



SECP
INSURANCE DIVISION
Islamabad

Before Tahir Mahmood, Commissioner (Insurance)

In the matter of

PICIC Insurance Limited

Show Cause Notice No. and Issue ID/Enf/PICIC/2018/14432 Dated April 11, 2018

Date of Hearing: July 3, 2018

Attended By: 1. Mr. Zeeshan Abdullaha
Advocate High Court
Authorized Representative

2. Mr. Tanveer Ahmed
Representative
M/s. PICIC Insurance Limited

Date of Order: July 20, 2018

ORDER

Under Section 61 read with Section 156 of the Insurance Ordinance, 2000

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This Order shall dispose of the proceedings initiated against M/s. PICIC Insurance Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Section 61 of the Insurance Ordinance, 2000 (the "Ordinance"). The Company, its Chief Executive and Directors shall be collectively referred to as (the "Respondents") hereinafter.

2. During examination of the Annual Audited Accounts and Regulatory Returns of the Company for the period ended December 31, 2016, the Commission, vide letter dated October 17, 2017, advised the Company to submit response to the observations highlighted in the examination letter by October 24, 2017. The Company was granted further two extensions on its request vide letters dated October 27, 2017 and November 13, 2017 to submit the response.

3. The Commission, vide letter dated November 23, 2017, again advised the Company to submit response without any further delay as sufficient time/extension for submission of the response had already been allowed. The Company failed to submit its response despite of further three reminders to the Company dated December 19, 2017, January 1, 2018 and January 24, 2018.

4. Further, upon failure to furnish the requisite information /documents, the Company, vide letter dated February 26, 2018, was directed under Section 61 of the Ordinance to provide the requisite information by March 1, 2018. Record of the



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Commission shows that the Company did not submit any response in respect of the said matter until the date of the Show Cause Notice.

5. In view of the above, it appeared that the Company and its Board of Directors violated the provisions of Section 61 of the Ordinance.

6. Section 61 of the Ordinance states that:

"Power of Commission to call for information and access.- (1) The Commission may by notice in writing direct any insurer to supply the Commission, within such period as the notice may specify, with any information relating to its insurance business which the Commission may reasonably require.

(2) The Commission may direct that any information supplied under subsection (1) shall be certified by the principal officer of the insurer, by an independent auditor or in the case of a life insurer by the insurer's appointed actuary.

(3) The Commission may by notice in writing direct the chief executive or principal officer of the insurer to discuss with the Commission any matter pertaining to the business or management of the insurer.

(4) The Commission may by notice in writing require the insurer to allow any officers of the Commission nominated for the purpose to observe, for such period as the Commission may specify, the manner in which the affairs of the insurer or of any of its offices or branches are being conducted."

7. Therefore, a Show Cause Notice (SCN) ID/Enf/PICIC/2018/14432 dated April 11, 2018 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.

8. The Respondents vide letter dated May 9, 2018 submitted their comments, which are reproduced hereunder:

"We acknowledge receipt of your Show Cause Notice U/s 61 read with section 156 of the Insurance Ordinance, 2000 issued for non-compliance of information asked for vide your letter dated October 17, 2017 and make following submissions.

Maintainability of the show cause:

1. *Section 61 of Insurance Ordinance provides (1) The commission may by notice in writing direct any insurer to supply the Commission, within such period as the notice may specify, with any information relating to its insurance business which the Commission may reasonably require. The show cause notice is not maintainable as the majority of the information asked for in the Commission letter dated October 17, 2017 does not relate to the business of the insurer.*

Without prejudice to our contention that the show cause is not maintainable, we would like to submit as under:



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- *The management of company has stopped underwriting in 2016. Key personnel of the company left the company due to which there was delay in providing you the information asked for in your letter dated October 17, 2017.*
- *Due to shortage of key personnel the company had requested for extension of holding the AGM of the company which was very kindly granted.*
- *We have already provided the information called for in your letter dated October 17, 2017. Copy attached.*
- *The company has applied for revocation of its insurance license. After revocation if its insurance license the company will not be listed in the insurance sector and will not be required to comply with the Insurance Ordinance 2000.*

The information required vide your letter dated October 17, 2017 has already been provided as stated above. We would therefore request you to take a lenient view of the delay in providing information and close the matter."

9. The Commission vide its notice dated June 25, 2018 scheduled the hearing on July 3, 2018 to provide an opportunity of hearing to the Respondents. The hearing of July 3, 2018 was held at the Company Registration Office of the Commission in Karachi and was attended by Mr. Zeeshan Abdullah and Mr. Tanveer Ahmed for and behalf of the Respondents in the instant matter.

10. During the hearing the Authorized Representative argued that the information required by the Commission, did not pertain to the business of insurer and therefore does not fall under the ambit of Section 61 read with Section 2(xxvii) of the Ordinance. He insisted that the Commission under this provision of the Ordinance, can only direct the insurer to supply the information relating to insurance business. He further maintained that as per the term "insurance" defined in the Ordinance, it is the business of entering into and carrying out policies or contracts, where an insurer, in consideration of premium, promises to make payment on the happening of the event specified in the contract. The Authorized Representative further argued that penal provision under Section 156 of the Ordinance is not attracted under the instant matter.

11. The Show Cause Notice was based on the fact that the Company had failed to provide the requisite information to Commission under Section 61 of the Insurance Ordinance in the matter of queries related to Annual Audited Accounts for the period ended December 31, 2016. All information sought by the Commission pertained to the business of the insurer. As the Company failed to submit response to the Commission despite multiple reminders, therefore, the Commission issued notice to the Company under Section 61 of the Ordinance. The Company also failed to comply with the notice issued under Section 61 of the Ordinance, therefore, Show Cause Notice dated April 11, 2018 was issued to the Respondents. It is pertinent to note that response to the Commission's examination letter was submitted on May 7, 2018 i.e. subsequent to the Show Cause Notice dated April 11, 2018 as evident from the reply of the Company submitted in response to Show Cause Notice.



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12. Moreover, the Authorized Representative has argued that the information required by the Commission does not fall under the ambit of Section 61 read with Section 2(xxvii) of the Ordinance. Definitions of "insurance" and "insurer" as provided in the Ordinance are given below:-

(xxvii) "insurance" means the business of entering into and carrying out policies or contracts, by whatever name called, whereby, in consideration of a premium received, a person promises to make payment to another person contingent upon the happening of an event, specified in the contract, on the happening of which the second-named person suffers loss, and includes reinsurance and retrocession:

Provided that a contract of life insurance shall be deemed to be a contract of insurance notwithstanding that it may not comply with the definition set out in this clause;

(xxxi) "insurer" means:

(i) any company or other body corporate carrying on the business of insurance, which is a company or other body corporate incorporated under any law for the time being in force in Pakistan; and

(ii) any body corporate incorporated under the law of any jurisdiction outside Pakistan carrying on insurance business which carries on that business in Pakistan.

13. Moreover, Section 61 of the Ordinance requires that:

"Power of Commission to call for information and access.- (1) The Commission may by notice in writing direct any insurer to supply the Commission, within such period as the notice may specify, with any information relating to its insurance business which the Commission may reasonably require. (bold and underline for emphasis)

14. While the Ordinance provides the definition of insurance, Section 61 explicitly states that the Commission may seek any information relating to insurance business from the insurer. The examination letter dated October 17, 2017 sought clarification/ explanation from the Company relating to its insurance business. Contents of the letter are reproduced below:-

"The offsite review of annual audited accounts and regulatory returns for the year ended December 31, 2016 (the "Accounts") of PICIC Insurance Limited (the "Company") resulted into the following observations, which need clarification/ explanation alongwith the supporting documents:

- i. Copy of Management Letter issued by external auditors and the management response thereto along with copy of the Cover Letter/ Board Letter issued by external auditors.*
- ii. Calculations/ working may be provided on the Liability Adequacy Test as required in the para 15 of the IFRS-4 alongwith calculations of impairment loss, if any, on*



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the reinsurance assets as per requirement of para 20 of the IFRS-4. Moreover, those terms and conditions of insurance contracts that have a material effect on the amount, timing and uncertainty of the insurer's future cash flows, are also required to be disclosed as required under para 39 of the IFRS-4.

- iii. *Company has not provided the Claim Development table in the Accounts, which need to be furnished.*
 - iv. *Update on steps have been taken for removal of auditor's observation regarding minimum solvency requirement. Moreover, provide the complete detail and status of Merger with Crescent Star Insurance Limited / Crescent Star Foods (Pvt) Ltd.*
 - v. *Comments and update on instances of non-compliances with the requirements of the Code of Corporate Governance for Insurer 2016 highlighted by statutory auditor.*
 - vi. *Party-wise age analysis of the balances provided in 'Annexure A.*
 - vii. *The Company has not submitted the 'Valuation Report on the Estimation of IBNR claims' as required vide clause 4 of SEC Guidelines for IBNR (Circular 9 of 2016 dated March 9, 2016).*
 - viii. *The Company has not submitted 'Mandatory submission of Investment out of Provident Fund Trust as for the period ended December 31, 2016, as required by Employees' Provident Fund (Investment in Listed Securities) Rules, 2016 – SRO. 770 (I)/2016 dated, August 17, 2016.*
 - ix. *The Company has not submitted the website compliance certificate for year ended December 31, 2016. Moreover, the signed copy of Accounts needs also to be provided. Moreover, provide the signed copy of the Accounts.*
2. *You are required to furnish your reply within 7 days from the date of this letter. The aforementioned information / documents are also required to be submitted through email to Shahid.Iaved@secp.gov.pk in editable format."*

15. Upon perusal of the above letter, I have reached to the conclusion that the information sought by the Commission was related to the insurance business. Therefore, the Commission may direct the insurer to supply the information sought within the specified time. Therefore, submission/argument of the Respondents in this regard is not tenable.

16. Although, the Company has submitted response on May 7, 2018, the Respondents failed to submit information to the Commission despite issuance of multiple letters / reminders and subsequent direction dated July 11, 2017 under Section 61 of the Ordinance until the date of the Show Cause Notice.

17. 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/or other legal references, I am of the view that the default



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of Section 61 of the Ordinance is established. Therefore, the fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents i.e. the Company, its CEO and Directors.

18. 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.”

19. 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, the Directors were required to ensure compliance with provisions of the Ordinance. Furthermore, the Directors should have responded to the directions issued to the Company under Section 61 of the Ordinance. The Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Section 61 of the Ordinance.

20. 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 fine, take a lenient view and warn the Respondents to ensure full compliance with the Ordinance, Rules, Regulations and directives of the Commission in future.

21. 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.

Tahir Mahmood
Commissioner (Insurance)

