



INSURANCE DIVISION
Islamabad

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Before Fida Hussain Samoo, Commissioner (Insurance)

In the matter of

Continental Insurance Company Limited

Show Cause Notice No. and Issue Date: ID/Enf/Continental/2017/10781 dated August 21, 2017

Date of Hearing: December 5, 2017

Syed Nayyar Hasnain Haider
Managing Director
M/s. Continental Insurance Company
Limited

Attended By: Mr. Zubair Ali Khan
Chief Accountant
M/s. Continental Insurance Company
Limited

Date of Order: December 12, 2017

ORDER

Under Section 46(1)(b), 46(2), 51(1) & 51(2) of the Insurance Ordinance, 2000; and Clause Ixxviii, Ixxix & Ixxx of the Code of Corporate Governance for Insurers, 2016 read with Section 156 of the Insurance Ordinance, 2000

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This Order shall dispose of the proceedings initiated against M/s. Continental Insurance Company Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Section 46(1)(b), 46(2), 51(1) & 51(2) of the Insurance Ordinance, 2000 (the "Ordinance"); and Clause Ixxviii, Ixxix & Ixxx of the Code of Corporate Governance for Insurers, 2016 (the "Code"). The Company, its Chief Executive and Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company did not submit its Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2016, which were required to be submitted within four (4) months from the end of the period to which they refer i.e. April 30, 2017.



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3. In this regard, the Commission vide letter dated May 30, 2017, advised the Company to furnish its Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2016, without any further delay. However, the Company neither provided the said Accounts/Returns nor replied until the date of Show Cause Notice.

4. Similarly, the Company was also found in violation of the subject matter for late submission of the Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2015. The Commission initiated the regulatory proceedings against the Company by issuing a Show Cause Notice dated June 2, 2017. Subsequently, the Commission passed an order dated August 23, 2017 whereby a fine of Rs. 50,000/- was imposed on to the Company. Further, the Company was directed as under:-

"...The Company and its management are further directed to immediately file the financial statements for the year ended 2015 along with the audit report thereon. Further, the Company and its management are also directed to observe strict compliance of the provisions of the Ordinance, Rules and Regulations in future..."

5. Moreover, the Company did not submit Quarterly 'Statement of Assets and Liabilities' for the Quarters ended on March 31, 2016, June 30, 2016, September 30, 2016, December 31, 2016, and March 31, 2017, in violation of Section 46(2) read with 51(2) of the Ordinance that require the accounts to be submitted within six (6) weeks from the end of the period to which they refer i.e. May 15, 2016, August 15, 2016, November 15, 2016, February 15, 2017, and May 15, 2017 respectively.

6. In addition to the above, clause (Ixxviii) of the Code, requires that along with Annual Audited Accounts and Regulatory Returns as required under Section 46 (1) read with Section 51 (1) of the Ordinance, the insurer shall file an Annual Statement of Compliance to the Commission confirming status of compliance with provisions of Section 11 and 12 of the Ordinance. Moreover, clause (Ixxix) of the Code also requires that the said Annual Certificate of Compliance should be reviewed and certified by the statutory auditor of the insurer, and the review report should also be filed by the insurer along with the said Certificate.

7. The Company did not submit the said Statement of Compliance for the year ended December 31, 2016 to date.

8. In view of the above, it appeared that the Respondents failed to file Company's Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2016, its quarterly 'Statement of Assets and Liabilities' for the quarters ended March 2016, June 2016, September 2016, December 2016, and March 2017; and Annual Statement of Compliance with Section 11 and 12 of the Ordinance for the year ended December 31, 2016 within the stipulated time, in violation of Section 46(1)(b) read with Section 51(1) of the Ordinance; and Clause Ixxviii, Ixxix & Ixxx of the Code respectively.

9. Sub-section (1)(b) and (2) of Section 46 of the Ordinance require that:



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"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) Every insurer shall furnish, to the Commission, following the last day of December, March, June and September in each year, a statement of assets and liabilities in the form and prepared in accordance with the regulations prescribed under the preceding sub-section made up as of that date and such statement shall be certified by a principal officer of the insurer.

Provided that an actuarial valuation of policyholder liabilities as at the date to which such statement is made up is not required by virtue of this sub-section alone, and that the regulations prescribed under this sub-section shall provide for the determination of the value which is to be attributed to policyholder liabilities for the purposes of this sub-section."

10. Sub-section (1) and (2) of Section 51 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.

(2) The statement referred to in sub-section (2) of section 46 shall be furnished as a return to the Commission in such manner as may be prescribed by the Commission,



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but in any case including at least one printed copy, within six weeks from the date to which it is made up:

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 fifteen days."

11. The relevant clause lxxviii, lxxix & lxxx of the Code are reproduced below:

(lxxviii) Along with the financial statements and regulatory returns as required under sub-section (1) of section 46 of the Insurance Ordinance, 2000 (Ordinance No. XXXIX of 2000), insurer shall file with the Securities and Exchange Commission of Pakistan, an annual certificate of compliance duly signed by the Chief Executive Officer (by whatever name called) and two directors, confirming the status of compliance with the provisions of section 11 and section 12 of the Insurance Ordinance, 2000 (Ordinance No. XXXIX of 2000) during the year, as per the format given in the Annexure II.

(lxxix) The content of the said annual certificate of compliance should be reviewed and certified by the statutory auditor of the insurer, and the review report should also be filed along with the said certificate.

(lxxx) In case during the period referred to in the certificate, an insurer has not been in compliance with any of the requirements of section 11 and / or section 12 of the Insurance Ordinance, 2000 (Ordinance No. XXXIX of 2000), the same should be disclosed in the declaration and the reasons for non-compliance thereof should also be provided by the insurer as note to the said certificate.

12. Therefore, a Show Cause Notice (SCN) No. ID/Enf/Continental/2017/10781 dated August 21, 2017 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.

13. The Company vide letter dated September 19, 2017 requested the Commission for an extension of 10 days to submit its response. The Commission considering the request of the Company allowed an extension until September 29, 2017.

14. Upon non-receipt of the reply, the Commission vide letter dated October 20, 2017 scheduled the hearing on October 26, 2017. However, the Company vide letter dated October 25, 2017 requested to adjourn the hearing for 10 days. The request of the Company was acceded to and hearing was fixed on November 9, 2017. The Company vide letter dated November 7, 2017 again requested to grant an extension of further 15 days to collate the requisite information and appear for hearing in person. The Commission vide its letter dated November 20, 2017 scheduled the hearing on November 27, 2017. Nonetheless, on November 27, 2017, the Company submitted request to reschedule the hearing to any other date. The request of the Company was acceded to and hearing was rescheduled on December 5, 2017.



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15. The hearing of December 5, 2017 was held at the Head Office of the Commission in Islamabad, which was attended by Syed Nayyar Hasnain Haider, Managing Director of the Company, who appeared for hearing in his personal capacity as well as representing other members of the Board. He was accompanied by Mr. Zubair Ali Khan, Chief Accountant of the Company as an Authorized Representative, representing the Respondents before the Commission in the instant matter.

16. During the hearing, the Authorized Representatives stated that the Company has submitted Annual Audited Accounts for the year 2016 in response to earlier show cause proceedings. The Authorized Representatives also submitted a copy of Annual Audited Accounts & Regulatory Returns for the year ended December 31, 2016 and email through which the said Accounts/Returns were submitted. The Authorized Representatives were clarified that default also pertains to non-submission of Quarterly 'Statement of Assets and Liabilities' and compliance certificate under the Code. The Authorized Representatives accepted the default and committed to supply the same in due course of time. They stated that due to sudden resignation of the CFO, the Company could not comply with the said mandatory requirements. They requested the Commission to take lenient view in the matter and assured to comply with all the requirements in future.

17. In terms of Section 46(1)(b) read with Section 51(1) of the Ordinance, the Company was required to file the Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2016 within four months from the close of the year 2016, however, as evident from the record and arguments, the Company failed to file the Accounts / Returns to the relevant wing of the Insurance Division.

18. Similarly, the Company also failed to submit Quarterly 'Statement of Assets and Liabilities' for the Quarters ended on March 31, 2016, June 30, 2016, September 30, 2016, December 31, 2016, and March, 31, 2017, in violation of Section 46(2) read with 51(2) of the Ordinance that require the Statement to be submitted within six (6) weeks from the end of the period to which they refer. The Company failed to file the said financial statements until the date hereof. Therefore, the violation of the aforementioned sections of the Ordinance is clearly established. The reason given by the Company for non-submission is not tenable.

19. In terms of Clause lxxviii of the Code, the Company was also required to file an Annual Statement of Compliance with the Commission confirming status of compliance with the provisions of Section 11 and Section 12 of the Ordinance along with Annual Audited Accounts and Regulatory Returns as required under Section 46(1) of the Ordinance. Moreover, clause lxxix of the Code requires from the insurer that the said Annual Certificate of Compliance should be reviewed and certified by the statutory auditor of the insurer, and the review report should also be filed along with the said Certificate. However, the Company failed to file Annual Statement of



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Compliance in contravention with the requirement of Clauses Ixxviii, Clause Ixxix and Clause Ixxx of the Code.

20. Additionally, it has been observed that the Company was also penalized vide order dated August 23, 2017 for late submission of the Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2015. The Company was directed in the same order to 'observe strict compliance of the provisions of the Ordinance, Rules and Regulations in future'. However, it appears that the Respondents have failed comply with earlier direction of the Commission.

21. 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 the Code, I am of the view that the default of Section 46(1)(b), 46(2), 51(1) & 51(2) of the Ordinance; and Clause Ixxviii, Ixxix & Ixxx of the Code is established. The Company has also accepted its default. Therefore, fine as provided under Section 156 of the Ordinance can be imposed on the Company and/or its Directors & Chief Executive Officer.

22. 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."

23. However, before proceeding further, I find it relevant to discuss the duties of the Directors who are, 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 Directors have failed to perform their duties with due care and prudence. As the Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Section 46(1)(b), 46(2), 51(1) & 51(2) of the Ordinance; and Clause Ixxviii, Ixxix & Ixxx of the Code, therefore, it could be legitimately inferred that the default was committed knowingly and willfully.

24. In exercise of the power conferred on me under Section 156 of the Ordinance read with S.R.O. 750(I)/2017 dated August 2, 2017, I, instead of imposing the maximum fine as provided under the said provisions, impose a fine of Rs. 300,000/- (Rupees Three Hundred Thousand Only) on the Company due to the default of Section 46(1)(b), 46(2), 51(1) & 51(2) of the Insurance Ordinance, 2000; and Clause



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Ixxviii, Ixxix & Ixxx of the Code of Corporate Governance for Insurers, 2016, as mentioned in the above paras hereof. 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.

Fida Hussain Samoo
Commissioner (Insurance)

