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INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director (Enforcement)

In the matter of

M/s. Premier Insurance Limited

Show Cause Notice No. and Date : ID/Enf/Premier/2019/389 Dated February 01, 2019

Date of Hearing: April 23, 2019

Attended By: 1. Mr. Rashid Sadiq
Authorized Representative
2. Mr. Zeeshan Sattar
Authorized Representative & Company Secretary
Premier Insurance Limited

Date of Order: May 13, 2019

ORDER

Under Regulation 16(1)(a) of the Accounting Regulations for Non-Life Insurance part B of the Securities and Exchange Commission (Insurance) Rules, 2002, Regulation 3(1)(a)(B)(iii), (iv), (vi) & Regulation 3(1)(b)(ii) of the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2017 and Section 134(3) of the Companies Act, 2017 read with Section 134(12) of the Companies Act, 2017 and Section 156 of the Insurance Ordinance, 2000

.....

This Order shall dispose of the proceedings initiated against M/s. Premier Insurance Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Regulation 16(1)(a) of the Accounting Regulations for Non-Life Insurance part B of the Securities and Exchange Commission (Insurance) Rules, 2002, (the "Accounting Regulations"), Regulation 3(1)(a)(B)(iii), (iv), (vi) & Regulation 3(1)(b)(ii) of the Companies (Investment in Associated Companies or Associated Undertakings) Regulations, 2017 (the "2017 Regulations") and Section 134(3)¹ of the Companies Act, 2017 (the "Act") read with Section 134(12)² of the Act and Section 156 of the Insurance Ordinance, 2000 (the "Ordinance"). The Company and its Directors shall be referred to as the "Respondents" hereinafter.

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¹ Section 160(1)(b) of the Companies Ordinance, 1984

² Section 160(8) of the Companies Ordinance, 1984



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
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2. The Company is registered with the Securities and Exchange Commission of Pakistan (the "Commission") under the Ordinance to carry on non-life / general insurance business in Pakistan.

3. The Commission initiated inspection of the Company vide Order dated January 30, 2018 under Section 59A of the Ordinance, which was concluded by the inspection team on October 26, 2018 by submitting the final inspection report. The inspection team observed the following violations of the provisions of the Accounting Regulations, the 2017 Regulations, the Act and the Ordinance:-

- i. The statutory auditors of the Company mentioned a decline of Rs. 56.5 million as 'other than temporary' in certain scrips of 'Available-for-Sale (AFS)' investment in quoted shares. The Company did not record the impairment and therefore, the statutory auditors qualified their opinion on the financial statements for the year ended December 31, 2017. The impact of this decline if fully taken into account may turn the Company into insolvent, besides hitting its accumulated losses and assets by the same amount. Following figures were observed in the annual accounts and regulatory returns of the Company for the year ended December 31, 2017:-

| | Rupees in million |
|--|-------------------|
| Admissible assets as of December 31, 2017 | 2,569.9 |
| Liabilities as of December 31, 2017 | 2,367.9 |
| Margin of admissible assets over liabilities | 202.0 |
| Impairment recommended by the statutory auditor | 56.5 |
| Margin if impairment recommended by the auditor is accounted for | 145.5 |

- ii. Furthermore, notice of 65th AGM of the Company held on April 29, 2017 as attached with the annual audited accounts for the year ended December 31, 2016, did not contain the statement setting out all material facts concerning special business i.e. investment in associated companies or associated undertakings of the Company as required under Section 134(3) of the Act.

- iii. Investment in the equity of the following associated undertakings were authorized:

| S. No. | Name of Company | Amount of investment approved in FY' 2017 (Rs. in '000s) | Amount Utilized to date (Rs. in '000s) | Further Investment to be made in FY-2018 (Rs. in '000s) | Maximum Amount after approval in FY-2018 (Rs. in '000s) |
|--------|--|---|---|--|--|
| 1 | Crescent Cotton Mills Limited | 90,000 | 1,050 | 1,450 | 2,500 |
| 2 | Crescent Textile Mills Limited | 80,000 | 16,858 | 8,142 | 25,000 |
| 3 | Shams Textile Mills Limited | 60,000 | 6,694 | 18,306 | 25,000 |
| 4 | Suraj Cotton Mills Limited | 70,000 | 93,832 | 106,168 | 200,000 |
| 5 | First Equity Modaraba | 75,000 | 27,799 | 12,201 | 40,000 |
| 6 | Shakarganj Mills Limited | 90,000 | 475 | 1,024 | 1,500 |
| 7 | Crescent Steel & Allied Products Limited | 100,000 | 23,409 | 76,591 | 100,000 |
| 8 | Crescent Jute Products Limited | 100,000 | - | - | - |
| 9 | Crescent Fibers Limited | 100,000 | 848 | 4,152 | 5,000 |
| | Total | 765,000 | 170,964 | 228,035 | 399,000 |



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- iv. The statement filed by the Company under Section 134(3) of the Act concerning special business of investment in associated undertakings as annexed with notice of 66th AGM of the Company held on April 30, 2018, did not contain the details required under Section 199 of the Act regarding investment made in unquoted Crescent Powertec and Novelty Enterprises (Pvt.) Ltd. Moreover, the Company did not maintain register required under Regulation 7 of the related regulations.
- v. Statement filed under Section 134(3) of the Act concerning the special business of investment in associated undertaking annexed with notice of 66th AGM of the Company held on April 30, 2018 as attached with the annual audited accounts for 2017 did not contain the followings details as required under the 2017 Regulations with respect to investment made in its quoted associated undertakings:
- a. Sources of the funds from which the investments were made required under Regulation 3(1)(b)(iii) of the 2017 Regulations.
- b. Performance review of the investment made/ already made in associated undertakings as Rs. 276.56 million were invested in associated undertakings as of December 31, 2016 as required under Regulation 3(1)(b)(vi) of the 2017 Regulations.
- c. Salient features of the agreement(s), if any, with associated company or associated undertaking were not mentioned with regards to the proposed investment. This was required under Clause 3(1)(b)(iv) of the 2017 Regulations.
- vi. It was observed in the followings two cases that the average cost per share in 2017 exceeded current and preceding twelve weeks weighted average market price. Details are as follows:

| Scripts | Avg. Cost (Rs.) | Market Price (Rs.) |
|-------------------------|-----------------|--------------------|
| First Equity Modaraba | 5.82 | 4.5 |
| Crescent Steel & Allied | 159.79 | 145.5 |

- vii. As per statement filed under Section 134(3) of the Act, the approved limit of investment in Suraj Cotton Mills Limited was Rs. 70.00 million, however investment in the said scrip was Rs. 93.83 million as on December 31, 2017. This resulted in a breach of limit by Rs. 23.83 million. Though the Company subsequently enhanced the said limit, however, the Company did not comply on the date of reporting i.e. December 31, 2017.

4. Therefore, it appeared that the Company *prima facie* did not comply with the provisions of Regulation 16(1)(a) of the Accounting Regulations, Regulation 3(1)(a)(B)(iii), (iv), (vi) & Regulation 3(1)(b)(ii) of the 2017 Regulations, Section

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134(3) of the Act, for which the Respondents are liable to be penalized under Section 134(12) of the Act and/ or Section 156 of the Ordinance.

5. Regulation 16(1)(a) of the Accounting Regulations states that:

"16. Investments and Investment Properties: (1) For the purpose of all statements prepared under these regulations, and for the purpose of S34 (1) of the Insurance Ordinance 2000:

(a) Available for sale investments shall be stated at the lower of cost or market value (market value being taken as lower if the fall is other than temporary)..."

6. Regulations 3(1)(a)(B)(iii), (iv) and (vi) of the 2017 Regulations state as follows:

Regulation 3(1)(a)(B)(iii) of the 2017 Regulations

"3. Information to be disclosed to members. (1) The company shall disclose following information in the statement annexed to the notice, pursuant to sub-section (3) of section 134 of the Act, of a general meeting called for considering investment decision under section 199 of the Act-...

(B) General disclosures:-...

(iii) sources of funds to be utilized for investment and where the investment is intended to be made using borrowed funds...."

Regulation 3(1)(a)(B)(iv) of the 2017 Regulations

"(iv) Salient features of the agreement(s), if any, with associated company or associated undertaking with regards to the proposed investment."

Regulation 3(1)(a)(B)(vi) of the 2017 Regulations

"(vi) In case any investment in associated company or associated undertaking has already been made, the performance review of such investment including complete information/justification for any impairment or write offs."

7. Regulation 3(1)(b)(ii) of the 2017 Regulations states that:

"(b) In case of equity investment, following disclosures in addition to those provided under clause (a) of sub-regulation (1) of regulation 3 shall be made,-

....

(ii) In case the purchase price is higher than market value in case of listed securities and fair value in case of unlisted securities, justification thereof;..."

8. Section 134(3) of the Act provides that:

"Where any special business is to be transacted at a general meeting, there shall be annexed to the notice of the meeting a statement setting out all material facts

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concerning such business, including, in particular, the nature and extent of the interest, if any, therein of every director, whether directly or indirectly, and, where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the document may be inspected, shall be specified in the statement."

9. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/Premier/2019/389 dated February 01, 2019 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Section 134(12) of the Act and/ or Section 156 of the Ordinance should not be imposed on them for the aforementioned alleged contraventions of the law.

10. Thereafter, the Company vide letter dated March 04, 2019 submitted the reply in respect of the aforesaid SCN, which is summarized below:

"

- i. ... it is to be noted firstly that the SCN is being issued after issue of the Insurance Rules, 2017 dated 09 February, 2017 (hereinafter the '2017 Rules') which has repealed the Insurance Rules, 2002 and SEC (Insurance) Rules, 2002 (hereinafter the 'Repealed Rules'). It is respectfully submitted that while the 2017 Rules seeks to allow the continuation of certain pending processes initiated under the Repealed Rules, as enumerated in Rule 64 of the 2017 Rules, the matter at hand does not fall within the definitions for any of the processes provided for therein.
- ii. Secondly, there is no provision providing for the processes or authority for issuance of show cause notices under the Repealed Rules.
- iii. It is, therefore, respectfully submitted that without the operational element of a notification specifying initiation of proceedings under the Repealed Rules and in the absence of any express provisions allowing for initiation and conduct of proceedings under the Repealed Rules, the issue of SCN for perceived violations of the Repealed Rules does not appear to be lawful.
- iv. With regard to paragraph 6(i) and as adequately explained in the Directors' Report, the referred Repealed Rules state that the available for sale securities have to be marked to market if the fall is other than temporary. The Board reviewed the entire portfolio for consideration of impairment, according to its already approved impairment policy, and decided that the fall is temporary, as all the scrips are fundamentally solid blue-chip entities and the fall in the market price is because of political unrest in the country which was expected to be over within next year for which the Company has the holding power. The Company has earned dividend and capital gain in these scrips during the period of investment. The per share average cost of these scrips is lower than the highest market value in 2017, an evidence that the fall is temporary, therefore, no



impairment was required to be booked. The difference in the market and cost is disclosed in the accounts for information as required by the law. A remarkable recovery of values by more than 12% in the next quarter ending March 31, 2018, confirms the Board's stance of temporary fall.

The Board had disagreed with the stance of auditors based on the above-mentioned facts. It is noteworthy that the external auditors suggested the list of a few scrips, without providing any basic logic/legal clarity of their selection.

- v. With regards to paragraph 6(ii), it is submitted that the statement under Section 160(l)(b) of the Repealed Companies Ordinance, 1984 could not, though inadvertently, be printed with the notice of Annual General Meeting in the annual report.*
- vi. With regards to para 6 (iv) it is respectfully submitted that the investments in Crescent Powertec and Novelty Enterprises were not made pursuant to the notice of 66th annual general meeting as alleged in the SCN. These investments were made many years ago, after complying with the requirements of applicable law at the relevant point in time. No new investment is made in the year 2016 and, therefore, no detail was required to be provided in the notice of 66th annual general meeting.*
- vii. With regards to paragraph 6 (v) it is submitted that the investments were made from the company's own funds. The company, however, could not provide performance review which was unintentional and inadvertent. The agreements with associated companies are not required as shares are purchased from the market.*
- viii. With regards to paragraph 6 (vi), it is submitted that excess investment in Suraj Cotton was the result of realizing capital gains, however, the approval of the same was taken subsequently.
...."*

11. The Commission vide letter dated April 08, 2019 scheduled the hearing on April 18, 2019, however, the Authorized Representative of the Respondents vide email dated April 15, 2018 requested to adjourn the hearing to April 23, 2019. The aforesaid request was acceded to and the Commission vide letter dated April 16, 2019 re-scheduled the hearing on April 23, 2019 at the Head Office of the Commission in Islamabad.

12. The hearing of April 23, 2019 was attended by the Authorized Representatives of the Respondents namely, Mr. Rashid Sadiq and Mr. Zeeshan Sattar (Company Secretary) in person at the Commission's Head Office.

13. During the hearing, the Authorized Representatives reiterated their comments submitted vide letter dated March 04, 2019 and submitted that the



auditor's view point regarding impairment of certain 'Available for Sale (AFS)' investments in quoted shares was not logical and the Company with the strength of a holding capacity decided not to record any impairment as it considered the fall in the value of scrips as temporary and attributed the same to the political turmoil in the country. The Authorized Representatives of the Respondents also informed that a recovery in value of these scrips by more than 12% in the quarter ending March 31, 2018 was made, which confirmed the Board's stance of temporary fall in value of the said scrips.

14. With regards to the non-disclosure of special business in the notice of 65th AGM as annexed with the annual audited accounts for the year ended December 31, 2016, the Authorized Representatives admitted the non-compliance with Section 134(3) of the Act and assured of full compliance in the future. However, in the matter of non-disclosure of special business concerning investment in associated undertakings in the notice of 66th AGM of the Company, they contended that the investments in Crescent Powertec and Novelty Enterprises (Pvt.) Ltd. were made many years ago after seeking the requisite approval at that point in time and that no new investment was made in these entities, which could have required re-approval.

15. While discussing the matter related to source of funds with which investments were made in its quoted associated undertakings, the Authorized Representatives of the Respondents stated that the Company invested in the aforesaid companies from its own funds, however no specific details were provided in this regard. Further, they admitted that the Company failed to provide the performance review of the investments in associated undertakings. As regards the provision of salient features of the agreements between the Company and its associated undertakings, the Authorized Representatives reiterated that shares were purchased directly from the market and the Company did not make any direct transaction with any of its associated undertakings.

16. In addition to the above, the Authorized Representatives argued over the matter of difference between average cost per share of certain entities in 2017 and that of preceding twelve weeks weighted average market price. They maintained that taking average cost of shares is not a precise approach due to persistent market fluctuations and average cost can be higher after the purchase as it is an average of various transactions at various rates over a span of time. They also contended that the Company never made any investment at a price higher than the market price at the time of transactions and the same could be verified from the past data (i.e. date) when the said shares were purchased.

17. The matter related to investments in associated undertakings in excess of the approved limits was also discussed during the hearing. The Authorized Representatives of the Respondents submitted that the excess investment in Suraj Cotton Mills Limited was a result of realizing capital gains, however, subsequent approval was taken in respect of enhancing the approved limit for investment.

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18. The Company was required to record impairment in the AFS investments as recommended by the auditors, taking into consideration the decline of Rs. 56.5 million and should have devised a practical approach to deal with said decline instead of only attributing it to the political turmoil in the country. On the other hand, the methodology of the auditors to conduct impairment testing was that it took three cut-off dates i.e. 31st December 2016, 31st December 2017 and 6th April 2018 and compared pricing of the shares on those three specific dates with that of cost per share. Then the auditor shortlisted those scrips where the market price on all three above mentioned cut off dates was below cost per share and therefore recommended impairment against such scrips. The auditor did not recommend any impairment in the scrips where the market value at any of the three cut-off dates exceeded from the cost of that specific scrip. On the basis of the same methodology, the auditor had recommended the impairment of Rs. 56.5 million decline being 'other than temporary' as referred to in Regulation 16(1)(a) of the Accounting Regulations. Therefore, the Company failed to provide any such logical reason for not recording the above-referred impairment as that of the auditor.

19. Further, the Company also failed to comply with the Section 134(3) of the Act while not attaching the statement mentioning all material facts concerning special business of the Company to the notice of 65th AGM held on April 29, 2017 and admitted the said violation in its comments to the inspection team. As regards the investments in unquoted associated undertakings of the Company namely, Crescent Powertec and Novelty Enterprises (Pvt.) Limited, the Company could neither back up its claim of compliance with relevant provisions of law at the time of investment nor did it provide the dates of investment of respective shares to the inspection team as well as during the hearing.

20. Moreover, the Company's claim regarding purchase of shares of its associated companies or associated undertakings directly from the market is not supported by any documentary evidence. In addition, the Company could not substantiate its statement with any documented proofs in respect of purchase price never being higher than the market price of at least two scrips namely, First Equity Modaraba and Crescent Steel & Allied, whereby it could show the dates of transactions, purchase price and market value of the scrip either to the inspection team or during the hearing. Lastly, the Company was required to invest within the approved limit of investment in any of its associated undertakings, however, the investment amount observed in the annual audited accounts for the year ended December 31, 2017 was in excess of the aforesaid approved limit. The Company's stance that this excess was a result of realization of capital gains, marking the investment to market is not tenable as marking the investment to market is not allowed under Regulation 16(1)(a) of the Accounting Regulations that requires AFS investments to be carried at lower of cost and market value.

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21. Prior to proceeding further, I find it relevant to address the issue raised by the Authorized Representative during the hearing held on April 23, 2019 regarding applicability of the repealed Insurance Rules, 2002 and the SEC (Insurance) Rules, 2002 (the "Repealed Rules") and the jurisdiction and delegation of powers to adjudicate under the Repealed Rules. The attention of the Respondents is invited towards the Section 6 of the General Clauses Act, 1897, as per which repeal shall not affect the previous operation of the enactment so repealed. It also provides that repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. It further provides that such repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid. Section 6 of the General Clauses Act, 1897 is reproduced below:

"6. Effect of repeal – Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not- Revive anything not in force or existing at the time at which the repeal takes effect, or Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid."

22. Further, protection is also provided by the Constitution of Pakistan, 1973 under Article 264, which while providing effect of repeal, has provided that any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the law had not been repealed. Article 264 is reproduced below:-

"264. Effect or repeal of laws.- Where a law is repealed or is deemed to have been repealed, by, under, or by virtue of the Constitution, the repeal shall not except as otherwise provided in the constitution

- (a) revive anything not in force or existing at the time at which the repeal takes effect;*
- (b) affect the previous operation of the law or anything duly done or suffered under the law;*
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law;*
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law; or*
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;*

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and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the law had not been repealed. "

23. 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 violations of Regulation 16(1)(a) of the Accounting Regulations, Regulation 3(1)(a)(B)(iii), (iv), (vi) & Regulation 3(1)(b)(ii) of the 2017 Regulations, Section 134(3) of the Act, are clearly established, for which the Respondents may be penalized in terms of Section 134(12) of the Act and/or Section 156 of the Ordinance.

24. Section 134(12) of the Act states that:

"(12) Any contravention or default in complying with requirement of this section shall be an offence liable –

- (a) in case of a listed company, to a penalty of level 3 on the standard scale; and*
- (b) in case of any other company, to a penalty of level 2 on the standard scale."*

25. Penalty of level 3 is provided under Section 479 of the Act, which states that:

"479. Adjudication of offences and standard scale of penalty. – (1) There shall be a standard scale of penalty for offences under this Act, which shall be known as – "the standard scale".

2) The standard scale consists of –

| <i>Level</i> | <i>Limit of penalty</i> | <i>Per day penalty during which the default continues</i> |
|--------------|----------------------------|---|
| <i>1</i> | <i>Upto Rs.25,000</i> | <i>Upto Rs.500</i> |
| <i>2</i> | <i>Upto Rs.500,000</i> | <i>Upto Rs.1,000</i> |
| <i>3</i> | <i>Upto Rs.100 million</i> | <i>Upto Rs.500,000</i> |

26. 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."

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27. In exercise of the power conferred on me under Section 134(12) of the Act and Section 156 of the Ordinance, I, take a lenient view and do not impose fine on Board of Directors of the Company. However, I impose a fine of Rs. 100,000/- (Rupees One Hundred Thousand only) on the Company under the said provision of the Ordinance, due to the non-compliances, as mentioned hereinabove. Furthermore, the Respondents are hereby warned and directed to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

28. Hence, the Company is hereby directed to deposit the applicable fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty (30) days from the date of this Order and furnish receipted vouchers issued in the name of the Commission for information and record.

29. 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.

Hasnat Ahmad

Director/ HoD (Enforcement)

