



SECP
INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director (Insurance)

In the matter of

Excel Insurance Company Limited

Show Cause Number and Date: ID/Enf/Excel/2016/7040, October 6, 2016

Date of Hearing: November 14, 2016

Attended By: 1. Mr. Ijaz Ahmed, Advocate Supreme Court;
2. Mr. Sarfraz Ahmed, Advocate

Date of Order: December 28, 2016

ORDER

Under Section 11(1)(a) and Section 28 Read with Section 156 of
the Insurance Ordinance, 2000.

.....

This Order shall dispose of the proceedings initiated against the Chief Executive Officer and Directors of M/s. Excel Insurance Company Limited (the "Company"), for alleged contravention of Section 11(1)(a) and Section 28 of the Insurance Ordinance, 2000 (the "Ordinance"). The Company and its Chief Executive Officer and Directors shall be referred to as the "Respondents" hereinafter.

A. Background

2. The Company is registered under the Ordinance to carry on non-life insurance business in Pakistan.

3. It was revealed during the examination of the Company's half yearly accounts for the period ended June 30, 2016 that the Company has a paid-up capital of Rs. 300 million (December 31, 2015: Rs. 300 million).

4. In terms of Section 11(1)(a) and Section 28 of the Ordinance read with S.R.O.828(I)/2015 dated August 18, 2015, the Company was required to have a paid-up capital of Rs. 350 million by June 30, 2016, and in this regard, the Company was required to raise its capital by an amount of Rs. 50 million in order to meet the minimum paid-up capital requirement as on June 30, 2016.

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5. The Company vide letter dated June 30, 2016 requested the Commission to grant three months' extension to meet the minimum paid-up capital requirement. It was also mentioned in the said letter that the Company is in a position to raise its paid-up capital as well as other options such as operational and strategic alliances are under consideration to meet the shortfall. It would be pertinent to note that no further progress in this regard was intimated to the Commission till the commencement of the instant proceedings.

6. Section 11(1) of the Ordinance provides that:

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

(a) the provisions of this Ordinance relating to minimum paid- up share capital requirements are complied with;..."

7. And, the relevant provisions of Section 28 of the Ordinance state that:

"Requirements as to capital.-(1) An insurer registered under this Ordinance to carry on insurance business shall have a paid-up capital of not less than the required minimum amount.

(2) For the purposes of this section, the required minimum amount is:

(a) one hundred and fifty million rupees, or such higher amount as may be prescribed by the Federal Government, for an insurer carrying on life insurance business; and

(b) eighty million rupees, or such higher amount as may be prescribed by the Federal Government, for an insurer carrying on non-life insurance business;"

8. Also, S.R.O.828(I)/2015 dated August 18, 2015 requires every non-life insurer, registered under the Ordinance, to raise its paid up share capital in the manner as given hereunder:

Type of Insurer	Year 2015	Year 2016		Year 2017	
	31 st December	30 th June	31 st December	30 th June	31 st December
Life Insurer	Rs.500 million	Rs.550 million	Rs.600 million	Rs.650 million	Rs.700 million
Non-Life Insurer	Rs.300 million	Rs.350 million	Rs.400 million	Rs.450 million	Rs.500 million

9. In view of the above, it appeared to the Commission that the Company failed to comply with the minimum paid-up capital requirement in violation of Section 11(1)(a) and Section 28 of the Ordinance, as at the stipulated deadline of June 30, 2016 by which the Company was required to raise its paid-up capital by Rs. 50 million thereby making up a total to Rs. 350 million.



10. Hence, Show Cause Notice bearing number ID/Enf/Excel/2016/7040 dated October 6, 2016 was issued to the Respondents, thereby calling upon them to show cause as to why punitive action may not be taken against them in terms of Section 156 of the Ordinance for not complying with the provisions of Section 11(1)(a) and Section 28 of the Ordinance read with S.R.O.828(I)/2015 dated August 18, 2015.

11. Upon receipt of the said Show Cause Notice, the Respondents, through their letter dated October 17, 2016 under the signature of one of the Directors, stated that they have already started the process for fulfilling necessary statutory requirements to increase the paid-up capital during the grace period allowed to them by holding meeting of the Board of Directors of the Company on August 31, 2016, in which bonus shares were recommended by the Directors of the Company. The Board also recommended to increase the authorized capital from Rs. 300 million to Rs. 500 million. Both the recommendations of the Board were subsequently passed through ordinary resolution in Extra Ordinary General Meeting. The letter also stated that Section 94 of the Companies Ordinance, 1984 requires submission of Form 7 - Notice of Increase in Nominal Share Capital within 15 days of passing the resolution, which was under process.

B. Hearings

12. The Commission, vide its notice no. ID/Enf/Excel/2016/7158 dated October 20, 2016, scheduled the hearing for November 14, 2016 at 10:00 a.m., however, on the request of the Respondents vide their letter dated November 3, 2016, the said hearing was rescheduled for November 14, 2016 at 3:30 p.m. An undated power of attorney executed by the Respondents in favor of Mr. Ijaz Ahmed, Advocate Supreme Court and others (including Mr. Sarfraz Ahmed, Advocate) was provided vide the same letter. Subsequently, Mr. Ijaz Ahmed vide his letter dated November 8, 2016 requested that the hearing be held via video link facility of the Commission. Accordingly, the said hearing was attended by Mr. Ijaz and Mr. Sarfraz via video link facility of the Commission connecting Karachi Office and the Head Office, for and on behalf of the Respondents.

13. It would be pertinent to mention that Mr. Ijaz Ahmed, vide another letter dated November 8, 2016, while acting on behalf of the Respondents stated that the Company has already initiated the process to increase the paid-up capital up to Rs. 400 million, and in this regard, Extra Ordinary General Meeting was held on October 5, 2016 i.e. before the issuance of the Show Cause Notice. Also, the following documents were enclosed with the said letter:

- i. Copy of Form 7 and challan of fee paid for enhancement of the authorized capital;
- ii. Notice dated September 5, 2016 of the Extra Ordinary General Meeting. It would be pertinent to state that as per Notice dated September 5, 2016, issuance of bonus shares was treated as an ordinary business whereas, the



increase in the authorized capital of the Company was considered to be the special one;

- iii. Minutes of the Extra Ordinary General Meeting held on October 5, 2016 to amend the Memorandum and Articles of Association for enhancement of the authorized capital; and
- iv. Extracts of the resolution passed in the aforesaid Extra Ordinary General Meeting and Form 26.

14. During the hearing of November 14, 2016, Respondents explained the steps taken by the Company to address the issue (as mentioned above). They reiterated that there was no issue of funds and the reserves were available before the deadline i.e. 30th June, 2016. Respondents requested that steps taken by the Respondents may be considered and no adverse action may be initiated against the Company. The Respondents were asked to provide copy of Form 3 to the Commission. Subsequent to the hearing, Respondents, vide email dated November 15, 2016, provided the copy of Form 3 to the Commission.

C. Issues

15. Needless to say that the minimum paid-up capital requirement was not complied with in the stipulated deadline of June 30, 2016 by which the Company was required to raise its paid-up capital by Rs. 50 million thereby making up a total to Rs. 350 million as per S.R.O.828(I)/2015. The Company vide letter dated June 30, 2016 requested the Commission to grant three months' extension to meet the minimum paid-up capital requirement. However, the requirement was still not met within that period. Keeping in view all the time required to increase the paid up capital, the Respondents should have initiated this exercise in year 2015 when the aforesaid S.R.O. was issued.

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

16. The arguments, documents and evidences which have been submitted by the Respondents so far have been found to be evidencing the fact that the Company failed to meet the minimum paid up capital requirement till issuance of the Show Cause Notice. In this regard, the Respondents have based their argument on the fact that they initiated the process to increase the paid up capital up to Rs. 400 million in the grace period provided to them.

17. Therefore, in view of the above and as stated earlier, the violation of Section 11(1) and Section 28 of the Ordinance is clearly established, for which the Respondents may be penalized in terms of Section 156 of the Ordinance, which 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."

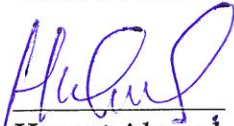
E. Overall conclusion:

18. 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 default of Section 11(1)(a) and Section 28 of the Ordinance is established. The Respondents failed to meet the paid up capital requirement within the time frame provided. The Respondents, however have provided a copy of Form 3 dated November 15, 2016, whereby paid up capital of the Company has been increased to Rs. 400 million.

F. Penalties and directions

19. The Company has increased its paid up capital to Rs. 400 million four and half months after the deadline provided under S.R.O.828(I)/2015 dated August 18, 2015, therefore, in exercise of the power conferred on me under Section 156 of the Ordinance read with S.R.O. 122(I)/2016 dated February 12, 2016, I, instead of imposing the fine as provided under the said provision, hereby warn the company to be careful in future. The Company and its management are further directed to complete the process of meeting the paid up capital requirement and submit its report to the Commission before the deadlines provided under the aforesaid SRO dated August 18, 2015.. Further, the Company and its management are also directed to observe strict compliance of the provisions of the Ordinance, Rules and Regulations in future.

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

