



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Afro-Asian Insurance Brokers (Private) Limited

Show Cause Notice Issue Date: December 18, 2014

Date of Hearing: January 12, 2015

Attended By:

1. Mr. M. Shujaat Ali
Chief Executive Officer
M/s Afro Asian Insurance Brokers (Pvt.) Ltd.
2. Mr. Najeeb Moochhala
Partner
M/s Moochhala Gangat & Co. (Chartered Accountants)
3. Mr. Hussain Juzer Ali
Head of Consultancy
M/s Moochhala Gangat & Co. (Chartered Accountants)

Date of Order: January 22, 2015

ORDER

(Under Section 158 of the Insurance Ordinance, 2000)

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This Order shall dispose of the proceedings initiated against the former Chief Executive Officer (CEO) and Directors of M/s Afro-Asian Insurance Brokers (Private) Limited ("the Company") under Section 158 of the Insurance Ordinance, 2000 (the "Ordinance") for making material misstatements in the Annual Audited Accounts (the "Accounts") of the Company for the period ended June 30, 2012.

SECURITIES & EXCHANGE
COMMISSION OF PAKISTAN

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Background Facts

2. This office of the SECP (the Commission) carried out an examination on May 20, 2014 of the Accounts of the Company for the period ending on June 30, 2013.
3. An anomaly has been noted in the Accounts of the Company for the period cited above, that in the comparative statement of Balance Sheet for the period ending on June 30, 2012 contained in the Accounts for the period ending on June 30, 2013, the paid up capital of the Company was stated to be Rs. 5,000,000/-. And also the Accounts for the year ending on June 30, 2012, the Company earlier submitted with the Company Registration Office (CRO - Karachi) of the Commission vide letter dated November 13, 2012 carried the same amount as being Rs. 5,000,000/-.
4. However, the Accounts for the year ending on June 30, 2012 submitted by the Company with the Insurance Division vide letter dated February 26, 2013 as a part of the licensing requirement stated the paid up capital to be Rs. 10,000,000/-.
5. Since the minimum paid-up capital requirements for securing eligibility to commence direct insurance brokerage business was and is Rs. 10,000,000/-, as laid down under Rule 13 of the Insurance Rules 2002 by the Federal Government for the purpose of sub section 3 of section 102 of the Insurance Ordinance 2000 (the Ordinance). It appears that the Company submitted incorrect and false accounts, as stated in the preceding paragraph No. 3 with this office in order to obtain an insurance brokerage licence.
6. Subsequently a letter was received from M/s Moochhala Gangat & Co. Chartered Accountants (the representatives) dated June 18, 2014 with reference No. MGC/AIB18/2014 for and on behalf of the Company. The subject letter established that the paid-up capital of the Company was Rs. 5,000,000/- as on June 30, 2012. However, while the letter dated February 26, 2013, in which the Company sought for the brokerage licensing approval from this office, stipulates that the paid-up capital of the Company was Rs. 10,000,000/- at that time, which was certified by the auditor (M/s Abdullah & Co. Chartered Accountants) and endorsed by the CEO of the Company.
7. Later in a meeting dated June 30, 2014 here at the Commission's office, the representatives of the Company admitted that the paid up capital of the Company on June 30, 2012 was Rs. 5,000,000/- only.
8. It was also found out that the Company in its Board Meeting held on May 22, 2013 decided to increase the paid-up capital from Rs. 5000,000/- to Rs. 12,000,000/-

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which was eventually increased on June 1, 2013, but that occurred almost one month after having acquired the insurance broking license.

9. Hence, it has established that the Company has made material misstatements in the Accounts for the period ending on June 30, 2012 for which the Commission can take action as provided under Section 158 of the Ordinance.

Show Cause Notice

10. Accordingly, the Show Cause Notice was issued on December 18, 2014 under Section 158 of Ordinance to the former CEO and Directors of the Company, calling upon them to show cause as to why the penalty, as provided under Section 158 of the Ordinance, should not be imposed upon the Company and/or its Directors and the CEO for making material misstatements in the Accounts for the period ending on June 30, 2012.

Company's Response

11. In response to the said Show Cause Notice, the Company, vide their letter dated December 22, 2014 requested to appear in person and respond the Notice verbally.

Hearing

12. The Commission scheduled the hearing in the matter on January 12, 2015, 11:30 A.M. at this office and it was communicated to the Company vide Hearing Notice No. ID/Enf/AA/2014/21643 dated January 2, 2015.

13. As per scheduled, the hearing was attended by Mr. Shujaat Ali from the Company and Mr. Najeeb Moomhala and Mr. Hussain Juzer Ali, auditors of the Company who submitted the Authority Letter to act on behalf of the Company and its "Directors".

14. Hearing proceedings thereof, as follows briefly:

- a. The representative submitted that it was an oversight from their side that they filed the document with wrong paid up capital amount.
- b. The Company's CEO admitted that they knew the minimum paid up capital requirement for obtaining insurance brokerage license but could not fulfill it.

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- c. The representative pleaded that there were some mismanagement with the previous Auditor of the Company (M/s Abdullah & Co. Chartered Accountants) since Mr. Abdullah remained unwell and the Accounts were being managed by his staff. Later, Mr. Abdullah passed away and M/s Abdullah & Co. Chartered Accountants ceased to exist.
- d. The representative was asked that when they came to know regarding the submission of documents with wrong paid up capital amount in order to get the insurance broking licence, why they did not inform it to the Commission. The representative replied that it was due to inadvertent error. However the Company later increased the paid up capital to Rs. 12 million.
- e. Finally, the Company's representative accepted their mistake and requested the Commission to take a lenient view for contravening the provisions of the law.

Consideration of Company's Submissions

15. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the representatives, M/s Moomhala Gangat & Co., Chartered Accountants and the CEO of the Company), and have also referred to the provisions of the Ordinance and the findings of supervision wing. I am of the view that there have been obvious misstatements in the accounts for the period ending June 30, 2012 of the Company, which were made knowingly and deliberately in order to obtain the license.

16. 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 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 true and fair reporting of the material facts in the Company's accounts, therefore, it could be legitimately inferred that the default was committed knowingly and willfully.

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Conclusion

17. After examining the arguments in light of facts of the case as discussed in the aforementioned paragraphs of this Order, obvious material misstatement is established. Therefore, the penalty as provided under Section 158 of the Ordinance can be imposed on the Company and/or its Directors.

18. Section 158 of the Ordinance states that:

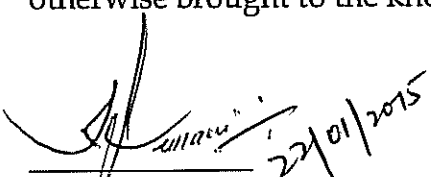
"Penalty for false statement in document.- Except as otherwise provided in this Ordinance, whoever, in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Ordinance, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable by the Commission with fine which may extend to one million rupees."

Order

19. As stated in the preceding paragraphs under Hearing, the CEO of the Company admitted their act of misstatement and made a request for leniency and the fact that the Company later raised the paid up capital to Rs. 12 million. Therefore, acting leniently I, instead of going for the maximum penalty as provided under Section 158 of the Ordinance, impose a fine of Rs. 200,000/- (Rupees two hundred thousand only); that is to say Rs. 100,000/- (Rupees one hundred thousand only) on Mr. Akbar Alikhan, (former) CEO and Director and Rs. 100,000/- (Rupees one hundred thousand only) on Mrs. Farida Alikhan, Director, in exercise of the power conferred on me under the aforesaid section of the law.

20. Mr. Akbar Alikhan and Mrs. Farida Alikhan are hereby directed to deposit their respective fines as mentioned in the preceding paragraph, 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 receipt of this Order and furnish receipted vouchers issued in the name of Commission for information and record.

21. This Order is issued without prejudice to any 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.


Tariq Hussain
Director