



SECP

INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director (Insurance)

In the matter of

Allianz EFU Health Insurance Limited

Show Cause Notice Issue Date: June 16, 2015

Date of Hearing: August 10, 2015

Attended By: Mr. Rashid Sadiq
Chief Executive Officer
M/s. RS Corporate Advisory (Private) Limited

Date of Order: October 2, 2015

ORDER

Under Regulation 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012 read with Section 11(1)(f), Section 12 and Section 156 of the Insurance Ordinance, 2000

.....

This Order shall dispose of the proceedings initiated against M/s. Allianz EFU Health Limited (the "Company"), Mr. Saifuddin N. Zoomkawala, Mr. Taher G. Sachak, Mr. Heinz Walter Dollberg, Mr. Rafique R. Bhimjee, Mr. Jahangir Siddiqui, Mr. S. C. (Hamid) Subjally and Mr. Hasanali Abdullah for alleged contravention of Regulation 2(2) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012 (the "Regulations") read with Section 11(1)(f) and Section 12 of the Insurance Ordinance, 2000 (the "Ordinance"). The Company, Mr. Saifuddin N. Zoomkawala, Mr. Taher G. Sachak, Mr. Heinz Walter Dollberg, Mr. Rafique R. Bhimjee, Mr. Jahangir Siddiqui, Mr. S. C. (Hamid) Subjally and Mr. Hasanali Abdullah shall be referred to as the "Respondents" hereinafter.

A. Background

2. It was observed that the Company appointed its directors in the Extra Ordinary General Meeting of June 10, 2013, the approval of which was not obtained by the Respondents prior to assumption of charge as directors of the Company. In fact, an application for grant of approval under the Regulations was submitted with the Commission vide the Company's letter dated May 4, 2015,

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which implied that a substantial time had already been lapsed before filing of the said application.

3. In view of the above, the Commission initiated proceedings against the Respondents by issuance of a Show Cause Notice bearing number ID/Enf/Allianz/2015/1343 on June 16, 2015, thereby calling upon them to show cause as to why the fine, as provided under Section 156 of the Ordinance should not be imposed for non-compliance with Regulation 2(2) of the Regulations read with Section 11(1)(f) and Section 12 of the Ordinance. The contents of the Show Cause Notice have been reproduced below:

Sub: Show Cause Notice under Regulation 2(2) of the Insurance Companies (Sound & Prudent Management) Regulations, 2012 Read with Section 11(1)(f), Section 12 and Section 156 of the Insurance Ordinance, 2000.

1. WHEREAS, Clause (f) of Sub-section (1) of Section 11 of the Insurance Ordinance, 2000 (the "Ordinance") states that:

"Conditions imposed on registered insurers.-(1) An insurer registered under this Ordinance shall at all times ensure that:

...

(f) the insurer meets, and is likely to continue to meet, criteria for sound and prudent management including without limitation those set out in section 12;..."

2. AND WHEREAS, Clause (b) and (c) of sub-Section (1) of Section 12 of the Ordinance state that:

"Criteria for sound and prudent management.- (1) For the purposes of this Ordinance, the following shall, without limitation, be recognised as criteria for sound and prudent management of an insurer or applicant for registration as a person authorised to carry on insurance business:

...

(b) each director and officer or (in the case of an applicant which is a body corporate incorporated outside Pakistan) the principal officer in Pakistan of the insurer or applicant is a fit and proper person to hold that position;

(c) the insurer or applicant is directed and managed by a sufficient number of persons who are fit and proper persons to hold the positions which they hold;

Explanation: A person is a fit and proper person who possesses such experience and qualifications as are appropriate for the duties for which he is responsible, and conducts those duties with due diligence and skill. A person is not a fit and proper person to hold the position of Chairman, or of Chief Executive or principal officer in Pakistan, of an insurance company if that person does not have experience or qualifications of direct relevance to the conduct of insurance operations. A person is not a fit and proper person if the association of that person with the insurer is or is

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likely, for whatever reason, to be detrimental to the interest of the insurer or of the policy holders, or is otherwise undesirable."

3. AND WHEREAS, Clause (a) of Sub-section (5) of Section 12 of the Ordinance of 2000 states that:

"The insurer or applicant shall not be regarded as conducting its business in a sound and prudent manner if it:

(a) fails to satisfy an obligation to which it is subject by virtue of this Ordinance;..."

4. WHEREAS, Regulation 2(2) of the Insurance Companies (Sound & Prudent Management) Regulations 2012 (the "Regulations") states that:

"A proposed director or chief executive or principal officer of the insurer shall not assume the charge of office until their appointment has been approved by the Commission."

5. AND WHEREAS, it has been observed that M/s. Allianz EFU Health Insurance Limited (the "Company") has appointed its directors in the Extra Ordinary General Meeting of June 10, 2013, the approval of which was not obtained by the above-named respondents prior to the assumption of charge as directors of the Company.

6. AND WHEREAS, an application for grant of approval under the Regulations was submitted with the Commission on May 6, 2015 vide the Company's letter dated May 4, 2015, which implies that a substantial time has already lapsed before filing of the said application.

7. AND WHEREAS, in view of the foregoing paras hereof, it prima facie appears that the respondents have failed to comply with the aforementioned provisions of the law, for which the Commission may penalize Section 156 of the Ordinance.

8. AND WHEREAS, the provisions of Section 156 of the Ordinance state 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."

9. NOW, THEREFORE, you are hereby called upon to show cause in writing within ten (10) days from the date of receipt of this notice as to why penalty as provided under Section 156 of the Ordinance may not be imposed upon you for contravening the provisions



of Regulation 2(2) of the Regulations read with Section 11(1)(f) and Section 12 of the Ordinance, as aforesaid. In the event that you wish to be represented by a Representative, please ensure that the authorizing instrument (a board resolution or a power of attorney as may be appropriate) is submitted to this office along with your reply to this notice. In case you decide to opt for a hearing, you may appear in person or through a Representative. Please note that any reply submitted by a Representative without an appropriate authorizing instrument may not be taken into consideration for the purposes of the proceedings. All documents submitted by you in support of the reply must be duly authenticated. Please note that you will be liable under law for any concealment of any evidence or misstatement made in response of this show cause notice. We have video link facility available in the city in which you reside. In case you wish to avail this option please inform the undersigned in writing so that appropriate arrangements may be made in this regard.

Please acknowledge the receipt of this notice through return fax at the number provided in the letterhead.

-Sd/-

Hasnat Ahmad
Director (Insurance)

4. Thereupon, the Respondents, vide their letter dated June 25, 2015 requested for grant of further two weeks' time for submission of reply to the said Show Cause Notice, which was granted vide Commission's letter no. ID/Enf/Allianz/2015/1429 dated June 29, 2015.

5. In response to the aforementioned Show Cause Notice, the Respondents vide letter dated July 14, 2015, made their submissions as follows:

" ...

1. At the outset, it is stated that the Company is a well-reputed and law abiding corporate entity and it is managed strictly in compliance with the Ordinance and rules and regulations made thereunder, wherever applicable. Its Directors and CEO are professionals of high repute. Therefore, they cannot even think of deliberately violating any provisions of the Ordinance and rules and regulations made thereunder.
2. The Company filed an application with the Commission for approval of appointment of its Chief Executive vide its letter dated 05 March 2012 which was granted on 19 March 2012 vide letter bearing reference No. ID/PRD/EFU Health/12887. The Board of Directors of the Company renewed the appointment of the Chief Executive on 26 March 2015 effective 01 April 2015 and the Company made an application with the Commission on 27 March 2015. In response to this letter, the Commission vide its letter dated 22 April 2015, bearing reference no. ID/PRDD/004-APPROVALS/2015/927, stated that "Perusal of the application and the record of this office has revealed that the Board of Directors of the Company were elected in the Extra Ordinary General Meeting of the Company dated



June 10, 2013 and no application for the appointment of Directors was submitted with this office under Insurance Companies (Sound & Prudent Management) Regulations, 2012". The letter concluded seeking a clarification from the company on this matter.

3. The Company responded to the aforementioned communication through its letter dated 27 April 2015, wherein it was clarified that the Company was under the impression that if the same people are being re-elected to the Board of Directors of the Company then the approval of the Commission was not required. The Company, therefore, requested leniency and expressed its desire to file an application seeking approval for the appointment of the Board of Directors of the Company.
4. The Commission responded through its letter dated 29 April 2015, bearing reference no. ID/PRDD/004-APPROVALS/2015/1019, wherein it advised the Company to immediately submit applications for the approval of the Directors appointed through its Extra Ordinary General Meeting held on 10 June 2013.
5. The Company, promptly, in accordance with the Regulations, on 04 May, 2015, made an application, attaching with it all the required documents, seeking approval for the appointment of the directors, who were named in the Notice. Furthermore, the cover letter to this application reiterated the Company's regret for its earlier non-compliance of the relevant law and its request for leniency.
6. The Commission, however, issued the Notice on 16 June 2015 despite the fact that the company had shown compliance. This has indeed come as a great surprise to the Company and its Directors as they had never intended nor contemplated any deliberate contravention of either the provisions of the Ordinance or the Regulations. In its earlier communications on this matter, the Company clarified that its alleged non-compliance of the relevant law was the result of a mere misunderstanding and that it was genuinely bona fide mistake on the part of the Company. The Company also submitted that it was now fully cognizant of its legal shortcomings on the concerned matter and showed the utmost commitment and good faith when it sought to rectify the problem immediately after being told to do so by the Commission through its aforementioned letter dated 29 April 2015. This is indicative of positive intent on part of the Company to ensure that this mistake is never repeated in the future. Therefore, it is respectfully submitted that the Company and its Directors did not envisage the interpretation of the relevant law as stated in the Commission's letters to the Company and the Notice and the resulting requirements of the Regulations. The non-Compliance with the Regulations is, hence, due to a misunderstanding rather than a knowing and willful defiance as alleged in the Notice.
7. It is submitted that the Commission in its previous decisions have condoned such unintentional defaults. It is pertinent to mention that as per Section



20(6) (c) of the Securities and Commission of Pakistan Act, 1997 (the "Act"), the Commission must achieve uniformity in how it performs its functions and exercise its powers. It would be contrary to the interests of justice if any penalty and/or adverse action is taken against a law abiding entity such as the Company, which has shown full co-operation with the Commission and has not engaged in any egregious violation of the law that has caused any harm to any concerned party. In fact, there is ample precedence set by the Commission, where it has shown leniency towards parties that committed similar violations of the law that were caused as a result of mere misunderstanding and could be or were immediately rectified. In such cases, the Commission did not impose any penalty on the companies and their directors. In one such order, dated 28 July 2014, passed by the Commission, it was found that even though there had been a violation of Regulations 2(2) of the Regulations read with Section 11(1)(f) and Section 12 of the Ordinance, a lenient view was taken and no penalty or adverse order was passed against the concerned party, which had only committed the offence as a result of a mere unintentional oversight.

8. Without prejudice to the foregoing, in regards to the assertion made in paragraph no. 9 of the Notice, wherein it is stated that "substantial time has already lapsed before filing of the said application", please note that neither the Regulations nor the Ordinance provides for any time period within which an application seeking approval for the appointment of directors needs to be filed with the Commission. In the absence of any such prescribed limitation in the law it would be contrary to the interests of justice for the Company to be penalized for failing to file the said application within an unclear time frame.
 9. Without prejudice to the above submission and without admitting any deliberate contravention of the provisions of the Ordinance and the Regulations, the company and its Directors always wish to have cordial relationship with the Honorable Commission and hope that the Commission will appreciate the above position and approve the pending application of the directors & CEO and drop the Notice in the interest of justice without any further action.
 10. In light of the foregoing, and the fact that there has been no harm caused to any concerned party by these events, it is respectfully requested that in the interests of justice and good faith that leniency be shown and no penalty be imposed any adverse action be taken against the Company."
6. A 'Letter of Authority' was enclosed with the above quoted letter of July 14, 2015 whereby Mr. Rashid Sadiq, Chief Executive of M/s. RS Corporate Advisory (Private) Limited was authorized to represent the Respondents hereinafter referred to as the representative.



B. Hearings

7. The Commission, vide its notice no. ID/Enf/Allianz/2015/1664 dated August 4, 2015, scheduled the hearing for August 10, 2015 at 11:00 a.m.

8. The hearing of August 10, 2015 was attended by the representative, for and on behalf of the Respondents.

9. Brief proceedings of the hearing of August 10, 2015 were as follows:

- i. The representative was asked to present the stance of the Respondents, on which he stated that their contentions have already been submitted before the Commission vide letter dated July 14, 2015;
- ii. The representative stated that there should be some clear instructions from the Commission for all regulatees emphasizing over compliance of the Regulations. Thereupon, it was clarified that all the Regulations had already been published in the official gazette of Pakistan;
- iii. Lastly, the representative assured to submit certain case laws relevant to the instant matter.

10. The representative, vide his letter dated July 24, 2015, which was received by the Commission on August 25, 2015 quoted the decisions taken in the following cases / matters:

- i. Order dated February 17, 2015, which was passed by the Appellate Bench of the Commission in the matter of M/s. Takaful Pakistan Limited vs. Commissioner (Insurance) & SECP;
- ii. Order dated July 28, 2014, which was passed by the Commission against M/s. Security General Insurance Company Limited for violating Regulation 2(2) of the Regulations read with Section 11(1)(f) and Section 12 of the Ordinance;
- iii. Order dated August 20, 2014, which was passed by the Commission against M/s. The Pakistan General Insurance Company Limited for violating Regulation 2(2) of the Regulations read with Section 11(1)(f) and Section 12 of the Ordinance;
- iv. Order dated March 7, 2014, which was passed by the Commission against M/s. Shaheen Insurance Company Limited for violating the provisions of the Ordinance including running the operations of the Company without a chief executive officer for over a year's time;



- v. Order dated October 31, 2013, which was passed by the Commissioner (Insurance) for violating the provisions of the Ordinance relating to the minimum solvency requirements; and
 - vi. Order dated April 2, 2015, which was passed by the Commission for violating the provisions of Section 166 of the Ordinance.
11. Furthermore, the representative, vide his letter dated July 24, 2015, also stated that:

"The Notice is liable to be withdrawn as mandated under Section 20(6)(c) of the Securities and Exchange Commission of Pakistan Act, 1997 for maintaining uniformity in exercise of its powers in cases having identical and indistinguishable set of circumstances.

*...
The Rulings of Commission quoted above show that the Commission has taken a lenient view in all these cases and particularly, considered the delay in filing of application for approvals of directors as a procedural violation. Therefore, a different treatment cannot be meted out in the Respondents case as compared to the cases quoted above since clearly similar and indistinguishable sets of facts and circumstances exist in the case at hand.*

*...
Therefore, in view of the above rulings of the honorable Appellate Bench and the Commission, the Notice is liable to be withdrawn without any adverse action."*

C. Issues

12. The Respondents were required to obtain prior approval of the Commission for the appointment of new directors in compliance with Regulation 2(2) of the Regulations, and Section 11(1)(f) and Section 12 of the Ordinance, which the Respondents failed to comply. However, the Respondents subsequently filed their application for grant of approval to act as directors of the Company.

D. Summary of arguments and conclusions in respect of each issue

13. The Respondents based their argument in their letters of July 14, 2015 and July 24, 2015 on the following grounds:
- a. The Company is a law abiding corporate entity and the default of the Regulations was unintentional and genuinely bona fide mistake on part of the Respondents;
 - b. The Commission granted approvals to the Respondents for the first time on March 19, 2012, and the Respondents were under the impression that no



approval was required for the re-elected directors which had already been approved by the Commission;

- c. The Respondents immediately upon realizing the aforesaid unintentional mistake, filed application for grant of approval from the Commission to act as directors of the Company, vide their letter dated May 4, 2015;
- d. The Respondents further believed that they complied with the Regulations by filing an application vide their letter dated May 4, 2015 for grant of approval to act as directors of the Company, who were re-elected in the Extra Ordinary General Meeting of June 10, 2013;
- e. The Commission has condoned such unintentional defaults in the past hence, it would be contrary to the interests of justice if any penalty and/or adverse action is taken against the Respondents;
- f. The Respondents also pointed out that neither the Regulations nor the Ordinance provides for any time period within which an application seeking approval for the appointment of directors needs to be filed with the Commission. Hence, in the absence of any such prescribed limitation in the law, it would be contrary to the interests of justice for the Company to be penalized for failing to file the application within an unclear timeframe.

14. In this regard, it would be pertinent to state that the Regulation 2(2) of the Regulations specifically requires that a prior approval of the Commission shall have to be obtained by the persons before assuming the charge as directors of an insurer, hence, the application for grant of approval to act as directors of the Company by the Respondents should have been filed and approval to that effect should have been obtained by them before the election of directors were held on June 10, 2013.

15. It would further be important to note that the Regulations lay down a four-factor criterion for the Commission to testify the persons on which the Regulations apply. And, with the passage of time, three out of the four factors are prone to changes for a particular person who has been earlier approved by the Commission to act as either the director or the chief executive officer of an insurer. However, the only factor which would not require subsequent approval of the Commission shall be "Competence and capability of the person", if the Commission has earlier approved the appointment of that person to act as either the director or the chief executive officer of an insurer. Any or all of the other three factors i.e. "Integrity and track record of the person", "Financial soundness" and a situation of "Conflict of interest of the person with the business of the insurer" can change over a period of time. Hence, any person who intends to assume the charge as director or a chief executive officer (by whatever name called) and the principal officer of an insurer, either for the very first time or subsequently, is required to submit an application for grant of approval of the Commission under the Regulations.



16. Moreover, the Regulations have been framed while invoking the enabling provisions of Section 7(1)(f), Section 12 and Section 167(3) of the Ordinance, hence, any violation of these Regulations shall amount to the violation of the said enabling provisions of the Ordinance.

17. Therefore, in view of the above, it is established that the Respondents have failed to obtain approval of the Commission under the Regulations, prior to the assumption of charge as directors of the Company, for which they are liable to be penalized under Section 156 of the Ordinance.

18. However, in light of the following arguments, a lenient view in the instant matter can be taken against the Respondents:

- a. Order dated February 17, 2015 passed by the Honorable Appellate Bench of the Commission in the matter of Appeal No. 37 of 2013 (titled as M/s. Takaful Pakistan Limited vs. Commissioner (Insurance) & Securities and Exchange Commission of Pakistan), given the scenario that approval to the Respondents was granted by the Commission and that it was a procedural violation which did not impact the overall objective of the Regulations;
- b. the violation occurred due to an oversight and misunderstanding on part of the Respondents, and that no mala fide on their part was established during the course of the instant proceedings; and
- c. the Respondents have assured to comply with the provisions of the Regulations in future.

E. Overall conclusion

19. 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 Regulation, the Ordinance and other legal references, I am of the view that the default of Regulation 2(2) of the Regulations read with Section 11(1)(f) and Section 12 is established. Therefore, the fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents.

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. 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 so-called directors have failed to perform their duties with due care and prudence. As the persons associated with the Company as "directors" are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Regulation 2(2) of the Regulations, therefore, it



could be legitimately inferred that the default was committed, for which the penalty as provided under Section 156 of the Ordinance can be imposed.

F. Penalties and directions

21. In exercise of the power conferred on me under Section 156 of the Ordinance read with S.R.O. 221(I)/2015 dated March 11, 2015, I, instead of imposing a fine as provided under the said Section, take a lenient view, and thus condone the Respondents due to the reasons as mentioned hereinabove. However, the Respondents are hereby warned and directed to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

22. 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.

Hasnat Ahmad
Director

