



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Atlas Insurance Limited

Show Cause Notice Issue Date: March 28, 2014

Date of Hearing: May 5, 2014

Attended By: Mr. Muhammad Afzal
Company Secretary
M/s Atlas Insurance Limited

Date of Order: July 10, 2014

ORDER

(Under Regulation 16(1)(a) of Part B of Annexure II of the Securities and Exchange Commission (Insurance) Rules, 2002 and Section 46 Read with Section 156 of Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s Atlas Insurance Limited (the "Company") for not complying with the provisions of Regulation 16(1)(a) of Part B of Annexure II of the Securities and Exchange Commission (Insurance) Rules, 2002 (the "Regulations") of the Insurance Ordinance, 2000 (the "Ordinance").

Background Facts

2. The Company has filed its Half-Yearly Accounts as on June 30, 2012 (the "Accounts") in pursuance of the provisions of Section 245 of the Companies Ordinance, 1984. Amongst other requirements, these Accounts were required to be made in compliance of the requirements of the Regulations, which have been prescribed under Section 46 of the Ordinance.

3. Regulation 16(1)(a) of the Regulations lays down the requirement for recording and reporting the available-for-sale investments as:

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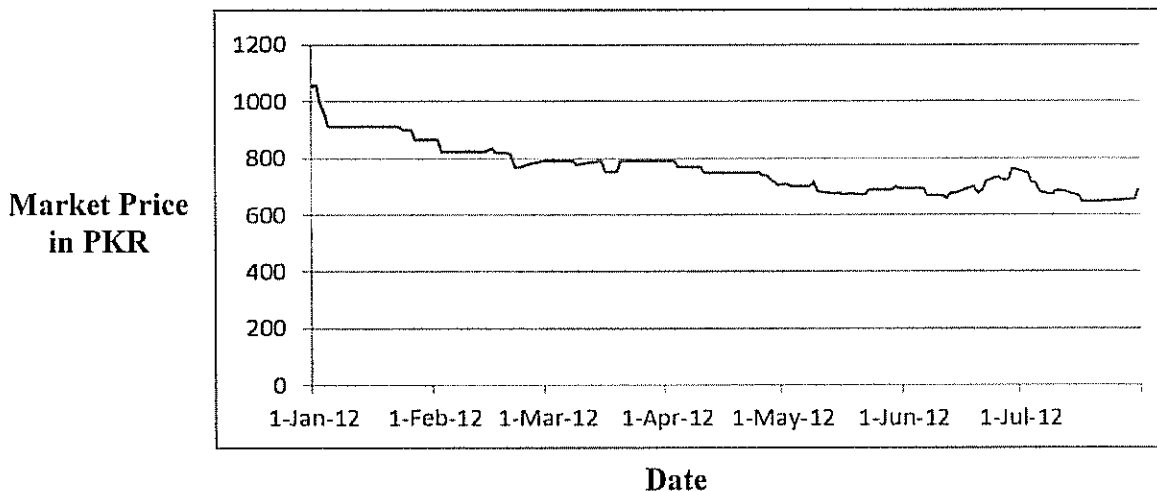


"Investment and Investment Properties.- For the purpose of all statements prepared under these regulations, and for the purpose of S34(1) of the Insurance Ordinance 2000.

*(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). In the case of fixed income investments redeemable at a given date and where the cost is different from the redemption value, such difference shall be amortized uniformly between the date of acquisition and the date of maturity in determining —cost. The market value of investments at the balance sheet date shall be disclosed, as shall the effect of non-compliance with IAS 39;
..."*

4. The Accounts reveal that the Company has made an investment in the shares of M/s Siemens Pakistan, average cost of which amounted to Rs. 1,151.25 per share as on June 30, 2012. The Company had stated its investment in the shares of M/s Siemens Pakistan at cost (Rs. 1,151.25 per share) on the face of its balance sheet made up as on June 30, 2012, thereby reaching an aggregate book value of Rs. 1,496,625/-.

5. The share price history of M/s Siemens Pakistan during the period from January 1, 2012 to July 31, 2012 (with date on x-axis and share price on y-axis) has been as follows:



6. The share price history of M/s Siemens Pakistan given above shows that the share price of the said company has been well below the Company's book value per share of its investment in M/s Siemens Pakistan and which has been consistently declining during the period under consideration i.e. January 1, 2012 to June 30, 2012 and even till July 31, 2012, which makes it evident that the fall in the market value of the share of M/s Siemens Pakistan has been other than temporary.



7. In view of the foregoing paras of this Notice, it may be inferred that the decline in the price of the share of M/s Siemens Pakistan was not temporary, and accordingly, the Company was required to state the said investment at lower of cost or market value.

8. Hence, it appeared that the Company has not recorded the impairment loss on its investment in the shares of M/s Siemens Pakistan, in its financial statements as on June 30, 2012, which constitutes non-compliance of Regulation 16(1)(a) of the Regulations read with Section 46(1)(b) of the Ordinance.

Show Cause Notice

9. Accordingly, the Show Cause Notice was issued on March 28, 2014 under Regulation 16(1)(a) of the Regulations and Section 46(1)(b) Read with Section 156 of Ordinance to the Chief Executive and Directors of the Company, calling upon them to show cause as to why the penalty, as provided under Section 156 of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with provisions of Regulation 16(1)(a) of the Regulations.

Company's Response to the Show Cause Notice

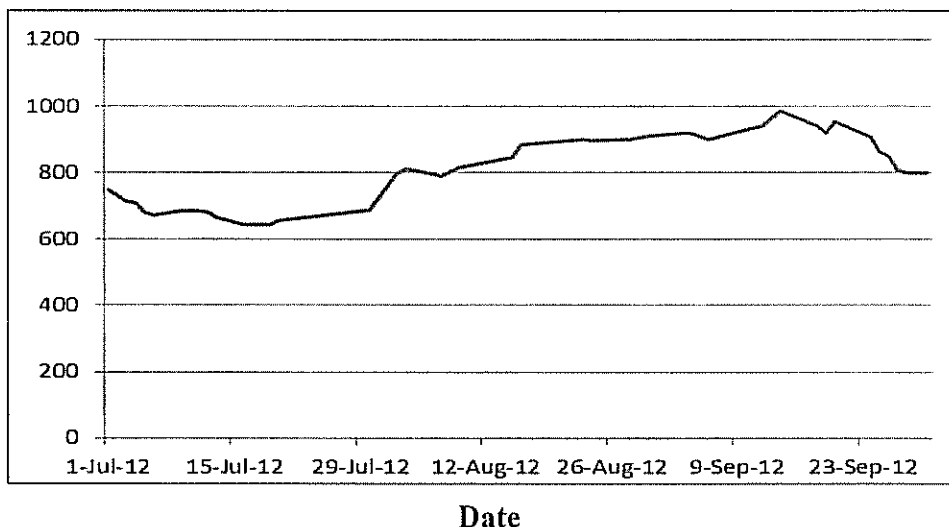
10. In response to the said Show Cause Notice, the Company, vide their letter no. AIL/SECP/1/2014 dated April 3, 2014, while stating that they intend to submit their written response by April 10, 2014 and also showed their intention to be heard in person or through their counsel in order to clarify the matter.

11. Subsequently, the Company has submitted their response, vide their letter no. AC/14/04/1633 dated April 7, 2014, in which the Company has placed adherence on the market price trend of the shares of Siemens Pakistan from July 2, 2012 to September 30, 2012. The Company states that during the period (July 2, 2012 to September 30, 2012), the share price improved from Rs. 800/- per share to around Rs. 900/- to Rs. 950/- per share, and also mentioned that the share recorded intra-day high of Rs. 1,002.73 per share on September 28, 2012. And, subsequent surge in the market price of that share led the Company to believe that fall in the share price was not of permanent nature for which impairment could have been recorded. Market price history of the shares of Siemens Pakistan from July 1, 2012 to September 30, 2012, as obtained from the website of the Karachi Stock Exchange has been as follows:

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Market Price
in PKR



The data further revealed that the share price of Siemens Pakistan witnessed an intra-day highest price of Rs. 1,002.73 on September 24, 2012, and not on September 28, 2012.

12. Moreover, the Company argued that "fall other than temporary" has not specifically been defined in the Ordinance, hence, the interpretation becomes a subjective and could vary from company to company.

13. The Company also stated that:

"...Company had holding of only 1,300 shares and financial impact of provision of Rs. 525,395 would have been hardly of any significance. It may not be out of place to mention here that Siemens paid 1,200% cash dividend for the year ended September 30, 2012

...Subsequently when the management thought, that now the fall in the market price could be other than temporary, it sold out the entire holding and recognized the loss..."

14. The Company further requested the Commission to take a lenient view of the matter as the amount is not material and decision was based on purely management judgment at the time, and showed their intention of being heard.

15. It would be pertinent to mention that the fall below the book value of the Company's investment in the shares of Siemens Pakistan could easily be interpreted as other than temporary, because of the fact that right from January 1, 2012 to June 30, 2012 and from July 1, 2012 to September 30, 2012, the market price of the shares of Siemens Pakistan has never reached the book value of these shares at which the Company has kept on the face of its balance sheet of June 30, 2012. Thus, the fall in price below the book value was of permanent in nature, at least as on June 30, 2012.



Hearings of the Case & Subsequent Developments

16. The hearing in the matter was scheduled for May 5, 2014 at 11:30 a.m., which was communicated to the Company and its Directors via the Commission's hearing notices no. ID/Enf/Atlas/2014/19445 dated April 18, 2014.

17. Accordingly, the said hearing was attended by Mr. Muhammad Afzal, Company Secretary (who will be referred to as the "Representative" hereinafter).

18. During the course of hearing, the Representative reiterated the contents of their response to the Show Cause Notice i.e. the Company's letter no. AC/14/04/1633 dated April 7, 2014. However, the Representative further mentioned that the Company has disposed of 1,496,625 shares of Siemens Pakistan on May 10, 2013 and May 13, 2013, thereby incurring an aggregate loss of Rs. 643,649/- thereon, and in this regard, sale confirmation statement and a summary of this disposal were provided.

Consideration of Company's Submissions

19. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the Representative, Mr. Muhammad Afzal, Company Secretary, and have also referred to the provisions of the law, as mentioned hereinabove. I am of the view that there has been an established default of Regulation 16(1)(a) of the Regulations, as the Company was required to state their Available for Sales investments at lower of cost or market value in terms of the provisions of Regulation 16(1)(a) of the Regulations, which have been violated as the Company has stated its Available for Sale investments in the shares of Siemens Pakistan at cost and has not booked impairment in the book value of these investments, as the market price of these shares had fallen well below the cost or book value, which persisted for a considerably longer period of time i.e. right from January 1, 2012 to September 30, 2012. Thus, the fall in the market value of the said shares was other than temporary. However, if the market value of any such investments would have remained below the book value during the period from April 1, 2012 to July 31, 2012, considering the balance sheet date of June 30, 2012, the fall would have even then been considered as other than temporary.

20. However, before proceeding further, I find it relevant to discuss the duties of the Directors. The Directors, in addition to the day-to-day running of the Company and the management of its business, also have some 'fiduciary' duties i.e. duties held in trust and some wider duties imposed by statute and breach of these statutory duties will usually be a criminal offence, punishable by fine or imprisonment. Hence, the Directors are gauged against a higher standard of accountability which requires

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them to be vigilant and perform their duties with due care. In the instant case, however, the Directors have failed to perform their duties with due care and prudence. As the Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Regulation 16(1)(a) of the Regulations, as aforesaid, therefore, it could be legitimately inferred that the default was committed.

21. However, since the Company has disposed the investments under consideration back in May 2013 i.e. before the Show Cause Notice was issued on March 28, 2014, the amount involved was not quite material, the violation pertained to the balance sheet of half-year ended June 30, 2012, and that the Company has also requested the Commission to take lenient view, the violation can be taken as of low severity.

Conclusion

22. After carefully examining the arguments and studying the facts and findings of the case as mentioned in the above paras of this Order, the default of Regulation 16(1)(a) of the Regulations (i.e. Part B of Annexure II of the Securities and Exchange Commission (Insurance) Rules, 2002) is established. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed onto the Company and/or its Directors.

23. Section 156 of the Ordinance states 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, 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.”

Order

24. In exercise of the power conferred on me under Section 156 of the Ordinance, I, instead of imposing penalty, take a lenient view, and thus, condone the Company due to the following reasons:

- a. THAT the Company has disposed the investments under consideration back in May 2013 i.e. before the Show Cause Notice was issued on March 28, 2014;



- b. THAT the amount involved was not quite material;
- c. AND THAT the violation pertained to the balance sheet of half-year ended June 30, 2012 and not of any annual period.

Also, the Company is hereby issued a stern warning that in case of similar non-compliance in future a stronger action against the Company will be taken.

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 Chief Executive Officer of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Tariq Hussain
Director