



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Alpha Insurance Company Limited

Show Cause Notice Issue Date: December 18, 2013

Date of Hearings: February 26, 2014

Attended By:

1. Mr. Umair Khan
Managing Director / Chief Executive
2. Mr. Latif A. Choudhri
General Manager (Operations)

Date of Order: July 18, 2014

ORDER

(Under Section 166 read with Section 156 of the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s Alpha Insurance Company Limited (the "Company") for not complying with Section 166 read with Section 156 of the Insurance Ordinance, 2000 ("the Ordinance").

Background Facts

2. The relevant provision of Section 166 of the Ordinance state that:

"Insurance of public property.- (1) This section applies to direct nonlife insurance of public property.

(2) In this section –

(a) "Company" means the National Insurance Company Limited;

SECURITIES & EXCHANGE
COMMISSION OF PAKISTAN

Insurance Division, State Life Building-2
4th Floor, Wallace Road, Karachi, Pakistan

Tel: +92-21-32461053, +92-21-32465469 Fax: +92-21-32423248 Web: www.secp.gov.pk



(b) "public property" means:

(i) any property, movable or immovable, which belongs to, or the safety of which is the legal responsibility of, -

(A) the Federal Government, a Provincial Government or a local authority or statutory corporation; or

(B) 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; and

(ii) a project financed out of an external loan, or with external aid until it reaches:

(A) in the case of an industrial project, the stage at which it is capable of commencing normal production; and

(B) in the case of any other project, the stage at which it is capable of being put to the use for which it is intended; and

(c) "statutory corporation" means a body corporate, other than a company, established or set up by the Federal Government or a Provincial Government in pursuance of any law.

(3) 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:

Provided that marine, aviation and transport insurance relating to goods the import of which is financed out of an external loan, or with external aid, may, at the option of the importer, be placed with any insurer authorised to carry out such insurance business in the country giving the loan or aid.

(4) The Federal Government may -

(a) by order in writing exempt from compliance with subsection (3) any property or liability to which that subsection applies; or

(b) by notification in the official Gazette exclude from the application of sub-section (3) such property or liability as is specified in that notification.

(5) If the Company declares in writing that it is not able, by virtue of the operation of a provision of this Ordinance or for any other reason, to enter into a contract of insurance to which sub-section (3) refers, the property or liability which is the subject

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of that proposed contract of insurance shall be exempted from the provisions of sub-section (3) to the extent of the insurance proposed to be obtained by means of that contract of insurance.

(6) Any person who insures, and any insurer which accepts insurance of, any property or liability, knowing such insurance to be in contravention of sub-section (3), shall be guilty of an offence:

Provided that no person shall be in contravention of sub-section (3) by reason only of that sub-section becoming applicable to property or liability to which it was not applicable at the time that a contract of insurance in respect of that property or liability was taken out."

3. Onsite inspection of the Company was conducted in pursuance of the Commission's Inspection Order dated May 22, 2013 under Section 59A of the Ordinance, during the course of which, it was observed that the Company has underwritten risks related to assets that are owned / controlled / managed by public sector entities.

4. The following instances were observed where the public property was insured by the Company:

Insured Name	Policy Number	Policy Issue Date	Business Class	Gross Premium
State Life Insurance Corporation of Pakistan	2012/05/XXTPCDP00144	18/5/2012	Private Car (Comprehensive)	26,470
State Life Insurance Corporation of Pakistan	2012/10/XXTPCDP00348	31/10/2012	Private Car (Comprehensive)	51,175
Culture Department of Sindh	2012/06/CDTPCDP00086	22/06/2012	Private Car (Comprehensive)	21,148
Lasbella Industrial Estate Development Authority	2012/01/XXTPCD00019	20/01/2012	Private Car (Comprehensive)	31,404
Lasbella Industrial Estate Development Authority	2012/01/XXTPCDP00018	20/01/2012	Private Car (Comprehensive)	36,809

And, all of the above risks fall under the definition of public property as envisaged under Section 166 of the Ordinance.

5. The Company in its reply to the abovementioned observation stated that:

"Few vehicles of State Life and two other organizations were insured unknowingly and as a result of over-sight. State Life was trying to get exemption in terms of section 166(4) of Insurance Ordinance, 2000 and probably under the expectation that exemption would be granted these policies were issued. For future it will be ensured that such lapse does not take place."

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6. It was further noted that the Company has obtained insurance policy for its vehicles from the Company itself. And, it would be important to state that the said insurance coverage does not fall within the definition of 'Insurance Contract' given in International Financial Reporting Standard 4, which states that insurance contracts are those contracts under which the Company as insurer has accepted insurance risk from the insurance contract holder (the insured) by agreeing to compensate the insured.

7. IFRS-4 defines the 'Insurance Contracts' as follow:

Insurance contracts are those contracts under which the Company as insurer has accepted insurance risk from the insurance contract holder (the insured) by agreeing to compensate the insured....

8. The details of all such policies issued and related sum insured, premium written are as follows:

Sr.	Policy reference	Issue Date	Start date	Sum Insured	Gross Premium	Net Premium
1	2012/12/XXHGMDP00001	31/12/2012	1/1/2013	3,000,000	105,750	126,088
2	2012/12/XXTPCDP00425	14/12/2012	1/1/2013	10,200,000	259,521	306,000
3	2012/12/XXTPCDP00427	14/12/2012	1/1/2013	200,000	4,257	5,250
4	2012/12/XXTPCDP00429	14/12/2012	1/1/2013	90,000	2,182	2,700
5	2012/12/XXTPCDP00430	14/12/2012	1/1/2013	180,000	4,379	5,400
6	2012/12/XXTPCDP00431	14/12/2012	1/1/2013	300,000	7,309	9,000
7	2012/12/XXTPCDP00433	14/12/2012	1/1/2013	350,000	8,530	10,500
8	2012/12/XXTMCDP00435	14/12/2012	1/1/2013	122,000	7,431	9,150
9	2012/12/XXSCSDP00125	10/12/2012	31/12/2012	500,000	425	541
10	2012/12/XXSCIDP00126	10/12/2012	31/12/2012	1,000,000	170	230

9. The observation was taken up with the Company for seeking any comments / arguments of the Company before this observation could have been made part of the Onsite Inspection Report. Thus, in response to the above observation, the management has submitted the following:

"AICL has insured all its new vehicles with other insurance companies. The list is as follows

S.No.	Car Registration No. Make & Model	Insurance Company
1	AXQ-271 Toyota Corolla	NICL
2	AXQ-267 Toyota Corolla	NICL
3	AYE-494 Toyota Corolla	NICL
4	AZZ-793 Toyota Corolla	Atlas

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Quotation for insurance of Office equipment, furniture and fixtures has been obtained and matter is being placed before the competent authority to approve one of the quotation.

As to insuring its own vehicles, it is submitted that an old policy is continuing and will be discontinued from the next policy anniversary."

10. It is quite evident from the above-quoted response of the Company that still one of the new vehicles i.e. Toyota Corolla (having registration number AZZ-793) was insured with M/s Atlas Insurance Limited which is again a violation of Section 166 of the Ordinance.

11. In view of the foregoing paras hereof, it appeared to the Commission that the Company has repeatedly contravened the provisions of Section 166 of the Ordinance, for which the penal action as provided under Section 156 of the Ordinance may be taken against them.

Show Cause Notice

12. Accordingly, the Show Cause Notice was issued on December 18, 2013 under Section 166 read with Section 156 of the Ordinance to the Company, its Directors and the Chief Executive, 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 Section 166 of the Ordinance.

Company's Response to the Show Cause Notice

13. The Company, vide their letter dated January 20, 2014, submitted reply to the Show Cause Notice, whereby the Company stated that:

"...it is a law abiding corporate entity and any violation of law as mentioned in the show cause notice Ref: ID/Enf/Alpha/2013/18429 dated 18.12.2013 was unintentional and result of over-sight and merit lenient view. Few cases of insuring vehicles fall under category of "Public Property" happened due to expectancy that State Life would get Federal Government exemption in terms of section 166(4) of the Insurance Ordinance, 2000. Had the intention been otherwise, other vehicles of State Life, which are large in number, would also have been insured with Alpha.

Out of five policies mentioned in para 3 of the Notice, policies # 2012/05/XXTPCDP00144 and 2012/06/CDTPCDP00086 have not been renewed and are already expired. Policies issued to Lasbella Industrial Estate are going to expire on 18.01.2014 and will not be renewed. The other policy issued to State Life will expire on September, 2014 and will not be renewed thereafter.

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The policies stated in para 6 have been expired policies mentioned at serial No. 9 & 10 which will expire on 30.12.2012. These policies are not being renewed.

In view of the above, it is requested that a lenient view may please be taken and violation be condoned being unintentional..."

14. The above-quoted arguments of the Company appear to be fair and justified, as:

- a. The State Life Insurance Corporation of Pakistan, which is the parent body of the Company, has numerous vehicles, all of which fall under the definition of "Public Property" within the domain of Section 166 of the Ordinance, and if the Company had the intention to insurer / underwrite more public properties' risks, the Company could have underwritten all the vehicles of the State Life Insurance Corporation of Pakistan to its net, which was not the case;
- b. The argument further supports the Company's intention to abide by the provisions of Section 166 of the Ordinance by not issuing new policies appertaining to the public properties to an insurer other than the National Insurance Company Limited.

15. Subsequently, the Company provided office copies of two letters dated January 22, 2014, issued by Mr. Latif A. Choudhri, General Manager (Operations) and addressed to Mr. Riaz Ahmed Razi, Chief Manager - Multan Branch and Mr. Suleman Basaria, General Manager (Marketing) / Branch Head- Clifton Karachi, thereby advising the addressees on taking such steps as mentioned in those letters in order to ensure compliance with the provisions of Section 166 of the Ordinance.

16. Copy of the "Inter-Office Communication" dated February 3, 2014 was also provided by the Company, in which Mr. Mohammad Farooq, Assistant General Manager - Underwriting communicated to Mr. Latif Ahmad Choudhri, General Manager (Operations) that fourteen (14) policies were not renewed, as per the instructions given by him (Mr. Latif Ahmad Choudhri, General Manager (Operations)).

Hearings of the Case & Subsequent Developments

17. The hearing in the matter was scheduled for February 26, 2014 at 2:30 P.M., which was communicated to the Company, its Directors and the Chief Executive via the Commission's hearing notice no. ID/ENF/Alpha/2014/18951 dated February 20, 2014.

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18. Accordingly, the said hearing was attended by Mr. Umair Khan, Managing Director / Chief Executive and Mr. Latif A. Choudhri, General Manager (Operations) of the Company. Mr. Umair Khan handed over the general power of attorney in his favor, authorizing him to attend the hearing and make arguments on behalf of the Company and its Directors, who shall be referred to as the "Representative" hereinafter.

19. The Representative reiterated the arguments as mentioned in the Company's letter of January 20, 2014, and assured that the Company would be extra careful and cautious, in future, and also assure that compliance of Section 166 of the Ordinance shall be made, in letter and spirit.

Consideration of Company's Submissions

20. I have carefully examined and given due consideration to the written and verbal submissions of the Company, and have also referred to the provisions of the Ordinance. I am of the view that there has been an established default under the relevant provision of the Ordinance. The Representative of the notice has also admitted this as well and showed the intention and commitment of the Company to fulfill the statutory requirement as laid down under Section 166 of the Ordinance.

21. 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 them to be vigilant and perform their duties with due care. In the instant case, however, the Directors have over looked and 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 Section 166 of the Ordinance i.e. the Directors of the Company were required to follow the laws in letter and spirit at any cost, therefore, it could be legitimately inferred that the default was committed.

22. The arguments and submissions, made by the Company in its letter of January 20, 2014 and subsequently reiterated by the Representative during the course of the hearing in the matter, appear to be fair and justified, as:

- a. The State Life Insurance Corporation of Pakistan, which is the parent body of the Company, has numerous vehicles, all of which fall under the definition of "Public Property" within the domain of Section 166 of the Ordinance, and if the Company had the intention to insurer / underwrite more public properties' risks, the Company could have underwritten all the vehicles of the State Life Insurance Corporation of Pakistan to its net, which was not the case;

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- b. The argument further supported the Company's intention to abide by the provisions of Section 166 of the Ordinance by not issuing new policies appertaining to the public properties to an insurer other than the National Insurance Company Limited;
- c. The submitted office copies of two letters dated January 22, 2014, whereby two of the senior officials of the Company were advised to take such steps as mentioned in those letters in order to ensure compliance with the provisions of Section 166 of the Ordinance, further evidence the Company's intention to ensure compliance with the aforementioned statutory provisions of Section 166 of the Ordinance.

Conclusion

23. 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 Section 166 of the Ordinance is established. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed on the Company.

24. 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 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."

Order

25. In exercise of the power conferred on me under Section 156 of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, condone the Company due to facts as mentioned in para 22 hereof.

Also, the Company, its Directors and the Chief Executive are hereby issued stern warning that in case of similar non-compliance in future a stronger action will be taken.

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26. 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.

A handwritten signature in black ink, appearing to read 'Tariq Hussain', is positioned above a horizontal line.

Tariq Hussain
Director