy of approval to change the financial year to a date other than 31st December and clarification regarding non-submission of audited



accounts, Statement of Premium Written and the Statement of brokerage/commission within four months of the year end.

7. In reply, the Company vide letter dated August 26, 2016, stated that:

"That in Compliance of Para (ii) of above referred letter, as stated in Rule 27 of the SEC Rules 2002 which requires us to file Audited Accounts within four months of the account closing date. kindly be advised that we have already submitted the audited accounts on December 27, 2015 with the SECP in terms of Section 233 & 242 of the SECP Ordinance 1984 evidence enclosed for your kind perusal."

As stated above accounts submitted with SECP on December 27, 2015 not April 2016 in terms of Section 233 and 242 of SECP Ordinance, 1984. It is clarified that SECP did not open/find the accounts attached in attachment option and issued observation letter in this regard So, we complied the said letter and re-submitted the accounts to SECP along with Directors report evidence attached comply point 2."

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"Please be advised the Brokerage earned during the year ended June 2015 mainly comprises of brokerage earned from the agency agreement, therefore no separate disclosure was considered in audited financial statements.

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Further to the Reply of Point No. 5 above, please note that all brokerage income was received during the year ended June 30, 2015 hence no amount was due to be received as at 30th June 2015. Therefore, separate disclosure of receivable of income from agency and non-agency agreement were not applicable."

8. The response of the Company to the aforesaid observations was not found to be satisfactory. Hence, a Show Cause Notice bearing number ID/Enf/Fairwater/2016/7288 dated October 31, 2016 was issued to the Company and its Board of Directors, thereby calling upon them to show cause as to why punitive action may not be taken against the Company in terms of Section 102(6) of the Ordinance for contravening the provisions of Section 109 of the Ordinance read with Rule 27 of the Rules.

9. The Company vide letter dated November 8, 2016 sought an extension till November 30, 2016 to respond to the Show Cause Notice. The Company was allowed to respond till November 25, 2016.

B. Hearings

10. Thereafter, the Insurance Division, vide hearing notice no. ID/Enf/Fairwater/2016/7676 dated November 30, 2016, scheduled hearing for December 8, 2016 at 03:00 p.m. However, on the request of the Company, the hearing was rescheduled to December 19, 2016 at 11:30 a.m.

11. The hearing was held through video link facility of the Commission connecting the Commission's Karachi Office with its Head Office in Islamabad on



the request of the Respondents. The hearing was attended by Mr. Asghar Imam Khalid and Mr. Riaz Haider of M/s. Khalid Imam & Company, Chartered Accountants for and behalf of the Respondents.

12. Submission of the Respondents both through their reply to the SCN and at the time of hearing are summarized as under:

- i. The Respondents reiterated that the financial statements for 2015 were submitted in December 2015 to Company Registration Office (CRO). The Respondents stated that their license was due for renewal in April 2016, therefore, they submitted audited financial statements of the Company along with application for renewal of license. The Respondents were clarified that Company submitted its financial statements to the Company Registration Office under the Companies Ordinance, 1984. However, no submission was made under Insurance Ordinance, 2000;
- ii. The Company submitted its Balance Sheet, Profit & Loss Account along with other financial statements before December 31, 2015. The remaining statements shall also be submitted along with the audited accounts for the year ended December 31, 2016;
- iii. All brokerage income was received during the year ended June 30, 2015 hence no amount was received as at June 30, 2015. Therefore, separate disclosure of receivable of income from agency and non-agency agreement were not applicable;
- iv. The Respondents assured to submit Company's twelve months' financial statements along with the statement of premium and commission for the year ended December 31, 2016.

13. The Respondents pleaded that it was not a serious violation therefore, license may not be revoked. The Respondents assured that all the requirements of the Insurance Ordinance, 2000 will be met.

C. Issues

14. In terms of Section 109 of the Ordinance read with Rule 27(3) of the Rules, a licensed insurance broker (like the Company), is required to submit the requisite report / accounts / financial statements to the Insurance Division within four months of the close of the financial year i.e. by April 30, 2016. The financial statements should have been submitted up to October 30, 2015, even if the year end was considered to be June 30, 2015. However, the Company filed the financial statements for the year ended June 30, 2015 on April 19, 2016 along with its application for renewal of license. Furthermore, the Company was required to obtain approval of the Insurance Division to change the financial year to a date other than 31st December in terms of Rule 27(2) of the Rules. The Company changed its financial year from 31st December to 30th June without seeking prior



approval of the Insurance Division. It was also noted that the Respondents did not provide the Statement of Premium Written and the Statement of brokerage/commission for the year ended June 30, 2015.

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

15. With regard to the merits of the Show Cause Notice, the Respondents have admitted that the Accounts were filed with the Company Registration Office and not with the Insurance Division as required under Section 109 of the Ordinance and Rule 27(1) & (3) of the Rules. It is evident from the record of the Insurance Division that the Respondents filed the financial statements for the year ended June 30, 2015 on April 19, 2016 with application for renewal of license. It has been observed that the Respondents did not seek any prior approval for changing its year-end from 31st December to 30th June. The Respondents have also failed to submit the Statement of Premium Written and the Statement of brokerage/commission.

16. In view of the above, the Respondents have contravened the provisions of Section 109 of the Ordinance read with Rules 27(1) & (3) of the Rules, on account of which the Insurance Division has the power to cancel the insurance broking license or refuse to renew the broking license under Sections 102(6) of the Ordinance.

17. Section 102 (6) of the Ordinance states that:

“(6) The Commission may cancel or refuse to issue or renew a broking license, where the Commission believes on reasonable grounds that the broker has contravened a provision of the Ordinance, including without limitation that the broker has failed to maintain prescribed minimum levels of paid-up capital, statutory deposit or professional indemnity insurance.”

E. Overall conclusion:

18. I have carefully examined and given due consideration to the submissions made by the Respondents, and have also referred to the provisions of the Ordinance and other legal references (i.e. the Rules), I am of the view that the element of default of Section 109 of the Ordinance read with Rule 27(1) & (3) of the Rules is there, for which the broking license may be cancelled in terms of Section 102(6) of the Ordinance. However, the Respondents have assured the Insurance Division to be compliant with the rules and regulations, hence, a lenient view may be taken. I, instead of cancelling the insurance brokerage license of the Company in terms of Sections 102(6) of the Ordinance, strictly warn the Company to be careful in future.

19. 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 or directors of the Company) in accordance



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with the law on matters including those subsequently investigated or otherwise brought to the knowledge of the Commission.

Fida Hussain Samoo
Commissioner (Insurance)

