



INSURANCE DIVISION  
Islamabad

Before Fida Hussain Samoo, Commissioner (Insurance)

*In the matter of*

M/s. Security General Insurance Company Limited

Show Cause Notice No. & Issue ID/Enf/SGICL/2017/8722 Dated March 3, 2017  
Date:

Date of Hearing: May 2, 2017

Attended By: Mr. Rashid Sadiq  
Chief Executive Officer  
M/s. RS Corporate Advisory (Pvt.) Ltd.  
(for and behalf of the Respondents)

Date of Order: May 23, 2017

**ORDER**

Under Section 166 read with Section 156 of the Insurance Ordinance, 2000.

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This Order shall dispose of the proceedings initiated against the Chief Executive and Directors of M/s. Security General Insurance Company Limited (the "Company") for alleged non-compliance with Section 166 read with Section 156 of the Insurance Ordinance, 2000 (the "Ordinance"). The Chief Executive and Directors of the Company shall be referred to as the "Respondents" hereinafter.

2. An onsite inspection of the Company was conducted under Section 59A of the Ordinance, during which, the inspection team observed that the Company underwrote risks related to assets that were owned by the public sector entities, in violation of Section 166 of the Ordinance.

3. The Company entered into contracts of insurance relating to the property owned by public sector entities i.e. M/s. Rawalpindi Development Authority (RDA), M/s. National Highway Authority (NHA) and M/s. National University of Sciences and Technology (NUST).

4. The Company, vide Commission's letter dated December 29, 2016 was advised to provide its comments in the matter. In response, the Company, vide its letter dated January 25, 2017, provided its comments as under:



"The Company issued insurances of only four vehicles of National Highway Authority and ten vehicles of Rawalpindi Development Authority (RDA) in 2015. Vehicles of RDA were insured through open tender published in the newspapers. These were, however, not renewed by the Company in 2016. Further, the Company had also insured Motor fleet of National University of Science and Technology (NUST) on the understanding that it is an autonomous body. However, as per your guidance, the said motor business will not be renewed on expiry."

5. In view of the violations highlighted in the preceding paras, the Commission initiated penal action by issuance of a Show Cause Notice (SCN) on March 3, 2017 bearing No. ID/Enf/SGICL/2017/8722 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 for non-compliance with Section 166 of the Ordinance.

6. In response to the said SCN, Mr. Rashid Sadiq, CEO, M/s. RS Corporate Advisory (Pvt.) Ltd. the ("Authorized Representative"), vide letter dated March 9, 2017 sought an extension of two weeks to submit the comments. The request was acceded to and therefore, the Commission vide letter dated March 13, 2017 allowed the Respondents to submit their response until March 27, 2017.

7. Subsequently, the Authorized Representative vide letter dated March 27, 2017 submitted reply to the SCN, which is summarized below:

(a) The Company issued insurances of only four (4) vehicles of NHA and ten (10) vehicles of RDA in the year 2015. Vehicles of RDA were insured through open tender published in the newspapers. These policies were, however, not renewed by the Company in 2016. Further, the Company had also insured vehicles of NUST on the understanding that it was an autonomous body, which was not covered under the definition of public property. It was also undertaken that the insurance policies of the said risks would not be renewed in future. The Commission, however, preferred to issue SCN to the Respondents, despite assurance for strict compliance in future;

(b) As of now, it is confirmed that the Company has no other insurances relating to the public property;

(c) If the Company intended to specifically insure public properties' risk, the Company would have underwritten many properties instead of just a few, which compared to the Company's business is insignificant. Nevertheless, the Company reiterates its assurance to abide by the provisions of the Ordinance, specifically Section 166, by not renewing or issuing any new contracts/policies appertaining to the public properties;



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(d) As per sub-section (6) of Section 166 of the Ordinance, the instances and scenarios where the insurer or the person accepting insurance of the public property has done so knowingly and with the knowledge that such an insurance is a contravention of sub-section (3) or is illegal. The imposition of penalty under Section 156 is, therefore, subject to the determination that the default was made 'knowingly'. Thus, the directors/officers not having express actual knowledge of default would not be held liable. This interpretation has prevailed with the Commission when deciding matters that require a willful, deliberate and intentional default on part of the directors/officers and such matters were dismissed with a warning where no willful and deliberate intention of the directors/officers could be established;

(e) The SCN is also liable to be withdrawn as mandated under Section 20(6)(c) of the Securities and Exchange Commission of Pakistan Act, 1997 for maintaining uniformity in exercise of its powers in the following cases having identical and indistinguishable set of circumstances:-

- i. In the matter of Askari General Insurance Company Limited, penalty was imposed vide order dated April 13, 2012 for violation of Section 166 of the Ordinance involving third party insurance provided to four PAF aircrafts. Honorable Appellate Bench vide its order dated April 23, 2014, set aside the penalty;
- ii. In the matters of Habib Insurance Company Limited and Universal Insurance Company Limited, involving fire and terrorism insurance for 337 call booths on Islamabad-Lahore Motorway, vide orders dated May 5, 2014 and May 12, 2014 respectively, did not impose the penalty on assurance that the default will not be repeated and willingness to adopt the provisions of Section 166 of the ordinance in letter and spirit;
- iii. In the matter of Alpha Insurance Company Limited, involving comprehensive insurance provided to few vehicles owned by Government owned/controlled entities, vide order dated July 18, 2014, no fine was imposed as the same was due to oversight and assurance was given to comply with the legal provisions in future; and
- iv. In the matter of Premier Insurance Limited, involving insurance provided to property of Institute of Chartered Accountants of Pakistan, vide order dated April 2, 2015, no fine was imposed as the said company admitted its mistake being an oversight on its part and assured to comply with the provisions in future.

(f) The orders of the Commission quoted above, show that the Commission has taken a lenient view in all these cases and no penalties were imposed on assurance for future compliance. Therefore, a different treatment cannot be meted out in the case of the Company as compared to



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the cases quoted above since clearly similar and indistinguishable sets of facts and circumstances exist in the case at hand. A different treatment would amount to unfair, unjust and discriminatory treatment and would contravene the letter and spirit of the scheme envisaged under Section 20(6)(c) of the Securities and Exchange Commission of Pakistan Act, 1997. Therefore, in view of the above rulings, the SCN is liable to be withdrawn without any adverse action; and

(g) The Company is law-abiding as is evidenced by their outstanding compliance record in the past. The Company remains genuinely committed to complying with all relevant and applicable laws, rules and regulations. Any violation of Section 166 of the Ordinance as mentioned in the SCN was unintentional and a result of mere oversight and therefore, merits a lenient view.

8. Thereafter, the Commission, vide its notice no. ID/Enf/SGICL/2017/9063 dated March 31, 2017, scheduled the hearing for April 19, 2017. The said hearing was adjourned on the request of the Authorized Representative and therefore was rescheduled for May 2, 2017 at 03:30 pm. The hearing was attended by the Authorized Representative for and behalf of the Respondents.

9. During the hearing, the Authorized Representative gave his arguments to defend the proceedings of the SCN. He admitted that the Company insured the government property/assets in violation of Section 166 of the Ordinance. However, he maintained that the insurance policies of the aforesaid property/assets were not renewed. The Authorized Representative assured that the Company would observe strict compliance with the provisions of the Ordinance in future. The Authorized Representative insisted that primary responsibility of placing risk lies with the insured not the insurer. He was of the opinion, that other party is also accused in the instant matter and therefore should be made part of the regulatory proceedings. He requested the Commission to take lenient view and offered unconditional apology on behalf of the Respondents.

10. The Respondents of the instant SCN were required to ensure compliance with the provisions of Section 166 of the Ordinance, which state that:

*"Insurance of public property.- (1) This section applies to direct nonlife insurance of public property.*

*(2) In this section -*

*(a) "Company" means the National Insurance Company Limited;*

*(b) "public property" means:*

*(i) any property, movable or immovable, which belongs to, or the safety of which is the legal responsibility of, -*

*(A) the Federal Government, a Provincial Government or a local authority or statutory corporation; or*



- (B) any company, firm, undertaking, institution, organisation or other establishment which is managed or controlled by the Federal or a Provincial Government or local authority or statutory corporation or in which such Government, by itself or jointly with a local authority or corporation or company managed or controlled by it, holds a controlling financial share or interest or which is specified by the Federal Government for the purposes of this clause; and
- (ii) a project financed out of an external loan, or with external aid until it reaches:
- (A) in the case of an industrial project, the stage at which it is capable of commencing normal production; and
- (B) in the case of any other project, the stage at which it is capable of being put to the use for which it is intended; and
- (c) "statutory corporation" means a body corporate, other than a company, established or set up by the Federal Government or a Provincial Government in pursuance of any law.
- (3) Subject to the provisions of sub-sections (4) and (5), all insurance business relating to any public property, or to any risk or liability appertaining to any public property, shall be placed with the Company only and shall not be placed with any other insurer:

*Provided that marine, aviation and transport insurance relating to goods the import of which is financed out of an external loan, or with external aid, may, at the option of the importer, be placed with any insurer authorised to carry out such insurance business in the country giving the loan or aid.*

- (4) The Federal Government may –
- (a) by order in writing exempt from compliance with subsection (3) any property or liability to which that subsection applies; or
- (b) by notification in the official Gazette exclude from the application of sub-section (3) such property or liability as is specified in that notification.
- (5) If the Company declares in writing that it is not able, by virtue of the operation of a provision of this Ordinance or for any other reason, to enter into a contract of insurance to which sub-section (3) refers, the property or liability which is the subject of that proposed contract of insurance shall be exempted from the provisions of sub-section (3) to the extent of the insurance proposed to be obtained by means of that contract of insurance.
- (6) Any person who insures, and any insurer which accepts insurance of, any property or liability, knowing such insurance to be in contravention of sub-section (3), shall be guilty of an offence:

*Provided that no person shall be in contravention of sub-section (3) by reason only of that sub-section becoming applicable to property or liability to which it was not applicable at the time that a contract of insurance in respect of that property or liability was taken out."*



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11. The written comments and arguments of the Respondents have been reviewed. The Respondents insured the vehicles of NUST on the understanding that it was an autonomous body which was not covered under the definition of public property. The Respondents, however have admitted that the policies issued to NHA, RDA and NUST were in violation of 166 of the Ordinance.

12. It is pertinent to mentioned that by virtue of the definition of the public property as laid down under Section 166 of the Ordinance, any property, movable or immovable, which belongs to, or the safety of which is the legal responsibility of a statutory corporation shall be deemed to be the public property. And, Section 166 of the Ordinance has also defined the term "statutory corporation" as a body corporate, other than a company, established or set up by the Federal Government or a Provincial Government in pursuance of any law. Therefore, the Company issued insurance policies to NHA, RDA and NUST in violation of Section 166 of the Ordinance.

13. 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 and other legal references, I am of the view that there has been an established default of Section 166 of the Ordinance. However, the Respondents have informed that vehicle insurances of NHA and RDA have not been renewed in 2016 and have further assured that the Company does not intend to renew NUST's vehicle insurance after expiry of the current insurance policy. The Respondents have admitted their mistake being an oversight on their part.

14. In exercise of the power conferred on me, I instead of imposing any penalty under Section 156 of the Ordinance, take a lenient view, and thus condone the Respondents for the reasons and circumstances as mentioned in the foregoing paras hereof. However, the Respondents are hereby strictly warned and directed to take immediate steps to discontinue issuing policies in respect of the public properties. Moreover, the Respondents are hereby directed to observe strict compliance of the provisions of the Ordinance, Rules and Regulations in future.

15. 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 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)

