



Fida Hussain Samoo
Commissioner

Before Fida Hussain Samoo, Commissioner (Insurance)

In the matter of

Silver Star Insurance Company Ltd.

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| Number and date of show cause notice: | No. EMD/Enf/SSICL/2015/2901 Dated November 3, 2015 |
| Date of hearing: | April 25, 2016. |
| Present: | Mr. Shezada Mazhar, Advocate Supreme Court, Mazhar Law Associates (the "Authorized Representative") |

Order under Sections 65 read with Section 156 of the Insurance Ordinance, 2000

This is an Order in the matter of Show Cause Notice bearing No. EMD/Enf/SSICL/2015/2901 dated November 3, 2015 (hereinafter referred to as the "Notice") under Sections 65 read with Section 156 of the Insurance Ordinance, 2000 (hereinafter referred to as the "Ordinance") served on the Chairman, Chief Executive, Directors of Silver Star Insurance Company Limited (hereinafter referred to as the "Company") and the Company.

2. The facts leading to this case briefly stated are that, a First Information Report (FIR) No. 0008852 dated April 2, 2015 was reported with Cyber Crime Circle NR3C, Lahore of Federal Investigation Agency (FIA) against Mr. Zahir Muhammad Sadiq, Chief Executive Officer of the Company wherein it was alleged that the Company is involved in preparation of fake /forged claims, bogus premium values, manipulation of FBR receipts, bogus bank statements and its confirmation and deposits, bogus intimation of claims to reinsurers both local as well as foreign including Pakistan Reinsurance Company Ltd (PRCL) by using computerized system and tailor made software. The Cyber Crime Circle, FIA vide Case No. C-50/15 dated April 2, 2015 under Section 36, 37-ETO-2002, 406,409,420,467,468,471,109-PPC,R/W5(2)47 filed a challan (supplementary/ incomplete) under Section 173 of the Code of Criminal Procedure of Pakistan confirming that the Company and its management was materially involved in:

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- fraudulent collection of Rs.21.242 million through illegal, fake and bogus re-insurance activities;
- Bogus payments of sales tax of Rs.23.709 million by using bogus and faked bank stamps;
- Bogus payments of sales tax of Rs.11.7 million by using bogus and faked bank stamps;
- Receipt of bogus reinsurance claims which are detriment to the national wealth.

3. It was transpired from the aforesaid proceedings of the FIA that the Company has failed to meet criteria for sound and prudent management of an insurer, as prescribed in Section 12 of the Ordinance. Moreover, the Company failed to submit its Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2014 by April 30, 2015 as required under Section 46(1)(b) read with Section 51(1) of the Ordinance. Thus the Notice was issued to the following i.e. Chairman, Chief executive, Directors of the Company and the Company (hereinafter referred to as the "Respondents") who *prima facie* authorized the contraventions of the provisions of the Ordinance:

| S No. | Directors |
|-------|---|
| 1. | Ch. Muhammad Sadiq, Chairman |
| 2. | Mr. Zahir Muhammad Sadiq, Chief Executive and Managing Director |
| 3. | Mr. Faisal Zaka Bajwa, Director |
| 4. | Mr. Imran Amjad Khan, Director |
| 5. | Mr. Kashif Hussain Shah, Director |
| 6. | Mr. Mudasser Imran, Director |
| 7. | Mr. Muhammad Kashif, Director |
| 8. | Silver Star Insurance Company 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 make an order under Section 65 read with Section 156 of the Ordinance.

4. In response, Mr. Shezada Mazhar, Advocate Supreme Court, Mazhar Law Associates, vide letter dated November 18, 2015 replied on behalf of the Respondents to the Notice and stated that the Company which is an independent person has been issued the instant show cause, which is glaring violation of the mandate of the section 65 of the Ordinance and submitted that the said Notice may kindly be withdrawn to the extent of the Company. The initiation of the proceeding is based on whimsical complaints is no ground whatsoever to issue the Notice to the Company, which not only is

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a stark violation of the subject cited law, but also violation of Article 13 of the Constitution of the Islamic Republic of Pakistan, 1973, wherein it is the fundamental right which states that no one shall be "prosecuted" or punished for the same offence twice. Moreover, the premature conclusion that the management of the Company is not meeting the fit and proper criteria as provided in Section 12 of the Ordinance is not worthy of any consideration as the said premises of the Insurance Companies (Sound and Prudent Management) Regulations, 2012 have been impugned before the Honorable Lahore High Court, Lahore and are suspended vide order dated February 10, 2012.

5. He further stated that the Notice is issued without completion of any special audit under Section 49, or investigation under Section 59, whereas in the instant case, the alleged investigation illegally initiated against the Company has still not been finalized without any subsequent direction, as the onsite inspection was undergoing at the premises of our clients, when instant Notice has been issued, thus rendering the entire proceedings devoid of merits and the backing of law. With respect to the non-filing of the annual accounts for the year December, 2014 and regulatory returns duly audited by the approved auditor, the record of our clients was confiscated by the FIA on April 1, 2015, which has since been under challenge, being illegal and all our efforts are underway for the retrieval of the same, which is the reason that the Respondents were incapacitated to submit the audit reports. Furthermore, the same stance was informed to SECP vide letters dated June 1, 2015, Sep 7, 2015, Sep 11, 2015 and Oct 7, 2015 and under the prevalent circumstances, the issuance of the instant Notice is deemed to be withdrawn and cancelled being based on ill-founded grounds, incomplete and illegal investigation, and explained allegations to the entire satisfaction of the relevant authorities.

6. The Commission is responsible to regulate the business of the insurance industry to ensure the protection of the interests of insurance policy holders and to promote sound development of the insurance industry and for the matters connected therewith and incidental thereto. The Ordinance provides the mechanism for supervision and regulation of the insurance industry in Pakistan. The Commission, as an "Insurance Regulator" is essentially required to act in such situations and take necessary actions to safeguard the interests of the policyholders, shareholders and various stakeholders of the Company. Moreover, section 156 of the Ordinance, is the primary reason for including Company in the show cause notice, which provides that 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

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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.

7. I have gone through the representations made by the legal counsel of the Company and arguments are not founds convincing. The Commission cannot remain silent in the while situation and is required to fulfill its fiduciary responsibilities. In order to provide the opportunity of being heard, the hearing of the case was fixed on Feb 16, 2016. On the date of hearing, Mr. Shezada Mazhar, Advocate Supreme Court, Mazhar Law Associates, appeared with power of attorney from all the Respondents (hereinafter referred to as the "Authorized Representative") to plead the case. The Authorized Representative reiterated the same arguments as provided through the written submissions vide letter dated Nov 18, 2015 and updated the current status of the case with the FIA. He told that the Chairman of the Company has passed away, recently. The Authorized Representative was told that the proceedings initiated under the provisions of the Ordinance are different from the proceedings in the Court. These are based on the non-filing of the annual audited accounts and facts contained in the FIR of FIA. It is prime responsibility of the Commission to safe-guard the interest of the policyholders and shareholders of the Company. The Authorized Representative added that all the relevant information/ documents are confiscated by FIA and the Respondents have approached the High Court for release of the documents necessary for the running of the business. It was also highlighted to the Authorized Representative that if the record of the Company is not with them, then how the business is being underwritten. Moreover, the Authorized Representative was asked to provide the list of documents/record confiscated by the FIA. The Authorized Representative argued that no business is being underwritten by the Company and agreed to update Commission on the information sought by the investigation team and details provided by the Company alongwith the details of record seized by the FIA.

8. The Authorized Representative vide letter dated March 9, 2016 submitted further submissions as agreed during the initial hearing proceedings through which he reiterated that the record of the Company has been seized by the FIA and shown inability of the company to file the requisite Audited Accounts 2014. He stated that the Company has filed an application before the Court for return of seized record by FIA which was dismissed vide order dated June 24, 2015 by the Special Judge Central, Lahore, however, the Company subsequently preferred to assail before the Honorable Lahore High Court, Lahore in the Constitutional Petition which is still pending adjudication. The requisite documents sought by the Commission were responded by the Company through its letter reference



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No. HO/MD/4743/2015 dated Nov 5, 2015 reassuring its intention to cooperate with the Commission at all times and reiterated that the provision of all information sought by the Commission, at the earliest in the requisite format. He also mentioned that the email dated Nov 6, 2015 of the Commission tantamount to an admission, on the part of the Commission of the stance of the Company, who had left the premises after onsite inspection due to non-availability of relevant record. The Authorized Representative held that to the utter dismay of the Company, the Commission issued directions vide letter dated Sep 01, 2015 to the Karachi Stock Exchange with respect to the suspension of the trading of shares of the Company, on the basis of the investigation and non-filing of the audited returns of the year 2014. Central Depository Company of Pakistan (CDC) through notice dated Sep 01, 2015 suspended the CDS eligibility of the ordinary shares of the Company, which were unwarranted and caused inflicting losses to Company for no fault of his own. It was asserted that the issuance of the Notice is premature as the action can also be taken once either the inquiry initiated by the Commission is completed or the investigation started by the FIA reaches its logical end. Without completion of any of the two actions, it would be based on presumption and not suitable under the law.

9. In order to finalize the proceedings of the Notice, the case was fixed for hearing on April 25, 2016. On the given date and time, the Authorized Representative appeared through video link facility available between the Company Registration Office (CRO), Lahore and the Head Office of the Commission to further plead the case. The Authorized Representative argued that the information has already been submitted vide letter dated March 9, 2016 and apprised that no Court Order or record from the FIA is received, the underlying reason being part of investigation proceedings by FIA. The Authorized Representative added that due to non-availability of record, the Company is unable to run its business. It was highlighted to the Authorized Representative that in case the Company fails to comply with the mandatory requirements of the Ordinance, the Commission has been empowered to issue direction to cease entering into new contracts of insurance business. Moreover, he was informed that Pakistan Reinsurance Company Ltd has withdrawn their treaty arrangements. The Authorized Representative reiterated its stance that the information has already been submitted to the Commission through correspondence.

10. The undersigned has received the copy of the investigation report dated March 4, 2016 ("Report") with findings that management is not cooperating and record is not provided to the investigation team by the Company. I have also gone through the Report and observations made by



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the investigation team. The seizure memos of FIA, annexed with the Report disclose that record seized contains bogus claims files, photocopies of CPRs, bogus stamps in original, computer servers, bogus policies record and manual registers of claims and TDR's. The seizer memos do not report that the books of accounts, required to be maintained under section 45(5) and 45(6) of the Ordinance, were seized by the FIA. Moreover, the seizure memos do not confirm that accounting records and underlying information was held by the FIA. Further, the Company could have easily arranged the information/ data related to PRCL, information pertaining to claims from M/s. Tahir Rasheed and Co. (Pvt) Ltd., surveyors of the Company and bank accounts statements from the Banks. This might have enabled the investigation team to make some breakthrough and arrived at preliminary findings.

11. The Section 45(5) and 45(6) of the Ordinance provides that the books of accounts would be prepared in the following manner:

"Books and Records:- 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 looseleaf 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".

12. The Company is also in violation of the Honorable Lahore High Court order in the writ petition No. 35499 of 2015 dated Nov 27, 2015 wherein "the learned counsel for the petitioner undertakes that the necessary information/documents shall be provided to SECP within a period of 10 days from today".

13. Before proceeding further, it is appropriate to reproduce section 65 of the Ordinance.

" Power to remove Chairman, Director, etc. of the insurer.- (1) If, after the completion of a special audit under section 49 or investigation under section 59, or otherwise on reasonable grounds, the Commission has reason to believe that a person holding the office of Chief Executive, Chairman, director, manager or principal officer, by whatever name called (including the principal officer in Pakistan of an insurer incorporated in a jurisdiction

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outside Pakistan), of an insurer has contravened the provisions of any law (including, in the case of a company any such person having become disqualified under the provisions of section 187 of the Companies Ordinance) and that the contravention is of such a nature that the association of such person with the insurer or insurance broker is or is likely to be detrimental to the interest of the insurer or of the policy holders, or is otherwise undesirable, such person not being a fit and proper person the Commission may make an order that such a person shall cease to hold the office with the insurer with effect from such date as may be specified in the order, and thereupon that office shall, with effect from the said date, become vacant provided that for public section insurance company or corporation i.e. National Insurance Company Ltd., Pakistan Re-insurance Company Ltd., and State Life Insurance Corporation of Pakistan the Commission may make a recommendation only to the Federal Government for the purpose.

(3) An order under sub-section (1) in respect of any person may also provide that he shall not, without the previous permission in writing of the Commission in any way, directly, or indirectly, be concerned with, or take part in the management of the insurer or any other insurer for such period not exceeding five years as may be specified in the order."

14. The Chief Executive and Director of the company have failed to produce before the investigation team, Books and records u/s 45 of the Ordinance and even contravened with the Order of the Honorable Lahore High Court, requiring the Company to provide requisite record before the Commission. The finding of the FIA and Investigation Team of the Commission validate and corroborate that:

- a. The claims amounted to Rs.28.017 million (recovered Rs.21.674 million) remained unconfirmed by M/s. Tahir Rasheed & Co. (Pvt.) Ltd., Insurance Surveyors. They denied to have conducted surveys and issued any survey reports of claims.
- b. Material payments of sales tax amounting to Rs.35.41 remained unverified by the Sindh Revenue Board and Punjab Revenue Authority. FIA confirmed sales tax payments from the respective revenue authorities and reported in the Challan filed by them.

Moreover, the Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2014 u/s section 46(1)(b) read with Section 51(1) of the Ordinance have not been filed with the Commission. The Chief Executive and Directors have failed to meet criteria for sound and prudent management of an insurer as prescribed in Section 12 of the Ordinance and regulation made therein alongwith provisions of the Section 11(1) of the Ordinance.



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15. The conclusions of the investigation ordered under section 59 of the Ordinance, findings of the FIA, non-production of the Books and Records u/s 45 of the Ordinance and significant non-compliances with Ordinance are underlying reasons to believe that persons holding the offices of Chief Executive and directors of the Company have contravened the provisions of the Ordinance and that the contravention is of such a nature that the association of such person with the Company is detrimental to the interest of the insurer and the policy holders of the Company, such persons not being the fit and proper persons.

16. In view of the above stated facts and reasons to believe and in exercise of the powers conferred upon me under Section 65 of the Ordinance, I hereby Order that the Chief Executive and Directors of the Company shall cease to hold their offices with the Company with effect from May 9, 2016. They shall not, without the previous permission in writing of the Commission in any way, directly, or indirectly, be concerned with, or take part in the management of the Company or any other insurance Company for such period not exceeding three years from the date of this Order.



Fida Hussain Samoo
Commissioner (Insurance)

Announced:
May 9, 2016,
Islamabad.

