

Before Tahir Mahmood, Commissioner (Insurance)

In the matter of

The Co-operative Insurance Society of Pakistan Limited

Show Cause Notice No. and Issue Date: ID/Enf/Cooperative/2018/14569
dated April 20, 2018

Date of Hearing: October 17, 2018

Attended By:

1. Mr. Fateh Khan Niazi
Chief Executive Officer
The Co-operative Insurance Society
of Pakistan Ltd.
2. Mr. M. Shoaib A. Waseem
Financial Advisor
The Co-operative Insurance Society
of Pakistan Ltd.
3. Mr. M. Hanif Khan Niazi
Legal Advisor

Date of Order: October 31, 2018

ORDER

Under Section 48 read with Section 156 of the Insurance Ordinance, 2000

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This Order shall dispose of the proceedings initiated against M/s. The Co-operative Insurance Society of Pakistan Limited (the "Society"), its Chief Executive and Directors for alleged contravention of Section 48 of the Insurance Ordinance, 2000 (the "Ordinance"). The Society and its Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Society is registered under the Ordinance to carry on the business of non-life insurance in Pakistan.

3. While reviewing the audited financial statements and regulatory returns for the year ended December 31, 2016, it was observed that the external auditor of the Society was not on the approved list of auditors for insurers notified by the Securities and Exchange Commission of Pakistan (the "Commission") through Circular 5 of 2014 as per requirement of Section 48 of the Ordinance.

4. The Society, vide letter dated October 17, 2017, was advised to provide its comments regarding appointment of statutory auditor. The Society, vide letter dated October 24, 2017, replied as under:-



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 2 -

"The External Auditor M/s Malik & Company Chartered Accountants were appointed by the Registrar, Cooperatives, Punjab, Lahore which is the appointing authority for external auditors; we do not have powers to appoint our external auditors."

5. As per Section 48 of the Ordinance, every insurer is required to appoint an auditor who shall be approved by the Commission irrespective of type/class of the Company. In view of the above, it appeared to the Commission that the Society has failed to meet the mandatory requirements of Section 48 of the Ordinance.

6. Section 48 of the Ordinance states that:

"Audit.- (1) Every insurer shall appoint an auditor who shall be:

- (a) approved by the Commission as qualified to perform audits of insurance companies; and*
- (b) authorised under the Companies Ordinance to perform audits of public companies.*

(2) The auditor shall in respect of the statements required to be provided pursuant to subsection (1) of section 46 express an opinion as to whether:

- (a) the statements accurately reflect the books and records of the company;*
- (b) the company has maintained proper books and records;*
- (c) the statements present fairly the state of affairs of the company as at the balance date and the result of the company for the financial year ended on that date;*
- (d) in the case of a life insurer, the apportionment required to be performed under section 17 has been performed in accordance with the advice of the appointed actuary; and*
- (e) the statements have been prepared in accordance with this Ordinance.*

(3) The opinion required to be expressed by an auditor under sub-section (2) shall be expressed in writing and a copy of the opinion shall be attached by the insurer to the statements to which it relates, when those statements are delivered to the Commission.

(4) The auditor shall in the audit of all such accounts and statements have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by sections 255, 256, 257 and 260 of the Companies Ordinance, 1984."

7. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/Cooperative/2018/14569 dated April 20, 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.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 3 -

8. Thereafter, the Society vide letter dated April 30, 2018 submitted its response, which is reproduced hereunder:

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8. *That our society is registered under the Cooperative Societies Act, 1925 and is regulated by the Registrar, Cooperatives, Punjab, Lahore.*

9. *That the society is not empowered under its bylaws and the Cooperative Societies Act ibid to appoint its auditors. The relevant provisions of the Act and the bylaws of the society are reproduced herewith as ready reference:-*

"Section 22 Audit (1) The Registrar shall be himself or by some person authorized by him in writing by general or special order in this behalf audit, the accounts of every society once at least every year. "

18 (vii) "To appoint auditors and determine their remuneration subject to the approval of the Registrar. "

10. *That the external auditors M/s Malik & Co. Chartered Accountants were appointed by the Registrar, Cooperatives, Punjab, Lahore (copy of the appointment letter attached).*

11. *That the society has not made any willful default of the provisions of section 48 of the Insurance Ordinance, 2000.*

12. *That the society cannot be penalized for the omission of the act not under control of it.*

13. *That the society is a compliant entity and has not made any default, whatsoever.*

14. *That the society has also issued request letter to the Registrar Office, Cooperatives, Punjab, Lahore to appoint the auditors from the panel of auditors maintained by SECP (copy enclosed).*

It is therefore prayed that no adverse action be taken against the society as no will full default has been made and it cannot be penalized for the omission of act not under its control.

....."

9. The Commission, vide its notice no. ID/Enf/Cooperative/2018/15301 dated June 11, 2018, scheduled the hearing for June 21, 2018 at the Head Office of the Commission. However, the Society vide letter dated June 12, 2018 requested to reschedule the aforesaid hearing to another date. Accordingly, the hearing was rescheduled on October 17, 2018, intimated to the Society vide letter dated October 4, 2018.

10. The hearing was attended by the Authorized Representatives namely Mr. Fateh Khan Niazi, Chief Executive Officer of the Society, Mr. Shoaib Ahmed Waseem,



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 4 -

Financial Advisor of the Society and Mr. Muhammad Hanif Khan Niazi, legal advisor of the Society, representing all the Respondents before the Commission in the instant matter.

11. During the hearing the Representatives argued that the Society is of the view that the auditor approval is given by the Commission on completion of audit/ submission of accounts & regulatory returns. The Representatives were clarified that the Commission has notified the list of approved auditors under Section 48 of the Ordinance, from which the Society can appoint the auditor. The Representatives apprised the Commission that the Society is registered under the Cooperative Societies Act, 1925 and is regulated by the Registrar, Cooperatives, Punjab, Lahore and therefore the appointment of external auditor is done by the Registrar and not by the Society. The Representatives requested the Commission to take lenient view in the matter.

12. As per Section 48(1) of the Ordinance, every insurer shall appoint an auditor who shall be approved by the Commission as qualified to perform audits of insurance companies. In this regard, the Commission has approved a list of auditors for insurers notified through Circular 5 of 2014 as per requirement of Section 48 of the Ordinance. This Circular was applicable on the Society from its effective date. However, it was observed during the examination of the Annual and Audited Accounts and Regulatory Returns of the Society for the year ended December 31, 2016, the external auditor of the Society was not on the approved list of auditors as prescribed under aforementioned circular above. Accordingly, the Society did not comply with Section 48 of the Ordinance by appointing auditors other than the approved list of auditors.

13. The Society has maintained that it does not have mandate to appoint its auditor as the appointment is done by the Registrar, Cooperatives, Punjab, Lahore, which is the appointing authority for external auditors. It was also apprised by the Respondents that the society has also requested the Registrar Office, Cooperatives, Punjab, Lahore to appoint the auditors from the list of auditors approved by the Commission. Nonetheless, it is noted that the Society has communicated this information to the Registrar subsequent to issuance of the Show Cause Notice, while the circular was issued on February 14, 2014. The circular was issued to all the insurers including the Society. The Society should have immediately informed the respective Registrar concerning the requirement of auditor applicable on it through the aforesaid circular. It appears that the Society has been neglectful in ensuring compliance with Section 48 of the Ordinance.

14. 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 violation of Section 48 of the Ordinance is clearly established, for which the Respondents may be penalized in terms of Section 156 of the Ordinance.

15. Section 156 of the Ordinance provides that:



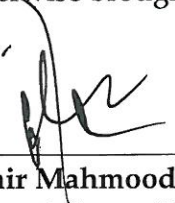
SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 5 -

"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."

16. In exercise of the power conferred on me under Section 156 of the Ordinance I, instead of imposing a 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.

17. 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)

