



SECP

INSURANCE DIVISION

Islamabad

Before Hasnat Ahmad, Director (Insurance)

In the matter of

Premier Insurance Limited

Show Cause Notice Issue Date: August 28, 2015

Date of Hearing: September 30, 2015

Attended By:

1. Mr. Iftikhar Gadar
Chief Financial Officer / Company Secretary
M/s. Premier Insurance Limited;
2. Mr. Brendan D'Lima
Deputy Executive Director/ Head of Operations
M/s. Premier Insurance Limited;
3. Mr. M. Imran
Head of Claims
M/s. Premier Insurance Limited.

Date of Order: October 30, 2015

ORDER

Under Section 130(3) 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. Premier Insurance Limited (the "Company"), and its Directors and Chief Executive Officer for alleged contravention of Section 130(3) read with Section 11(1)(f) and Section 12 of the Insurance Ordinance, 2000 (the "Ordinance"). The Company, its Directors and Chief Executive Officer shall be referred to as the "Respondents" hereinafter.

A. Background

2. The Federal Insurance Ombudsman passed an Order dated May 7, 2015 in the matter of Mr. Zafaryab Ali Khan vs. M/s. Premier Insurance Limited, whereby the Company was directed to pay the claim as per the surveyor's assessment within a period of thirty (30) days. However, the Company neither exercised its right to file a review or a representation as per the provisions of the Federal

SECURITIES AND EXCHANGE
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Ombudsmen Institutional Reforms Act, 2013 (Act No. XIV of 2013), nor did the Company comply with the Order of the Federal Insurance Ombudsman within the timeframe as stipulated in the said Order, thereby violating the provisions of Section 130(3) read with Section 11(1)(f), Section 12(1)(a) and Section 12(4) of the Ordinance.

3. Accordingly, for the alleged violation of Section 130(3) read with Section 11(1)(f), Section 12(1)(a) and Section 12(4) of the Ordinance, the Commission initiated proceedings against the Respondents by issuance of a Show Cause Notice bearing number ID/Enf/Premier/2015/2070 on August 28, 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 the said provisions of the Ordinance. The contents of the Show Cause Notice have been reproduced below:

SUBJECT: SHOW CAUSE NOTICE UNDER SECTION 130(3) READ WITH SECTION 11(1)(f), SECTION 12 AND SECTION 156 OF THE INSURANCE ORDINANCE, 2000

1. WHEREAS, the Federal Insurance Ombudsman vide Order dated May 7, 2015 in the matter of Mr. Zafaryab Ali Khan vs. M/s. Premier Insurance Limited held that:

"...In this case, the Surveyor has assessed loss in the range of Rs. 1,100,000/-, which is a fair assessment and the Respondent Co. is accordingly directed to pay the Claim as per Surveyor's assessment, within a period of thirty (30) days from the receipt of this Order..."

2. AND WHEREAS, M/s. Premier Insurance Limited ("the Company") did not exercise the right to file a review or a representation as provided under the Federal Insurance Ombudsmen Institutional Reforms Act, 2013 (Act No. XIV of 2013), within the prescribed period against the aforesaid Order of the Ombudsman.

3. AND WHEREAS, Mr. Zafaryab Ali Khan ("the Complainant") vide his Application dated August 20, 2015 approached the Commission for implementation of the said Order.

4. AND WHEREAS, the Company has prima facie failed to pay the ascertained amount of claim to the Complainant as decided by the Federal Insurance Ombudsman even after the expiry of 105 days i.e. from the date of issuance of the said Order till the date of complaint made by the Complainant.

5. WHEREAS, in terms of the provisions of Section 130(3) of the Insurance Ordinance, 2000 ("the Ordinance"), any order passed by the Federal Insurance Ombudsman, which has not been appealed against shall become final and operative. The same provisions also state that if such an order is not implemented, the insurance company concerned shall stand liable to such action including the imposition of a fine or penalty as the Commission may deem fit, and in relation to an insurance company officer to the



appropriate disciplinary or other proceedings. The provisions of Section 130(3) have been reproduced as under:

"Any order passed by the Insurance Ombudsman which has not been appealed against, or any order passed by the Commission in appeal, as the case may be, shall become final and operative and if not implemented shall render the insurance company concerned liable to such action including the imposition of a fine or penalty as the Commission may deem fit, and in relation to an insurance company officer, to the appropriate disciplinary or other proceedings."

6. AND WHEREAS, as per Section 11(1)(f) of the Ordinance reads as follows:

"An insurer registered under this Ordinance shall ensure at all times 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;"

7. AND WHEREAS, Section 12(1)(a) of the Ordinance states 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:

(a) the business of the insurer or applicant is carried on with integrity, due care and the professional skills appropriate to the nature and scale of its activities;
..."

8. AND WHEREAS, Section 12(4) of the Ordinance states that:

"The insurer or applicant shall not be regarded as conducting its business in a sound and prudent manner if it fails to conduct its business with due regard to the interests of policy holders and potential policy holders."

9. AND WHEREAS, the Company prima facie has not complied with the aforesaid Order of the Federal Insurance Ombudsman, for which the above-named respondents may be penalized in terms of Section 156 of the Ordinance, which states as under:

"156. 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."



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10. 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 under Section 156 of the Ordinance may not be imposed upon you for contravening the provisions of Section 130(3), Section 11(1)(f) and Section 12 of the Ordinance read with the aforementioned Order of the Federal Insurance Ombudsman, 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

4. In response to the said Show Cause Notice, the Respondents, vide their letter dated September 8, 2015 stated that:

"...We respect the office of Ombudsman, therefore decided not to file an appeal against his order dated May 7, 2015 and settle the claim purely as a gesture of goodwill, though we strongly believed that the Order lacks merit and we could have filed an appeal for your review on the following grounds:

- 1. The Sindh High Court case of Pakistan General Insurance Vs Mst. Bakht Bibi, on the matter of **insurable interest** as cited in the Ombudsman's Order has no relevance to the case under reference. A Bailee accepts the liability on account of others' goods in his possession, while the claimant under reference has avoided his established liability to government by not paying the governments due fee and no declaring the said car in his assets.*
- 2. The vehicle No.LEB-11-1811 was actually registered in the name of Sufizar (Pvt.) Ltd., but upon false declaration that the same was in the process of being registered in the name of Mr. Zafar Yaab Ali, the insurance policy was issued in the name of Mr. Zafar Yaab Ali – pursuing the basic principle of insurance of **utmost good faith**.*
- 3. However, upon occurrence of a partial loss later when it revealed that the vehicle was still registered under some other name, he was requested (Copy of our emails dated 30.05.2013 and 30.12.2013 are enclosed as Annexure 1) to have*



the title of the vehicle transferred in his own name as *insurable interest* did not exist. Unfortunately, he still did not fulfill his promise until he reported that the vehicle had been stolen on 19-7-2013. (Mr. Zafar yab misstated in his complaint that no objection was raised from our end on his not transferring the vehicle in his name).

4. In August 2013, after the theft of vehicle Mr Zafaryaab discovered that the original file of the vehicle had also been misplaced. This is an important point, as it is in fact the date of discovery of alleged loss of file not the date of when the alleged loss might have occurred. It remained the responsibility of Mr Zafar to establish that it was not the non-availability of the original excise file right from the inception of insurance cover which could not let him transfer the vehicle in his own name. This is non-disclosure of a material fact, which had serious bearing on the validity of insurance contract.
5. You will appreciate that due to non-availability of original excise file, our rights of recovery had been grossly prejudiced. It may be submitted that in case if the vehicle is traced and we approach Indus Motor company for issuance of duplicate documents they have a time consuming procedure and stringent conditions for issuing the duplicate documents such as: the vehicle must not be involved in any criminal activity, and it would be issued in the in the name of original allottee. Moreover, the Excise department's record would also have to get amended by the company in whose name the vehicle stood i.e. Sufizar (pvt) Ltd. Consequently in case of recovery we would be requiring cooperation from Sufizar (pvt) Ltd.
6. Despite all the above, when we received the Order of Ombudsman we decided to settle the claim. Since the payment was to be made in favor of Mr.Zafar Yaab Ali Khan, he was requested vide our letter dated 18.5.2015 (Annexure 2) for submitting the following documents before we could issue the cheque:
 - NOC from Sufizar (Pvt) Ltd. that the payment of claim may be made to Zafar Yaab Khan
 - Letter from Sufizar (Pvt) Ltd advising Motor Registering Authority to Transfer Vehicle in the name of Zafar Yaab Khan
 - Assurance from Sufizar that in case of recovery of vehicle, they would help the duplicate documents issued from Indus Motors.
7. We repeatedly requested Mr.Zafar Yaab for arranging the above documents but he was unwilling to listen to our requests and was insisting just for payment of Rs.1,100,000/-. Long last he provided NOC dated 12-08-2015 from Sufizar (Pvt) Ltd (Annexure 3) advising us for payment of claim to Mr.ZafarYaab Khan assuring that the Letter to Motor Registering Authority would be given on receiving cheque.
8. Though the assurance concerning approaching Indus Motor Co for obtaining the duplicate documents in case of recovery still not received, we released our Cheque No. SA 40116144 dated 31-08-2015 for Rs.1,100,000/- favoring Zafar



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Yaab Khan and delivered to Mr. Muhammad Waqas, Admin. In charge, Sufizar (Pvt) Ltd on 01-09-2015 (Copy of the receipt attached).

It is evident that no deliberate delay was caused from our end on receiving advice from M/s Sufizar (Pvt) Ltd. The orders of Honorable Federal Insurance Ombudsman were complied in letter and spirit on completion of essential and minimal requirements..."

B. Hearings

5. The Commission, vide its notice no. ID/Enf/Premier2015/2307 dated September 15, 2015, scheduled the hearing for September 30, 2015 at 11:00 a.m.

6. The said hearing was conducted through video link, connecting the Commission's Karachi office with the Head Office on the written request of the Respondents, vide letter dated September 17, 2015. The hearing of September 30, 2015 was attended by Mr. Iftikhar Gadar - Chief Financial Officer / Company Secretary, Mr. Brendan D'Lima - Deputy Executive Director / Head of Operations and Mr. M. Imran - Head of Claims, for and on behalf of the Respondents.

7. Brief proceedings of the hearing of September 30, 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 September 8, 2015;
- b. The Respondents stated that the Company decided to fully honor the order of the Federal Insurance Ombudsman by paying the ascertained claim as it did not file any review or representation against the said order. However, due to fact that certain documents were requested from the policyholder (Mr. Zafaryaab) and as soon as the documents were provided by him, the amount of claim was paid in full;
- c. The Respondents mentioned that at the time of issuance of the insurance policy, the vehicle (LEB-1811) was registered in the name of M/s. Sofizar (Private) Limited, however, the policy was issued to the policyholder on the basis of a declaration stating that the title of the said vehicle was in process of being transferred in the name of the policyholder. The Respondents further stated that the policyholder was requested to get the title of the vehicle transferred in his name, but the policyholder failed to transfer the vehicle in his name;
- d. The Respondents further stated that the original file of the vehicle had been misplaced. The Respondents were of the opinion that the policyholder failed to prove that the original file was available with him at the time of issuance of the insurance policy;



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- e. The Respondents were asked as to why did they try to renegotiate the amount of claim with the policyholder which had already been ascertained by the Federal Insurance Ombudsman in his order. In response, the Respondents stated that due to non-availability of the original file of the vehicle, the Company's right of recovery was at stake. Moreover, if the vehicle is subsequently recovered, the market price of such vehicle would surely be affected adversely. Hence, in order to ensure that the title of the vehicle is transferred in the name of the Company upon its recovery, and also to expedite the claim payment process, the Company requested the policyholder to provide a No-Objection Certificate from the original owner of the vehicle, a letter from the owner advising the Motor Registration Authority to transfer the vehicle in the name of the policyholder, and an assurance from the owner that it would assist the Company to obtain the duplicate documents, in case the vehicle is subsequently recovered;
- f. The Respondents stated that the said documents were requested from the policyholder vide Company's letter dated May 18, 2015 (i.e. almost two years after the loss). The policyholder provided the requisite documents vide his correspondence dated August 12, 2015, therefore, the Company made the payment of claim in full (i.e. Rs. 1.10 million) to the policyholder vide cheque dated August 31, 2015;
- g. The Respondents were asked as to why the claim was repudiated in 2013 i.e. prior to the matter being adjudicated by the Federal Insurance Ombudsman, on which the Respondents stated that the said claim was repudiated in 2013 due to non-existence of insurable interest, as the vehicle was not registered in the name of the policyholder;
- h. The Respondents were asked as to why the Company did not ensure presence of the insurable interest at the time of issuance of the insurance policy. Moreover, the Respondents were asked as to why the Company did not peruse the original file of the vehicle prior to issuance of the insurance policy. In response, the Respondents admitted that it was an oversight on part of the Company;
- i. The Respondents were clarified that the ascertained amount of claim should have been paid to the policyholder forthwith when the order of the Federal Insurance Ombudsman was issued, as all the matters concerning insurable interests and other factors were already adjudicated by the Federal Insurance Ombudsman. It was further clarified that the Company had the option to file a review or a representation against the order of the Federal Insurance Ombudsman, which the Company did not avail. Hence, the claim was ought to be paid without any further delay.



C. Issues

8. As per Section 130(3) of the Ordinance, any order passed by the Federal Insurance Ombudsman, which has not been appealed (or challenged) becomes final and fully operative.

9. The Respondents were required to ensure compliance with Section 130(3) of the Ordinance by adhering to the order of the Federal Insurance Ombudsman dated May 7, 2015, whereby the Company was directed to pay the claim as per the assessment of the surveyor within a period of thirty (30) days from the receipt of the said order. However, the Company did not file a review or a representation against the order of the Federal Insurance Ombudsman, as per the provisions of the Federal Ombudsmen Institutional Reforms Act, 2013 (Act No. XIV of 2013). In fact, the policyholder (Mr. Zafaryab Ali Khan) vide his application dated August 20, 2015 approached the Commission for implementation of the said order, which evidenced non-compliance with the provisions of Section 130(3) of the Ordinance by the Company.

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

10. The Respondents have stated in their response letter of September 8, 2015 that the vehicle was registered in the name of M/s. Sofizar (Private) Limited and not in the name of the policyholder at the time of effecting of the insurance policy. However, the insurance policy was issued in the name of the policyholder on the basis of a declaration submitted by him stating that the vehicle was in the process of transfer in his name. In this regard, the Company requested the policyholder vide its emails dated May 20, 2013 and December 30, 2013 to get the vehicle registered in his own name. The Respondents have further stated that the original file of the vehicle was missing.

11. The Respondents have admitted during the course of hearing that they tried to renegotiate the claim amount with the policyholder despite aforesaid decision of the Federal Insurance Ombudsman claiming that market value of the vehicle (without registration documents) would be much less than the vehicle which has proper registration documents. The Respondents have also confirmed that the claim was paid in full after receipt of the documents from the policyholder.

12. The Respondents have admitted that the essential element of insurable interest in the said insurance policy was overlooked by the Company at the time of issuance of the insurance policy. Moreover, the Respondents have also admitted that the Company did not peruse the original file of the vehicle at the time of issuance of the insurance policy.

13. In view of the admission of the Respondents stated at Para 12 above, it can be concluded that the Company issued the insurance policy to Mr. Zafaryab Ali Khan, who was not the owner of the vehicle (LEB-1811) at the time of issuance of



the said policy. In fact, the actual owner of the said vehicle was M/s. Sofizar (Private) Limited. Thus, the key element of an insurance contract i.e. insurable interest was missing since the inception of the said insurance policy. Also, the Company did not peruse the original file prior to the issuance of the policy. The policyholder cannot be blamed for the aforesaid lapses/oversight on part of the Respondents and therefore his claim should not have been repudiated on the basis of missing insurable interest.

14. The ascertained amount of claim (i.e. Rs. 1.10 million) was paid to the policyholder vide Company's cheque dated August 31, 2015 i.e. 116 days after the issuance of the order of the Federal Insurance Ombudsman.

E. Overall conclusion

15. 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 Ordinance and other legal references, I am of the view that the default of Section 130(3) is established. Therefore, the fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents.

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. 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 persons associated with the Company as "directors" are supposed to be well aware of their legal obligations, 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 Respondents of the Company.

F. Penalties and directions

17. 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. 200,000/- (Rupees Two Hundred Thousand Only) on the Company, due to the default of Section 130(3) of the Ordinance, as mentioned hereinabove. Further, the Respondents are hereby directed to observe strict compliance of the provisions of the Ordinance, Rules and Regulations in future.

18. Hence, the Company is hereby directed to deposit the applicable fine in the designated bank account maintained in the name of the Securities and Exchange



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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.

19. 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.

20. 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

