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SECP
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/2019/386 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 15, 2019

ORDER

Under Section 178(6) of the Companies Act, 2017, Clause (xxxviii) & (xliii) of the Code of Corporate Governance for Insurers, 2016 and Section 45(1) read with 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 Section 178(6)¹ of the Companies Act, 2017 (the "Act"), Clause xxxviii and Clause xliii of the Code of Corporate Governance for Insurers, 2016 (the "Code") and Section 45(1) of the Insurance Ordinance, 2000 (the "Ordinance"). The Company and its Directors shall be referred to as the "Respondents" hereinafter.

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 Code, the Act and the Ordinance:

- i. Review of the minutes of 82nd, 84th, 86th, 88th, 89th and 91st meeting of the Board of Directors revealed that the minutes of the said meetings did not make clear the significant changes and developments that took place in

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the Company, rather the major changes were mentioned with no adequate details. Number of paras were repeatedly mentioned in minutes of different meetings with no change and apparently minutes of the board meetings were not being prepared with due care in violation of Section 178 of the Act.

- ii. Furthermore, copies of the committees' record made available to the inspection team revealed that minutes of the Reinsurance and Coinsurance Committee were compiled in a mechanical way by the secretary of the said committee with no thoughtful input from the members. The minutes shed no light on the issues, challenges and opportunities being encountered by the Company; no discussion, no question and no suggestion, which were ever made during the meetings, were mentioned in the minutes. This practice of the Company and failure to document role of the committee was in violation of Clauses (xlirii) and (xxxviii) of the Code.
- iii. The statutory auditors included a qualification in their audit report about material unreconciled differences between the subsidiary ledgers (registers) and the general ledger maintained by the Company, aggregating to a net amount of Rs.134.56 million mainly in outstanding claims and reinsurance recoveries against outstanding claims and also highlighted it in their cover letter for the year 2017. Furthermore, the auditors expressed their inability to obtain sufficient appropriate evidence as to rights and obligations and its impact on the financial statements of the Company. Auditors also mentioned existence of such material unreconciled differences in their cover letter for the year 2016. The Company, in response to the query from the inspection team, stated as "*These differences are mainly related to legacy issues and due to change in accounting software.*" The Company failed to explain how these 'legacy issues' were translated to such unreconciled material differences and also did not make efforts to reconcile those differences in violation of Section 45(1) of the Ordinance.
- iv. The Company also failed to provide data sought by the inspection team regarding Claim files and Reinsurance files relating to the years 2016 and 2017.

4. Therefore, it appeared that the Company contravened the provisions of Section 178 of the Act, Clause (xxxviii) & Clause (xlirii) of the Code and Section 45(1) of the Ordinance, for which the Respondents are liable to be penalized under Section 178(6) of the Act and/or Section 156 of the Ordinance.

5. Clause (xxxviii) and Clause (xlirii) of the Code state that:

Clause (xxxviii) of the Code

"(xxxviii) Reinsurance and Coinsurance Committee- The committee shall develop the policy for effecting reinsurance, not inconsistent with the relevant provisions of the

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Insurance Ordinance, 2000, and shall ensure that adequate reinsurance arrangements are made for the business of the insurer. It shall peruse the proposed reinsurance arrangements prior to their execution, review the arrangements from time to time, and subject to the consent of the participating reinsurers, make appropriate adjustments to the arrangements in the light of the market development. It shall also assess the effectiveness of the reinsurance programme for the future reference."

Clause (xliii) of the Code

"(xliii) All committees (whether management committees or the Board committees) shall meet at least once in every quarter...The proceedings of the meetings shall be recorded and kept at the insurer's head office. Each committee of an insurer shall appoint a secretary of the Committee. The secretary shall circulate minutes of meeting of the relevant Committee to all members, directors and, if necessary, the Chief Financial Officer within a fortnight."

6. Section 45(1) of the Ordinance states as follows:

"Every insurer, in respect of all insurance business transacted by him, and in the case of an insurer incorporated in a jurisdiction outside Pakistan in respect of the insurance business transacted by the insurer in Pakistan, shall maintain proper books and records."

7. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/Premier/2019/386 dated February 01, 2019 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Section 178(6) of the Act and/or Section 156 of the Ordinance should not be imposed on them for the aforementioned alleged contraventions of the law.

8. Thereafter, the Company Secretary vide letter dated March 04, 2019 submitted the reply on behalf of the Respondents in respect of the aforesaid SCN, which is summarized below:

"

i. *The company is maintaining the information as per requirement of the applicable law as mentioned hereinabove and the minutes of the Board meetings / resolutions are prepared with due care in accordance with the stipulated requirements. While there is always a room for further improvements, this should not be considered as violation of the applicable law. Kindly appreciate that the Company is keeping the record as follows:*

- (a) Resolutions of the board passed by circulation;*
- (b) Minutes of all proceedings of the board meeting or committees of directors along with names of participants to be entered in properly maintained books;*

It may also be noted that the record of minutes if purporting to be authenticated by the Chairman of the meeting or by the Chairman of the next meeting shall be the evidence of the proceedings at the meeting. Further Section 45(1) as reproduced in

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paragraph 4 of the SCN refers to the books and records relating to insurance business transacted by the insurer.

In light of the above, the Company is in full compliance of the applicable provisions and, therefore, the allegation that minutes are not being prepared with due care is not agreed and it would be unfair to take any action on the pretext that minutes were not prepared with due care.

- ii. With regards to paragraph 5(ii), it is to be appreciate that the Company is maintaining the information as per requirement of the applicable law/Code. While there is always a room for further improvements, this should not be considered as violation of the applicable law.*
- iii. With regards to paragraph 5(iii) it is submitted that the issues that went unreconciled in the 2017 financial statements were legacy in the meaning that improper handing/taking over of responsibilities among staff and records during 2016 and 2017 and due change in accounting software. This led to delay in company's practice of reconciling between ledgers and registers and timely resolving any issues which come to knowledge being data entry/recording errors or accounting/ERP processing glitches. Being un-reconciled at some point in time does not mean it is un-reconcilable. With this notion management maintained that all differences will be reconciled and does not require any accounting adjustment to profits or receivables/payables at 2017 level. The company is making effort in this regard and able to identify the core reasons for such differences and will sort out this issue.*
- iv. With regards to paragraph 5 (iv), it is submitted that the delay in provision of data was due to compilation of huge information demanded by the inspection team relating to previous year, however, the same including all reinsurance files had been provided to the inspection team. If still any further information/documents are required, kindly let us know.
....."*

9. The Commission, vide letter dated April 08, 2019, scheduled the hearing on April 18, 2019, however the Company vide its email dated April 15, 2018 requested to adjourn the hearing to April 23, 2019. The request of the Respondents 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.

10. 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.

11. Brief proceedings of the hearing of April 23, 2019 were as follows;

- i. During the hearing, the Authorized Representatives reiterated the comments submitted vide the Respondents' reply to SCN dated March 04, 2019. With regards to recording the minutes of the meetings, they maintained that the*

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minutes of meetings were recorded in an orderly manner and included all the material information that needed to be disclosed. They further argued that minutes of the Board meetings/resolutions are primarily required to reflect the decisions taken during the said meeting and/or the dissent (if any) made to any of the decisions taken therein and do not require the details of discussions to be mentioned. The Authorized Representatives also submitted that minutes of the Board meetings/ resolutions are subsequently endorsed by the Chairman of the Company, which further validates their authenticity and the validity of the minutes of the Board meeting/resolution signed by the Chairman of a company can only be undone by the court of law. They denied the fact that minutes of the Board meetings/ resolutions were not being recorded with due care.

- ii. With regards to the issue pertaining to recording of minutes of the Reinsurance and Co-insurance committees, the Authorized Representatives asserted that the Company is maintaining information as per requirement of the applicable laws. However, they admitted that the Company would implement the suggestions and recommendations made by the inspection team in respect of recording the committees' minutes in future.
- iii. While discussing the matter related to unreconciled differences between the subsidiary and the general ledgers, the Authorized Representatives explained that these differences arose due to improper handing/taking over of responsibilities among staff and records during 2016 and 2017 and due to change in accounting software of the Company, which led to delay in the Company's practice of reconciling between its ledgers and registers. They further argued that the data being un-reconciled at any point in time did not mean that it could not be reconciled. The Authorized Representatives apprised during the hearing that the aforesaid unreconciled data has now been reconciled and that the Company is taking its system on real time basis.
- iv. In the matter regarding non-maintenance of proper record and non-provision of data to the inspection team by the Company, the Authorized Representative argued that the Company provided all the data sought by inspection team either on time or with some delay. They argued that the SCN should have mentioned specific instances where the data is claimed to be not provided by the Company, however there is no mention of any such instance in the SCN.

12. The Company was required to make available all the record sought by the inspection team whereas it either did not provide any data or provided the same with ample delay. Therefore, the Company's stance that all the record was provided to the inspection team and the delay that occurred was due to compilation of huge data is not tenable. It is pertinent to mention that the inspection team highlighted many instances whereby the Company either delayed the provision of requisite data or did not provide the data at all on one pretext or the other. Despite many reminders, data in response to the Information Request Memorandum (IRM) trickled down until as much late as conclusion of the inspection. Two crucially important matters related to providing party-wise break up of nine (9) balance sheet items and details of all write-offs during

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last five years remained unaddressed. Likewise, out of sample of claim files numbering forty (40) that were conveyed vide inspection team's email dated April 25, 2018 to the Company, large number of claim files including the files of Mobile Sales, Muller and Phips were not delivered to the inspection team on the excuse that the record was in Lahore.

13. Furthermore, another such instance included claim file of 'Noori Abad Power Vol. I', which was repeatedly sought by the inspection team and was not made available by the Company on the excuse that "it appeared to have been lost". Other examples include non-provision of six (6) sample reinsurance files relating to the year 2016 and 2017 despite various reminders by the inspection team. During the inspection, the Company could not manage to provide data as requested by the inspection team, despite having four (04) months from the date of receiving the IRM. Then again, the Company failed to produce the data, despite reminders given to the Company during one-month period of the onsite inspection. Such failure of the Company regarding provision of data showed either its unwillingness to share the data or that it had no proper record in place, which constitutes violation of Section 45 of the Ordinance.

14. In addition, the Company was required to record the minutes of the Board's meetings as prescribed under the Code, which is a mandatory requirement, as the said record is a source of critical information that can be used for future references. However, the inspection team observed that the minutes of the Board's meetings were recorded in a monotonous manner with incessant repetition of certain paragraphs. Moreover, it was also observed that certain critical information was missing from the minutes of the Board meetings such as appointment of new Chief Financial Officer and Company Secretary as well as that of Chief Executive Officer. In the afore cited instances, neither the reasons for such significant changes were mentioned therein nor the fact whether requisite approvals were sought for respective appointments. In short, the minutes of the Board meetings were not recorded with due care as required under the applicable provisions of the Code.

15. The copies of the minutes recorded for reinsurance and co-insurance committees shared with the inspection team revealed that they were compiled in a standard format and did not contain information regarding the proceedings that took place in the meetings. The inspection team witnessed that the secretary of the said committee prepared the minutes in a mechanical manner lacking any thoughtful input from the respective members, which raises the concern whether the said meetings took place in real or the minutes were recorded for the sake of formality only. The minutes also shed no light on the issues and challenges being countered by the Company and various phrases were repetitively used therein.

16. Another issue that raised the concern for inspection team was existence of material unreconciled differences between general and subsidiary ledger. The Company upon query of the inspection team attributed these differences to the legacy issues and change in accounting software of the Company. The Company also failed to explain what the afore stated legacy issues were and the steps that were being undertaken by the Company to resolve them as well as the time frame within which

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those were expected to be resolved. Further, the Company's claim that no adjustment to profits or receivables/ payables in 2017 was needed due to the aforesaid unreconciled material differences was discretionary and presented without any justification or calculation.

17. In a nutshell, the Company was required to comply with all the aforesaid applicable provisions of the law relating to proper recording of minutes of its Board and Committee meetings, reconciliation of differences between its general and subsidiary ledgers and maintenance /provision of all data as demanded by the inspection team.

18. 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 Act, the Ordinance, the Rules made thereunder and/or other legal references. I am of the view that violations of Section 178 of the Act, Clause (xxxviii) & Clause (xliii) of the Code and Section 45(1) of the Ordinance, are clearly established, for which the Respondents may be penalized in terms of Section 178(6) of the Act and/or Section 156 of the Ordinance.

19. Section 178(6) of the Act states that:

(6) Any contravention or default in complying with requirement of this section shall be an offence liable to a penalty of level 1 on the standard scale.

20. Penalty of 'Level 1' as provided under Section 479 of the Act states as:

"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>
1	Upto Rs.25,000	Upto Rs.500
2	Upto Rs.500,000	Upto Rs.1,000
3	Upto Rs.100 million	Upto Rs.500,000
....."		

21. 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

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an additional fine which may extend to ten thousand rupees for every day during which the default continues."

22. Upon assurance by the Respondents in terms of recording of minutes of Board and Committees meetings in a prudent / logical manner, I, take a lenient view and do not impose fine on the Respondents under Section 178(6) of the Act for violation of relevant clauses of the Code. However, due to gravity of the violation in terms of non-maintenance and non-provision of data to the inspection team, the Respondents may be penalized under Section 156 of the Ordinance.

23. In exercise of the power conferred on me under 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. 200,000/- (Rupees Two Hundred Thousands 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 Act, Ordinance, Rules, Regulations and Directives of the Commission in future.

24. 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.

25. 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)

