



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/2019/388 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 Rule 34, Rule 35 and Rule 36 of the Insurance Rules, 2017 and Section 97,
Section 98(1) & (2) 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 Rule 34, Rule 35 and Rule 36 of the Insurance Rules, 2017 (the "Rules") and Section 97, Section 98(1) & (2) 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 the following violations of the Rules and the Ordinance:

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- i. The register of agents as provided by the Company had following fields missing as required under Rule 35 of the Rules read with Section 98(1) of the Ordinance:

For natural persons	For a body corporate	For a firm
The date of birth of the agent.	Description of the business (other than insurance agent)	Description of the business (other than insurance agent)
Date of Appointment	The name(s) of shareholders holding more than 10% shares	Name of the partners in firm
In some cases, addresses and/or CNIC	In some cases, date of appointment / Registration.	In some cases, date of appointment / Registration.

- ii. The Company did not obtain annual declarations from its agents. In most of the cases, the inspection team observed that declarations were only obtained from the agents in the first year and thereafter no annual declarations were obtained as required under Rule 36(1) of the Rules read with Section 98(2) of the Ordinance.
- iii. The Company did not require its agents to complete the Agent Foundation Course (AFC) in violation of Rule 34 of the Rules read with Section 97 of Ordinance.
- iv. The Company did not have a formal documented policy regarding sales commission payable to its agents as the Company paid commission to its agents at different rates within the same class.
- v. Few companies i.e. Crescent Steel & Allied, Crescent Group/Business, Equity Textile and Suraj Textile obtained commission from the Company as agent against their own policies in violation of the Rules.

4. Therefore, the Company *prima facie* contravened the provisions of Rule 34, Rule 35 and Rule 36 of the Rules and Section 97, Section 98(1) & (2) of the Ordinance, for which the Respondents are liable to be penalized under Section 156 of the Ordinance.

5. Rule 34¹ of the Rules states that:

“Qualifications required of insurance agents.- For the purposes of section 97 of the Ordinance, the following shall be the prescribed qualifications, namely:- ...

(b) for persons entering into agency contracts after commencement of the Ordinance, the minimum qualification shall be Matriculate or Secondary School Certificate, and in the case of a natural person, that person, or in the case of a body corporate, each director, or in the case of a partnership, each partner, shall have the said qualification, and -

¹ Rule 26 of the Securities and Exchange Commission (Insurance) Rules, 2002

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(i) agents operating in the non-life insurance business shall be required to complete the foundation course of the Pakistan Insurance Institute or a foundation course of thirty days' duration, to be organized in-house by the concerned insurance company, subject to that insurance company having prior approval of the course syllabus by the Commission..."

6. Rule 35² of the Rules states that:

"Registration of insurance agents.- Every insurer shall, in the register required to be kept by it for the purposes of sub-section (1) of section 98 of the Ordinance, maintain the following details in respect of each insurance agent, namely:

(a) For a natural person:

- (i) his name;
- (ii) his date of birth;
- (iii) his residential address;
- (iv) his postal address (if different);
- (v) the names of persons employed by the insurance agent for the purpose of carrying out the business of an insurance agent;
- (vi) the date of appointment and his registration; and
- (vii) such other particulars as may be specified by the Commission.

(b) For a body corporate:

- (i) its name;
- (ii) the address of its registered office;
- (iii) its postal address (if different);
- (iv) a description of the business carried on by it (other than insurance agent);
- (v) the names of shareholders holding more than ten per cent of the issued share capital;
- (vi) the date of appointment and its registration; and
- (vii) such other particulars as may be specified by the Commission.

(c) For a firm:

- (i) its name;
- (ii) the address of its principal office;
- (iii) its postal address (if different);
- (iv) a description of the business carried on by it (other than insurance agent);
- (v) the names of the partners in the firm; and
- (vi) the date of appointment and its registration."

7. Rule 36³ of the Rules provides that:

"Statement and declaration required of insurance agents.- (1) Every insurer shall, before appointing an insurance agent, and thereafter at intervals of not less

² Rule 11 of the Insurance Rules, 2002

³ Rule 12 of the Insurance Rules, 2002.



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than twelve months, obtain from every insurance agent continuing to be appointed by it a statement of the information required under Rule 35 to be held by it in its register.

(2) Every statement obtained under sub-rule (1) shall be accompanied by a declaration by the insurance agent stating that –

- (a) the information given by him in accordance with sub-rule (1) is complete and correct;
- (b) he has complied with the requirements of the Ordinance and the rules made thereunder concerning the required qualifications of an agent;
- (c) he is (in the case of an existing agent) engaged or (in the case of an agent seeking appointment) proposes to engage bona fide in obtaining insurance policies for the insurer to whom the declaration is made;
- (d) he undertakes to comply, and (in the case of an existing agent) declares that he has during the previous twelve months complied with the relevant provisions of the Ordinance and the rules made thereunder concerning the conduct of an agent; and
- (e) he, or, in the case of a body corporate, any director of the body corporate, or officer of the body corporate engaging in the business of insurance agency, or, in the case of a firm, any partner of the firm, or officer of the firm engaging in the business of insurance agency, is not disqualified from acting as an insurance agent by virtue of:-
 - (i) being a minor;
 - (ii) having been found of unsound mind by a Court of competent jurisdiction;
 - (iii) having been found guilty, within the five years preceding the date of the declaration, of criminal misappropriation or criminal breach of trust, cheating or forgery or an abetment of or attempt to commit any such offence by a Court of competent jurisdiction;
 - (iv) having served any custodial sentence imposed by a Court of competent jurisdiction, ending within the five years preceding the date of the declaration;
 - (v) having been found guilty by a Court of competent jurisdiction of any offence involving insurance; or
 - (vi) having been otherwise declared as disqualified by the Insurance Tribunal, other than for a term which had expired prior to the date of the declaration..."

8. Section 97 of the Ordinance states that:

"Minimum qualifications for agents.- The Commission may prescribe minimum qualifications for persons appointed as insurance agents, which may extend to

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educational requirements, experience in the industry and membership of an approved trade or professional organisation."

9. Section 98(1) & 98(2) of the Ordinance state that:

"Insurer to maintain register of agents.- (1) An insurer shall maintain a register of all agents employed by the insurer, containing such particulars as may be prescribed...

(2) Prior to appointing a person as its agent, and at intervals of not more than twelve months thereafter during the time the person continues to act as its agent, an insurer shall obtain from that person in such form as may be prescribed, a declaration in respect of the following matters:

- (a) the information provided by him for inclusion in the register referred to in subsection (1) is complete and correct;*
- (b) he has complied with the requirements of the Ordinance concerning the qualifications of agents; and*
- (c) such other matters as may be prescribed."*

10. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/Premier/2019/388 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.

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

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- i. With regard to paragraph 7(i), it is respectfully submitted that the Company is compliant as all the fields have been mentioned on the register of agents.*
- ii. With regards to paragraph 7(ii), it is submitted that the Company invariably obtains annual declarations, however, there were some missing declarations which have not been collected.*
- iii. With regard to paragraph 7(iii), it is submitted that no agent was appointed who was not qualified.*
- iv. With regards to para 7 (iv), the Company has developed a written policy on Commission which is attached hereto.*
- v. With regards to paragraph 7 (v) it is submitted that the Equity Textiles, Suraj Cotton and Crescent Group except Crescent Steel have not obtained commission from the Company..."*

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12. 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.

13. 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.

14. During the hearing, the Authorized Representatives reiterated their comments submitted vide letter dated March 04, 2019 and maintained that the Company has compiled the required data and corrective actions have been taken against the observations of the inspection team. They also maintained that the Company did not appoint a single agent without having completed the Agent Foundation Course (AFC) and therefore all agents on the Board of the Company have duly completed the AFC course.

15. As regards the issue of non-existence of any formal policy for payment of commission to the agents, the Authorized Representatives admitted that the Company did not have any such policy in the past, however the same has now been developed and submitted to the Commission vide response dated March 04, 2019. Furthermore, the Respondents admitted vide their response dated March 04, 2019 that none of the companies mentioned in the SCN except Crescent Steel obtained commission from the Company. However, it is pertinent to mention here that other companies namely, Equity Textiles, Suraj Cotton and Crescent Group were taking commission from the Company in the name of various agencies. The Authorized Representatives assured that the Company is ensuring strict compliance with all the aforesaid provisions of law at present and will also ensure full adherence to these provision of the law in future along with a request to take a lenient view in the matter.

16. Nevertheless, it is evident that the Company failed to provide the requisite documents as demanded by the inspection team and lacked compliance thereof. Moreover, the Respondents also agreed to various observations regarding non-compliances as highlighted by the inspection team and noted the same for future compliance.

17. In brief, the Company was required to maintain a proper register of agents with all the fields duly filled in as required under Rule 35 of the Rules, however, the same was not produced to the inspection team. The management of the Company, while admitting the non-compliance thereof noted the same for future compliance. Moreover, the Company was also required to obtain annual declarations from all of its agents in order to comply with Rule 36(1) of the Rules, however the inspection team observed that the Company only obtained such declaration from its agents in the first year. The admission of said violation by the

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Company and assurance for compliance in future does not absolve it from its responsibility to abide by the law at all previous junctures of time.

18. Furthermore, it was also mandatory for the Company to require all its agents to complete the Agents Foundation Course (AFC) whereas the findings of the inspection report revealed that the Company could not produce any AFC certificates of its agents as against its claim that no agent has been appointed by the Company without having AFC course. It is pertinent to mention that AFC certificates were not even produced at the time of hearing by the Authorized Representatives in order to validate their claim.

19. In addition to the aforesaid facts, the Company essentially needed to have a formal documented policy with regards to payment of sales commission to its agents in order to maintain a consistent approach for payment mechanism to all of its agents. However, no such policy was in place as per the inspection report and the Company admitted the observation to not having any such formally developed policy. As per the inspection report, the Company was paying commission to its corporate agents against their own policies, which not only distorts the nature of transaction but also cause the recording of the related premium as well as commission to go against the accounting principle of substance over form. The Company agreed that the commission was being paid to the placeholders in such cases directly through their own agency or through any other agency name. Therefore, it is evident that the commission paid in all such cases is nothing more than a premium discount being paid to such companies and recording of related premium and commission is also against the accounting principle of substance over form.

20. 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 Rule 34, Rule 35 and Rule 36 of the Rules and Section 97, Section 98(1) & (2) of the Ordinance, are clearly established, for which the Respondents may be penalized in terms of Section 156 of the Ordinance.

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

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22. 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. 50,000/- (Rupees Fifty 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.

23. 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.

24. 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)

