



Before Tariq Bakhtawar, Director (Insurance)

In the matter of

The Pakistan General Insurance Company Limited

Number and date of show cause notice:

No. EMD/Enf/PGI/2015/2351
dated September 18, 2015

Date of hearing:

November 18, 2015

Present:

- i. Ch. Zahoor Ahmed, Chief Executive;
- ii. Mr. Nasir Ali, Director;
- iii. Ch. Ghulam Mustafa, Director; and
- iv. Mr. Muhammad Azhar Hafeez, Chief Financial Officer (the "Authorized Representative") for the remaining Directors of the Company

ORDER

Under Section 2(xxvii) read with Section 156 of the Insurance Ordinance, 2000.

This Order shall dispose of the proceedings pertaining to the Show Cause Notice bearing No. EMD/Enf/PGI/2015/2351 dated September 18, 2015 (hereinafter referred to as the "Notice") for violating the definition of the term "Insurance" as laid down under Section 2(xxvii) of the Insurance Ordinance, 2000 (hereinafter referred to as the "Ordinance") initiated against the Chief Executive, Directors of The Pakistan General Insurance Company Limited (hereinafter referred to as the "Company") and the Company itself.

2. The facts leading to this case briefly stated are, that pursuant to the inspection order dated November 13, 2013 under Section 59A of the Insurance Ordinance, 2000, an onsite inspection of the Company was conducted on January 6, 2014 to March 14, 2014. During the course of inspection, it was observed that the Company insured its own assets by issuing Fire Policy (9/FP/44899/2013) and Motor Policies (9/PC/4144, 9/PC/4174 etc.).

3. The policies were lacking essential elements of a valid Insurance Contract, 1872 and were issued *prima facie*; in violation of the definition of insurance as laid down under Section 2(xxvii) of the Ordinance and S.R.O. 149(I)/2009 dated February 11, 2009. Accordingly, Notice was issued to the following Chief executive, Directors of the Company and the Company (hereinafter referred to as



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Continuation sheet -1-

the "Respondents") who violated the aforesaid provisions of the Ordinance and S.R.O. 149(I)/2009 dated February 11, 2009:

S. No	Names of Directors and Company
1	Ch. Manzoor Ahmed, Chairman
2	Ch. Zahoor Ahmed, Chief Executive Officer
3	Ch. Ghulam Mustafa, Director
4	Mr. Muhammad Saleem, Director
5	Mr. Muazzam Gul Beg, Director
6	Dr. Mehmood-ul-Haq, Director
7	Mr. Athar Zahoor, Director
8	Mr. Rehan Baig, Director
9	Mr. Nasir Ali, Director
10	The Pakistan General Insurance Co. Ltd.

The aforesaid persons were called upon to show-cause, in writing, within 10 days of the date of Notice as to why necessary penal action may not be taken against them, as provided under Section 156 of the Ordinance, for the aforesaid contravention and why they may not be directed to comply with the same.

4. The Respondents failed to response to the Notice, however in order to provide the opportunity of being heard, the hearing of the case was fixed for November 2, 2015, to be held through video link facility available between head office of the Commission and Company Registration Office (CRO), Lahore. However, on the request of the Chief Executive of the Company vide letter dated October 28, 2015 the hearing was adjourned.

5. In the meantime, Ch. Zahoor Ahmed, the Chief Executive Officer of the Company vide letter dated October 21, 2015 received in the Commission on October 29, 2015 submitted that this is a non-cash transaction by which the Company has got its assets insured. The purpose of the transaction is that in the case of disaster the amount is recovered from reinsurers. The Commission has adopted IFRS 4 through its notification S.R.O. 149(1)/2009 dated February 11, 2009 applicable with effect from January 1, 2009 however, the IFRS 4 is not applicable to the Company in accordance with the provisions of para 4(f) of IFRS 4, which states that "An entity shall not apply this IFRS to: (f) direct insurance contracts that the entity holds (i.e. direct insurance contracts in which the entity is the policyholder). However, a cedant shall apply this IFRS to reinsurance contracts that it holds". Moreover, as per the Contract Act, 1872, a contract must be between two parties and by insuring its assets; the Company has a contract with its reinsurance companies to pay for the loss in case of

Bahkama
25/11



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ISLAMABAD

Continuation sheet -2-

damage. However, assured that in future the Company shall enter into an insurance contract with another insurance company for insurance of its assets and requested for a lenient view.

6. Being not satisfied with the representation made by the Chief Executive of the Company and in order to provide the opportunity of being heard, the hearing of the case was fixed on November 18, 2015. On the date of hearing, Ch. Zahoor Ahmad, Chief Executive Officer, Mr. Nasir Ali, Director, Ch. Ghulam Mustafa, Director and Mr. Muhammad Azhar Hafeez, Chief Financial Officer (the "Authorized Representative") for remaining Directors of the Company appeared before the undersigned to plead the case.

7. The Respondents and Authorized Representatives were told that the policies issued against insurance of own assets were lacking essential elements of a valid Insurance Contract, 1872 and were issued in violation of the definition of insurance as laid down under Section 2(xxvii) of the Ordinance, and IFRS 4 adopted vide S.R.O. 149(I)/2009 dated February 11, 2009. Moreover, the insurance policies issued by the Company as insurer comes under preview of IFRS 4 and argument that IFRS 4 is not applicable to the Company in accordance with the provisions of para 4(f) of IFRS 4 does not stand merit.

8. The Respondents and Authorized Representative reiterated the same arguments as were given through written submission in response to the Commission's Notice. The Respondents and Authorized Representative added that the Company has the capacity to retain 50% insurance of its own assets and therefore the Fire Policy (9/FP/44899/2013) and Motor Policy (9/PC/4144, 9/PC/4174 etc.) were issued to the Company itself which are further reinsured with the third party and ultimately the risk is transferred out.

9. The Respondents and Authorized Representative were highlighted that the insurance policies issued by the Company lack essential elements of a valid insurance contract and insurance contract in such situation is not permissible by the definition provided in Section 2(xxvii) of the Ordinance. Moreover, the Respondents and Authorized Representative's attention was invited toward the fact that other part of the transaction relates to the Company obligation as insurer has been ignored and that entails applicability of IFRS 4 on the Company. The Respondents and Authorized Representative were also highlighted that a contract may not be substituted with a sub-contract or another contract. The Respondents and Authorized Representative assured that in future the Company shall enter into

B. Akhlaq
25/11



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ISLAMABAD

Continuation sheet -2-

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B. Anshuman
25/11



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ISLAMABAD

Continuation sheet -3-

an insurance contract with another insurance company for insurance of its assets and requested for a lenient view.

10. The aforesaid provisions of the law and definition provided in the IFRS 4 are clear and explicit, which forbid an insurer to engage into contractual obligations concerning self-insurance. The insurance policies issued by the Company are considered to be contrary to the core principles of an insurance contract. Furthermore, it is relevant to mention here that the duties of directors whom are required to be vigilant and perform their duties with due care. The directors are supposed to be well aware of their legal obligations in connection with the requirements of the Ordinance and other applicable laws.

11. I have gone through the facts of the case; record of the Company; relevant provisions of the Ordinance; written submissions given in response to the Notice; and the arguments submitted by the Respondents and Authorized Representative of the Company during the course of hearing. I am of the firm view that there has been an established default of Section 2(xxvii) of the Ordinance for which the penal action may be taken in terms of Section 156 of the Ordinance which provides that 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. Therefore, I, in exercise of powers conferred upon me under Section 156 of the Ordinance, impose a penalty of Rs. 500,000 (Rupees Five Hundred Thousand only) on the Chief executive, Directors of the Company and the Company in the following manner:

S. No	Names of Directors and Company	Penalty (Rupees)
1.	Ch. Manzoor Ahmed, Chairman	50,000
2.	Ch. Zahoor Ahmed, Chief Executive Officer	50,000
3.	Ch. Ghulam Mustafa, Director	50,000
4.	Mr. Muhammad Saleem, Director	50,000
5.	Mr. Muazzam Gul Beg, Director	50,000
6.	Dr. Mehmood-ul-Haq, Director	50,000
7.	Mr. Athar Zahoor, Director	50,000
8.	Mr. Rehan Baig, Director	50,000
9.	Mr. Nasir Ali, Director	50,000
10.	The Pakistan General Insurance Co. Ltd.	50,000
	Total	500,000

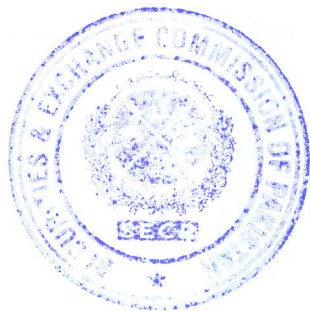
B. Akhlaq
25/11

12. The Chief Executive, Directors of the Company and the Company are, hereby, directed to deposit the afore-mentioned amount of penalty in the designated bank account maintained in the name of the Commission with MCB Bank within thirty days from the receipt of this Order and furnish a receipted bank challan to the Commission. In case of failure to deposit the penalty, proceedings under the Land Revenue Act, 1967 will be initiated for recovery of the fines as arrears of land revenue. It may also be noted that the said penalty is imposed on the Chief Executive and Directors of the Company in their personal capacity; therefore, they are required to pay the said amount from personal resources.

13. Further, in terms of the provisions of Section 473 of the Ordinance, I hereby direct the Chief executive of the Company to submit a certificate from the Auditors of the Company within 15 days from the date of this Order, verifying that the aforesaid self-insurance have been regularized pursuant to the definition laid down in Section 2(xxvii) of the Ordinance.

Tariq Bakhtawar
25/11

Tariq Bakhtawar
Director (Insurance)



Announced:
November 25, 2015
Islamabad.