



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/2015/2352
dated September 18, 2015

Date of hearing:

November 18, 2015

Present:

- i. Ch. Zahoor Ahmad, 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 Provisions of Section 226 read with Section 229 of the Companies Ordinance, 1984

This Order shall dispose of the proceedings pertaining to the Show Cause Notice bearing No. EMD/Enf/PGI/2015/2352 dated September 18, 2015 (hereinafter referred to as the "Notice") under the provisions of Section 226 read with Section 229 of the Companies Ordinance, 1984 (hereinafter referred to as the "Ordinance") served on the Chief Executive and Directors of the Pakistan General Insurance Company Limited (hereinafter referred to as the "Company").

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 from January 6, 2014 to March 14, 2014. During the course of inspection, the annual audited accounts for the year ended December 31, 2013 (hereinafter referred to as the "Accounts") revealed that the 'Others' of Rs.715,000 under the heading of "Other Creditors" (Note 10 to the Accounts) are payable on account of 'Security against rental agreement' and the Company did not maintain a special bank account with a scheduled bank for security deposits received by it.

3. The Company in response to the query raised by the inspection team confirmed that 'no special bank account is being maintained'. This transpired that the Company has violated the provisions of Section 226 of the Ordinance by not depositing the money of security deposits in a special bank account maintained with a scheduled bank and accordingly, Notice was issued to the

Tariq Bakhtawar
25/11

following Chief executive and Directors (hereinafter referred to as the "Respondents") of the Company who *prima facie* had authorized and permitted the contravention of the provisions of Section 226 of the Ordinance:

S. No	Names of Directors
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

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 229 of the Ordinance, for the aforesaid contraventions and why they may not be directed to comply with the same.

4. The Respondents failed to respond 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 the Company is generating rental income from its properties that the Company has purchased for investment purposes. As per the usual practice prevalent in the country, the tenants are supposed to deposit advance rent approximately of two (2) months which is adjustable against any damage caused to the property by the tenants and outstanding utilities etc, if any, otherwise same is refundable to the tenant on termination / cessation of the rent agreement. Moreover, Section 226 of the Ordinance is not applicable to amount received as securities and deposits, except in accordance with a contract in writing and they are of the opinion that the Company had not violated the provisions of Section 226 of the Ordinance.

B. Akhlaq
25/11

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 for 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 Authorized Representatives were explained Section 226 of the Ordinance, the amount received as securities deposits against the rent agreement were required to be put in special bank account and in the absence of explicit authorization in the agreement, the company was not allowed to utilize the money. Section 226 of the Ordinance is quoted below for the ready reference:

"No company, and no officer or agent of a company, shall receive or utilize any money received as security or deposit, except in accordance with a contract in writing; and all moneys so received shall be kept or deposited by the company or the officer or agent concerned, as the case may be, in a special account with a scheduled bank:

Provided that this section shall not apply where the money received is in the nature of an advance payment for goods to be delivered or sold to an agent, dealer or sub-agent in accordance with a contract in writing."

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 funds of security deposits are adjustable against five agreements and are repayable to the tenants on demand/ termination of the respective rent agreements. The Respondents and Authorized Representative were asked to provide agreements and identify clauses that allow them to use the security deposits and they failed to do so. The Respondents and Authorized Representative conceded that the security deposits are not being deposited in a special bank account and requested that inadvertent violation may please be condoned. It was assured that the Company being a law abiding corporate citizen would remain more observant in future.

9. The aforesaid provisions of the law are clear and explicit. The objective of these provisions is to secure the amounts collected from the tenants of a company from the being mis-utilized and may not be prone to any event affecting adversely the cashflow of the Company. Therefore, the company is required to act in the capacity of trustee to the tenants by receiving or utilizing any money received as security deposits only in accordance with a contract in writing and keeping the deposits in a separate special bank account with a scheduled bank. The Company in the instant case received the

Bahadur
25/11

money from the tenants but failed to deposit the said trust money in a special bank account with a scheduled bank and the management of the Company also failed to take such measures which should have resulted in the timely deposit.


10. I have gone through the facts of the case, the record of the Company, the 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 opinion that the provisions of Section 226 of the Ordinance have been violated in respect of non-deposit of the amount of security deposit in a separate special bank account. The Directors and Chief Executive of the Company are liable for the penalty as defined in Section 229 of the Ordinance. Section 229 of the Ordinance provides that whoever contravenes or authorizes or permits the contravention of any of the provisions of section 226 shall be punished with a fine which may extend to five thousand rupees and shall also be liable to pay the loss suffered by the depositor of security or the employee on account of such contravention. Therefore, I, in exercise of powers conferred upon me under Section 229 read with Section 476 of the Ordinance, impose a penalty of Rs. 45,000 (Rupees Forty Five Thousand only) on the Chief executive and Directors of the Company in the following manner:

S. No	Names of Directors	Penalty (Rupees)
1	Ch. Manzoor Ahmed, Chairman	5,000
2	Ch. Zahoor Ahmed, Chief Executive Officer	5,000
3	Ch. Ghulam Mustafa, Director	5,000
4	Mr. Muhammad Saleem, Director	5,000
5	Mr. Muazzam Gul Beg, Director	5,000
6	Dr. Mehmood-ul-Haq, Director	5,000
7	Mr. Athar Zahoor, Director	5,000
8	Mr. Rehan Baig, Director	5,000
9	Mr. Nasir Ali, Director	5,000
Total		45,000

11. The Chief Executive and Directors of the Company are, hereby, directed to deposit the aforementioned 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.

Bahatman
25/11

12. 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 60 days from the date of this Order, verifying that the aforesaid security deposits have been regularized pursuant to the provisions of Section 226 of the Ordinance and all moneys so received are kept or deposited in a special bank account with a scheduled bank.


Tariq Bakhtawar
Director (Insurance) 25/11

Announced:
November 25, 2015
Islamabad.

