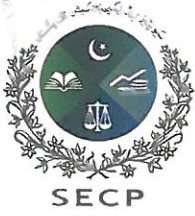


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SECP

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/2019/387 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 10, 2019

ORDER

Under Section 166 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 166 read with Section 156 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 that the Company had underwritten many risks apparently owned by the public sector organizations i.e. Employees Old-Age Benefits Institute (EOBI), Gwadar Industrial Estate Development Authority (GIEDA), National Development Complex, Sindh Nooriabad Power Co., Bank of Punjab and Sindh Bank in violation of Section 166(3) of the Ordinance.

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4. Therefore, the Company *prima facie* failed to comply with the provisions of Section 166(3) of the Ordinance, for which the Respondents are liable to be penalized under Section 156 of the Ordinance.

5. Section 166(3) of the Ordinance state that:

"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..."

6. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/Premier/2019/387 dated February 01, 2019 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.

7. Thereafter, the Company vide letter dated March 04, 2019 submitted reply to the aforesaid SCN, which is summarized below:

"

- i. *the responsibility to place all insurance business related to public property with the NICL, lies with the insured, which is unambiguously clear from the provisions of Section 166 (3) of the Ordinance....*

...

Therefore, the above is a positive obligation on any insured, responsible for public property, to seek to only be insured by the NICL and this responsibility cannot be escaped. In most of the cases mentioned in your SCN, the insured has sought insurance through floating tenders leading to the presumption that the requisite exemption has been sought from the Federal Government or that the NICL has issued a letter confirming that it cannot enter into a contract for such insurance as per the provisions of Section 166(5) of the Ordinance, it is the obligation of Insured that before floating tenders they should have got NOC from NICL. It is not the obligation of the Company under Section 166 of the Ordinance to apply and seek NOC from NICL as only the Insured is the person that initiates the process for placement of its insurance business. Whether the property being insured is 'public property' is specific knowledge that the insured would be in possession of to the exclusion of the insurer and, therefore, whether there has been any violation of the provisions of Section 166(3) of the Ordinance would be in the knowledge of the Insured - the one in possession of the public property and not in the knowledge of the Insurer who has responded to a tender with the legitimate expectation that all regulatory and legal requirements have been complied with. The Commission is required to initiate proceedings against the person who insures as well as against the person who places insurance business, therefore, Insured must be impleaded in the present proceedings as they are necessary parties to inquire why they had placed insurance by floating tenders without obtaining NOC and the present

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proceedings would be contrary to the requirements of Section 166 of the Ordinance if any decision is taken in the absence of EOBI, GIEDA, NDC, SNPC and BOP, the necessary parties for the purposes of present proceedings.

- ii. *The law does not envisage the imposition of fines as a consequence of insurance of 'public property', instead as per Section 10 of the National Insurance Corporation Act, 1976, the insurance policy becomes void for non-compliance.*

"10. Public property to be insured with the Corporation only.- (1) All insurance business relating to any public property or to any risk or liability appertaining to any public property, shall be placed with the Corporation and with no other insurer:...

(2) Any policy of insurance taken or issued in contravention of subsection (1) shall be void:--"

Additionally, no rules have been framed pursuant to Section 166(7) of the Ordinance for carrying out the purposes of this section and no rules are available under the National Insurance Corporation Act, 1976 for the purposes of Section 10 thereof that may be applied here. Section 166 of the Ordinance was intended to lapse upon the occurrence of one of the events listed in its subsection (9). However, no notification has been issued even after the lapse of 17 years since promulgation of the Ordinance...."

8. 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.

9. 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.

10. During the hearing, the Authorized Representatives reiterated their comments submitted vide letter dated March 04, 2019 and apprised that the Company was unaware of the fact that the entities seeking insurance of the public properties through floating tenders in the market were doing so without obtaining exemption from the Federal Government or "No Objection Certificate (NOC)" from the National Insurance Company Limited (NICL). The Authorized Representatives of the Company asserted that the said authorities must also be made parties to the existing proceedings as they also violated the law by offering public properties for insurance to insurers other than NICL without any Exemption / NOC in place.

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11. The Authorized Representatives of the Company further argued that if the Company intended to specifically underwrite the public property risks, it would have done so by underwriting various properties instead of a few ones, which formed an insignificant portion of the Company's business. However, they assured that the Company would adopt a prudent approach in future in complying with Section 166 of the Ordinance.

12. The written comments and arguments of the Respondents have been reviewed. The Respondents claimed to have underwritten the health insurance of Virtual University and Pakistan Institute of Legislative Development and Transparency with NOC from NICL in place. However, as per the inspection report, no such NOC was found attached therein. It also reflects that the Respondents were aware of the fact that aforesaid insured risks fall under the category of 'public property' and NOC from NICL is required to underwrite public property risks.

13. It is pertinent to mention 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 the Federal Government, a Provisional Government or a local authority or a statutory corporation or 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, 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.

14. Furthermore, the Respondents also underwrote the motor insurance of EOBI with the understanding that it was an autonomous body and it was not covered under the definition of public property. However, as per website of the EOBI, it falls under the Ministry of Overseas Pakistanis and Human Resource Development, Government of Pakistan. Similarly, excerpt from the 'Gwadar Industrial Estates Development Authority Act 2009 Baluchistan Act II of 2009 states as "the government shall by, notification in the official gazette establish an authority to be called 'Gwadar Industrial Estates Development Authority'. Further, authority shall be a body corporate...". This excerpt clearly shows that GIEDA is a Government established body maintaining public assets and hence the Respondents violated the provisions of Section 166 of the Ordinance by insuring the assets of GIEDA.

15. In an identical instance, the Respondents also insured the assets of 'National Development Complex (NDC)' due to the reason that it had called tender from all the insurance companies for vehicle insurance policies. However, the NDC is a defense and aerospace contractor and is a division under the National Engineering

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and Scientific Commission (NESCOM) and Ministry of Defense. It is important to note that invitation of tender by any public entity does not absolve the Company from complying with the requirements of Section 166 of the Ordinance.

16. Nonetheless, it is pertinent to mention here that the Company and its Directors were strictly warned in a similar case vide Order dated April 02, 2015 whereby the Respondents insured the assets of Institute of Chartered Accountants of Pakistan and Virtual University in violation of Section 166 of the Ordinance. The concluding para of the Order dated April 02, 2015 as referred to above states as:

"In exercise of the powers conferred on me under Section 156 of the Ordinance, I, take a lenient view by not imposing the penalty as provided under the said section of the Ordinance, 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 any 'public property'. The Respondents are further directed to note that in case of similar non-compliance in future, the Commission shall take severe action. Moreover, the Respondents are hereby directed to observe strict compliance of the provisions of the Ordinance, Rules and Regulations in future."

17. Keeping in view the submission made by the Respondents and its Authorized Representatives, I find it pertinent to mention here that it was the prime responsibility of the Company to evaluate whether it was underwriting a 'public property' risk or otherwise and instead of relying on assumptions that the insured would have obtained exemption from the Federal Government or NOC from NICL, the Company should have checked it by demanding the said exemption / NOC from the insured, prior to entering into contract of insurance for public property risks. Moreover, the Company should also have adopted a prudent approach in deciding whether the insured properties fell under the definition of 'public property' or not in light of the previous warning issued to it vide Order dated April 02, 2015. However, the Company did not follow any such approach and proceeded to underwrite the 'public property' risks in violation of Section 166(3) of the Ordinance.

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 Ordinance, the Rules made thereunder and/or other legal references. I am of the view that violations of Section 166 of the Ordinance, are clearly established, for which the Respondents may be penalized in terms of Section 156 of the Ordinance.

19. 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

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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."

20. 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 Thousand only) on the Company under the said provision of the Ordinance, due to the non-compliances, as mentioned hereinabove. The Respondents are hereby again warned and directed to take immediate steps to discontinue issuing policies in respect of any 'public property' risks and are further directed to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

21. 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.

22. 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)

