



SECP
INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director (Insurance)

In the matter of

The Pakistan Mutual Insurance Company (Guarantee) Limited

Show Cause Notice Issue Date: July 3, 2015

Date of Hearing: August 20, 2015

Attended By:

1. Ch. Abdul Karim
Chief Executive
M/s. Pakistan Mutual Insurance Co. (Gte) Ltd;
2. Hafiz Muhammad Farooq Afzal
Manager Finance
M/s. Pakistan Mutual Insurance Co. (Gte) Ltd.

Date of Order: October 1, 2015

ORDER

Under Section 46(1)(b) Read with Section 51(1) and Section 156 of
the Insurance Ordinance, 2000.

.....

This Order shall dispose of the proceedings initiated against M/s. The Pakistan Mutual Insurance Company (Guarantee) Limited (the "Company"), Ch. Abdul Karim - Chief Executive Officer, Ch. Shahbaz Ali - Director, Mr. Asif Javaid - Director, Mr. Yasir Naseer - Director, Mr. Jawad Amin, Mr. Muhammad Saleem and Mr. Hassan Ahmad Khan for alleged contravention of Section 46(1)(b) and Section 51(1) of the Insurance Ordinance, 2000 (the "Ordinance"). The Company and each of the above-named persons shall be referred to as the "Respondents" hereinafter.

A. Background

2. It was observed that the Company did not submit the Statement of Assets for Solvency Purposes (Form GJ) as on December 31, 2013 along with the audit report thereon issued by the Company's statutory auditor.

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3. The Company, vide Commission's letter no. ID/SE/PMICGL/2015/21995 dated February 10, 2015, was advised to file the Statement of Assets for Solvency Purposes (Form GJ) as on December 31, 2013 along with the audit report thereon within ten days of the receipt of the letter. The Company through its letter dated February 17, 2015, submitted its response as under:

"...the matter of solvency criteria under section 46(1)(b)(x) of the Insurance Ordinance, 2000, "is subjudice" the company having filed Writ petition no. 14773 of 2009, challenging SECP directive no. ID/1051/PMI(G)/2008, and assailing the company's minimum solvency requirement. Please note that, "the lis" is pending adjudication, and no order has yet been passed by the Hon'ble Lahore High Court Lahore, the last date of hearing was 04/06/2014. (Copy of the writ petition is enclosed.)

As regards the audit report (by the statutory auditors) in respect of the statement of company's assets and liabilities for solvency purposes, the matter has been fully explained in note no. 1 (1.1) of the company's financial statement for the year ended 31st December, 2013, filed with SECP..."

4. The clarification given by the Company was not found to be cogent as note 1(1.2) of annual accounts for the year 2013 did not address the filing of regulatory returns. Hence the Company *prima facie* failed to file its Statement of Assets for Solvency Purposes (Form GJ) as on December 31, 2013, as required under Section 46(1)(b) read with Section 51(1) of the Ordinance.

5. Accordingly, for the alleged violation of Section 46(1)(b) read with Section 51(1) of the Ordinance, the Commission initiated proceedings against the Respondents by issuance of a Show Cause Notice bearing number ID/Enf/PMICL/2015/1444 on July 3, 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 Section 46(1)(b) and Section 51(1) of the Ordinance. The contents of the Show Cause Notice have been reproduced below:

SUBJECT: SHOW CAUSE NOTICE UNDER SECTION 46(1)(b) READ WITH SECTION 51(1) AND SECTION 156 OF THE INSURANCE ORDINANCE, 2000

1. WHEREAS, the provisions of Section 46 (1)(b) of the Insurance Ordinance, 2000 (the "Ordinance") require every insurer to prepare and deliver to the Commission the annual statutory accounts / regulatory returns duly audited by an approved auditor.

"Accounting and reporting.- (1) Every insurer shall at the expiration of each year prepare and deliver to the Commission with reference to that year annual statutory accounts comprising the following statements duly audited by an approved auditor:

(b) in the case of a non-life insurer,

H/O



- (i) a statement of assets and liabilities;
- (ii) a statement of profits and losses;
- (iii) a statement of cash flows;
- (iv) a statement of premiums;
- (v) a statement of claims;
- (vi) a statement of expenses;
- (vii) a statement of investment income;
- (viii) a statement of claims analysis;
- (ix) a statement of exposures; and
- (x) such other statements as may be prescribed by the Federal Government;

each in such form as may be prescribed by the Commission and prepared in accordance with such regulations as are issued by the Commission from time to time in this behalf."

2. AND WHEREAS, Regulation No. 3(1) of Part – B of Annexure II of the Securities and Exchange Commission (Insurance) Rules, 2002 (the "Regulations") states that:

"The form of Regulatory Returns shall consist of the following which shall be submitted according to the published Forms annexed to these Regulations:

- Balance Sheet (Form GA), which shall be deemed to constitute the "Statement of Assets and Liabilities" required by S46(1)(b)(i) of the Ordinance.
- Profit and Loss Account (Form GB), which shall be deemed to constitute the "statement of profits and losses" required by S46(1)(b)(ii) of the Ordinance.
- Statement of Cash Flows (Form GC) required under S46(1)(b)(iii) of the Ordinance.
- Statement of Premiums (Form GD) required under S46(1)(b)(iv) of the Ordinance.
- Statement of Claims (Form GE) required under S46(1)(b)(v) of the Ordinance.
- Statement of Expenses (Form GF) required under S46(1)(b)(vi) of the Ordinance.
- Statement of Investment Income (Form GG) required under S46(1)(b)(vii) of the Ordinance.
- Statement of Claims Analysis (Form GH) required under S46(1)(b)(viii) of the Ordinance.
- Statement of Exposures (Form GI) required under S46(1)(b)(ix) of the Ordinance.
- Statement of Assets for Solvency Purposes (Form GJ) which is hereby prescribed under S46(1)(b)(x) of the Ordinance.
- Classified Summary of Assets in Pakistan (Form GK) which is hereby prescribed under S46(1)(b)(x) of the Ordinance."

3. AND WHEREAS, Section 51 (1) of the Ordinance states that:



"Submission of returns.- (1) The audited statements and report referred to in sub-sections (1) and (5) of section 46 and the report and statement referred to in section 50, including any report referred to in sub-section (7) of section 50, shall be furnished as returns to the Commission in such manner as may be prescribed by the Commission, but in any case including at least one printed copy, within four months from the end of the period to which they refer:

Provided that the Commission may on application by an insurer extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding one month."

4. AND WHEREAS, it appears that M/s. The Pakistan Mutual Insurance Company (Guarantee) Limited (the "Company") has not submitted the Statement of Assets for Solvency Purposes (Form GJ) as on December 2013 and the audit report thereon, issued by the Company's statutory auditor.

5. AND WHEREAS, vide letter no. ID/SE/PMICGL/2015/21995 dated February 10, 2015, the Commission has advised the Company to file the Statement of Assets for Solvency Purposes (Form GJ) as on December 31, 2013 along with the audit report thereon within ten days of receipt of the said letter. However, the Company, in response to the said letter of the Commission through its letter dated February 17, 2015, stated that:

"...the matter of solvency criteria under section 46(1)(b)(x) of the Insurance Ordinance, 2000, "is subjudice" the company having filed Writ petition no. 14773 of 2009, challenging SECP directive no. ID/1051/PMI(G)/2008, and assailing the company's minimum solvency requirement. Please note that, "the lis" is pending adjudication, and no order has yet been passed by the Hon'ble Lahore High Court Lahore, the last date of hearing was 04/06/2014. (Copy of the writ petition is enclosed.)

As regards the audit report (by the statutory auditors) in respect of the statement of company's assets and liabilities for solvency purposes, the matter has been fully explained in note no. 1 (1.1) of the company's financial statement for the year ended 31st December, 2013, filed with SECP..."

6. AND WHEREAS, the clarification given by the Company is not cogent as note 1(1.2) of annual accounts for the year 2013 does not address the filing of regulatory returns. Hence the Company has failed to file its Statement of Assets for Solvency Purposes (Form GJ) as on December 31, 2013, as required under Section 46(1)(b) read with Section 51(1) of the Ordinance.

7. AND WHEREAS, for the alleged violation of Section 46(1)(b) read with Section 51(1) of the Ordinance., the above-named directors and chief executive officer of the Company are liable to be penalized under Section 156 of the Ordinance, which states that:

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"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."

8. 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 may not be imposed upon you for contravening the provisions of Section 46(1)(b) and Section 51(1) 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)

6. In response to the said Show Cause Notice, the Respondents, vide their letter no. A/296/15 dated July 14, 2015 stated that:

"...1. Reference may kindly once again be made to our letter No. A/83/2013 dated 17-02-2015, referred to you, in our humble opinion it satisfactorily explains our inability to submit the Statement of Assets for solvency purposes (Form GJ) on 31-12-2013, and the audit report thereon, issued by the Company's statutory auditor. As you are aware; Writ petition no. 14773/2009 filed by the company is pending adjudication before the Hon'ble Lahore High Court, in which the Federal Government and SECP are attending the proceedings through their respective attorneys, our legal stance before the Hon'ble Court is that Rule 13 (1) of the Insurance Rules 2002, which prescribes minimum solvency requirement for Insurance Companies is ultra vires, discriminatory in nature, violate of Article 25 of the Constitution, and beyond the scope of section 36(3) (a) of the Insurance Ordinance 2000.



2. It is further been prayed by Our Company that the Hon'ble Court be pleased to strike down the above mentioned Rule 13(1) of the SECP Insurance Rules 2002, being in violation of the Insurance Ordinance 2000, as well as the Constitution of Pakistan.

3. Sir, since the matter of imposition of minimum solvency requirement in respect of our company is "subjudice", and is under judicial consideration, so far the matter has not been adjudicated upon and decided by the competent Court, in the circumstances any action at your end in the matter may entail serious legal consequences, therefore, till the orders of the Court minimum restraint may please be exercised in the matter, as any action would jeopardize and prejudice the orders of the High Court.

4. It is therefore humbly submitted that in the subject matter any repulsive order against our Company may for the time being be condoned, in the interest of justice and fair play.

Alongwith our Reply we are submitting a board resolution authorizing our Chief Executive, to appear and to attend the proceedings on behalf of the Company, before the SECP."

B. Hearings

7. The Commission, vide its notice no. ID/Enf/PMICL/2015/1666 dated August 4, 2015, scheduled the hearing for August 13, 2015 at 11:30 a.m.

8. However, the said hearing was adjourned on the request of the Respondents and therefore was rescheduled for August 20, 2015 at 11:30 a.m. via hearing notice no. ID/Enf/PMICL/2015/1861 dated August 12, 2015. The said hearing was conducted through video link, connecting the Commission's Lahore office with the Head Office on the written request of the Company, vide letter no. A/351/15 dated August 12, 2015. The hearing of August 20, 2015 was attended by Ch. Abdul Karim - Chief Executive Officer of the Company and Mr. Hafiz M. Farooq Afzal - Manager Finance of the Company, for and on behalf of the Respondents.

9. Brief proceedings of the hearing of August 20, 2015 were as follows:

- a. The Respondents were asked to present the stance of the Company, on which they stated that their contentions have already been submitted before the Commission vide letter dated July 14, 2015;
- b. The Respondents stated that Writ Petition No. 14773/2009 filed by the Company is pending adjudication before the Honorable Lahore High Court, in which the Company has challenged Rule 13(1) of the Insurance Rules, 2002, regarding minimum solvency requirement for insurers,



being *ultra vires*, discriminatory in nature, in violation of Article 25 of the Constitution, and beyond the scope of section 36(3)(a) of the Ordinance. And since, the matter of implementation of the minimum solvency requirement in respect of the Company is *sub judice*, hence, any action taken by the Commission would lead to serious legal consequences;

- c. The Respondents further argued that the solvency requirement should be on the basis of the size of the insurer;
- d. The Respondents were asked to confirm if the Company had challenged the filing requirements as laid down under Section 46 and Section 51 of the Ordinance, on which the Respondents confirmed that the Company did not challenge the filing requirements, instead the solvency regime was challenged;
- e. The Respondents were made to understand that the Commission has to treat all insurers equally, and that mere on the basis of filing of case before the Honorable Court of law without obtaining the restraining order does not absolve the insure to comply with the regulatory requirements under the Ordinance;
- f. Lastly, the Respondents assured that if the Commission deems it necessary, the Company shall file the requisite statement, upon which the Respondents were advised to file the statement without any further delay.

C. Issues

10. It would be pertinent to state that the provisions of Section 46(1)(b) of the Ordinance require every insurer to prepare and deliver to the Commission, the annual statutory accounts / regulatory returns duly audited by an approved auditor. And as per Section 51 (1) of the Ordinance, such returns shall be furnished to the Commission within four months from the end of the period to which they refer. Moreover, forms of the regulatory returns (including the Statement of Assets for Solvency Purposes (Form GJ)) have been prescribed under Regulation No. 3(1) of Part - B of Annexure II of the Securities and Exchange Commission (Insurance) Rules, 2002.

11. The Respondents were required to ensure compliance with Section 46(1)(b) and Section 51 of the Ordinance, which the Respondents failed by not filing the Statement of Assets for Solvency Purposes (Form GJ) as on December 31, 2013 along with the audit report thereon, issued by the Company's statutory auditor, despite the fact that the Commission vide its letter no. ID/SE/PMIGCL/2015/21995 dated February 10, 2015, advised the Company to file the said Statement along with the audit report thereon within ten days of receipt of the said letter of the Commission.



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

12. The Respondents stated in their response letter of July 14, 2015 that the Company has filed Writ Petition No. 14773/2009 before the Honorable Lahore High Court whereby the Honorable Court has been prayed to strike down Rule 13(1) of the Insurance Rules, 2002 concerning the minimum solvency requirement for insurers due to it being *ultra vires*, discriminatory in nature, in violation of Article 25 of the Constitution and beyond the scope of Section 36(3)(a) of the Ordinance.

13. The Respondents were of the view that till such time the matter of imposition of the minimum solvency requirement in respect of the Company is pending adjudication before the Honorable Court and till the time it is decided, any action taken against the Company in the instant matter, if so taken by the Commission, shall entail serious legal consequences. Accordingly, the Respondents submitted that any repulsive order against the Company may for the time being be condoned.

14. During the course of hearing in the matter, the Respondents admitted that the filing requirements as laid down in the Ordinance in its Section 46 and Section 51 have neither been challenged nor the Honorable Court has issued any restraining order. Moreover, the Company's stance in the matter of solvency has nothing to do with the filing requirements of the Ordinance. Accordingly, the Respondents were required to file the Statement of Assets for Solvency Purposes (Form GJ) as on December 31, 2013.

15. Hence, it can be inferred that the Respondents have failed to comply with the requirements of Section 46(1)(b) and Section 51 of the Ordinance, by not filing the Statement of Assets for Solvency Purposes (Form GJ) as on December 31, 2013, for which, they are liable to be penalized under Section 156 of the Ordinance.

E. Overall conclusion

16. 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 Section 46(1)(b) and Section 51 is established. Therefore, the fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents i.e. the Company and the so-called directors of the Company.

17. 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 Section 46(1)(b) and Section 51 of the Ordinance, therefore, it could be legitimately inferred that the default was committed. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed onto the Company and the respondent directors of the Company.

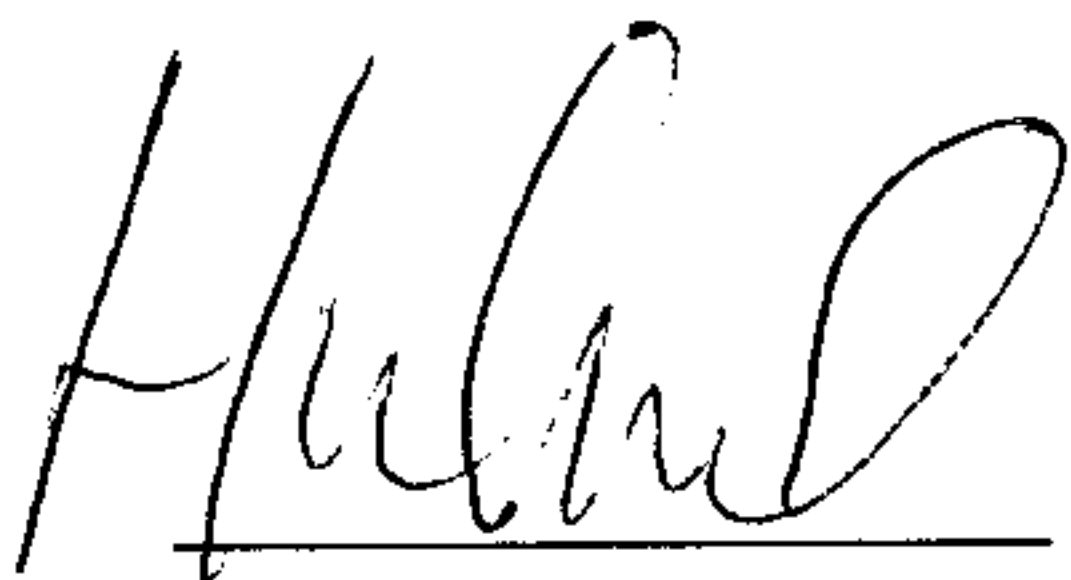
F. Penalties and directions

18. 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 the maximum fine as provided under the said Section, impose a fine of Rs. 10,000/- (Rupees Ten Thousand Only) on each of the Respondent persons and Rs. 100,000/- (Rupees One Hundred Thousand Only) on the Company, due to the default of Section 46(1)(b) and Section 51 of the Ordinance, as mentioned hereinabove. The Respondents are further directed to immediately file the requisite Statement of Assets for Solvency Purposes (Form GJ) as on December 31, 2013 along with the audit report thereon. However, in case of similar non-compliance in future, the Commission shall take stronger action against the Respondents. Further, the Respondents are hereby directed to observe strict compliance of the provisions of the Ordinance, Rules and Regulations in future.

19. Hence, all the Respondent are hereby directed to deposit the applicable fine 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 date of this Order and furnish receipted vouchers issued in the name of the Commission for information and record.

20. In case of failure to comply with this Order, the Commission shall be bound to initiate proceedings under Section 63(2)(d), Section 65 and/or Section 156 of the Ordinance. However, in case any willful misstatement is subsequently found in the submissions made by the Respondents, the Commission shall initiate proceedings under Section 158 of the Ordinance.

21. 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

