



SECP
INSURANCE DIVISION
Islamabad

Before Shaukat Hussain, Commissioner (Insurance)

In the matter of

Pakistan Mutual Insurance Company (Guarantee) Limited

Show Cause Notice No. and ID/Enf/PakistanMutual/2019/839
Issue Date: dated June 11, 2019

Date of Hearing: July 11, 2019

Attended By: Mr. Umer Abdullah
Authorized Representative

Date of Order: July 24, 2019

ORDER

**Under S.R.O. 245 (I)/2019 read with Section 40A of the Securities and Exchange
Commission of Pakistan Act, 1997**

.....

This Order shall dispose of the proceedings initiated by Securities and Exchange Commission of Pakistan (the "Commission") against M/s. Pakistan Mutual Insurance Company (Guarantee) Limited (the "Company"), its Chief Executive and Directors for alleged contravention of S.R.O. 245 (I)/2019 (the "directive"). The Company and its Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Insurance Ordinance, 2000 (the "Ordinance") to carry on the business of non-life insurance in Pakistan. However, the Commission vide its Directive under Section 63 of the Ordinance dated June 24, 2008 directed the Company to cease entering into new insurance contracts. The Supreme Court vide its Order dated January 25, 2016 dismissed the appeal of the Respondents as withdrawn and the Commission's Directive dated June 24, 2008 to cease the business of the Company was restored.

3. As per the directive, all regulated persons are required to submit compliance report on statutory regulatory orders issued by the Ministry of Foreign Affairs on United Nations Security Council Resolutions and intimation from the National Counter Terrorism Authority/Ministry of Interior regarding updates in the list of proscribed persons under the Anti-Terrorism Act, 1997, within three days of receiving the same, through email to aml.dept@secp.gov.pk by authorized officer of the regulated person. However, the Company failed to submit the compliance reports in the following instances:-

- i. Commission's email dated March 20, 2019 in respect of the National Counter Terrorism Authority (NACTA)'s letter No. F. No. 04/94/2014(Ops)

SECURITIES AND EXCHANGE
COMMISSION OF PAKISTAN
Insurance Division, NIC Building,
63 Jinnah Avenue, Islamabad, Pakistan



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8205 dated March 18, 2019 for 'Legal action regarding persons on the IVth Schedule'. Furthermore, the Commission also issued reminder vide email dated April 10, 2019 to submit the compliance report.

ii. Commission's email dated March 21, 2019 in respect of the National Counter Terrorism Authority (NACTA)'s letter No. F. No. 1/28/2017/DD(Ops & Imp) dated March 19, 2019 for 'Deletion of Persons from the List of IVth Schedule of ATA, 1997 of Khyber Pakhtunkhwa'. Furthermore, the Commission also issued reminder vide email dated April 10, 2019 to submit the compliance report.

iii. Commission's email dated March 21, 2019 in respect direction of the Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa, vide Notification No. SO(POLICE-I)/HD/11-2/2018/Vol-XXIII dated March 13, 2019 for 'retention of person on Schedule IV of Anti Terrorism Act 1997'. Furthermore, the Commission also issued reminder vide email dated April 10, 2019 to submit the compliance report.

iv. Commission's email dated March 25, 2019 in respect direction of the Ministry of Foreign Affairs vide S.R.O 402 (I)/2019 dated March 23, 2019 for 'travel restrictions, arms embargo and to freeze the funds and other financial resources of certain individuals and entities'. Furthermore, the Commission also issued reminder vide email dated April 10, 2019 to submit the compliance report.

v. Commission's email dated April 1, 2019 in respect of 'submission of Compliance report on AMLD list of banned/proscribed entities'. Furthermore, the Commission also issued reminder vide email dated April 10, 2019 to submit the compliance report.

vi. Commission's email dated April 8, 2019 in respect of direction of the Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa, vide Notification No. SO(POLICE-I)/HD/11-2/2017/Vol-XXI dated March 26, 2019 for 'removal of persons from the list of Schedule IV of Anti Terrorism Act, 1997'. Furthermore, the Commission also issued reminder vide email dated April 10, 2019 to submit the compliance report.

vii. Commission's email dated April 10, 2019 in respect of 'submission of compliance report on penal action in case of non-compliance with the notification on UNSCR listing'.

viii. Commission's email dated April 15, 2019 in respect of direction of the Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa, Notification No. SO(POLICE-I)HD/11-2/2017/Vol-XXI for 'removal of persons from the list of Schedule IV of Anti Terrorism Act, 1997'.

ix. Commission's email dated April 16, 2019 in respect of the Ministry of Foreign Affairs, Islamabad vide SRO No. 407(I)/2019 dated March 23, 2019 regarding 'amendments in 1267 ISIL (Da'esh) Sanctions Committee's List'. Furthermore, the Commission also issued reminder vide email dated April 23, 2019 to submit the compliance report.



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- x. Commission's email dated April 16, 2019 in respect of the National Counter Terrorism Authority (NACTA)'s letter No. F.No. 04/94/2014(Ops)-8205 dated April 12, 2019 for 'legal action regarding persons on IV Schedule'. Furthermore, the Commission also issued reminder vide email dated April 23, 2019 to submit the compliance report.
- xi. Commission's email dated April 23, 2019 in respect of the Ministry of Foreign Affairs SRO No. 471(I)/2019 dated April 18, 2019 regarding 'amendment of one entry from UN 1989 Al-Qaeda/Da'esh Sanctions Committee's List'.
- xii. Commission's email dated May 2, 2019 in respect of the Ministry of Interior's Notification dated April 18, 2019 for 'proscribed organization under First Schedule of the Anti Terrorism Act, 1997'.
- xiii. Commission's email dated May 2, 2019 in respect of the National Counter Terrorism Authority (NACTA)'s letter dated F.No. 04/94/2014(Ops)-8205 dated April 30, 2019 regarding 'retention of the persons in Schedule IV of Anti Terrorism Act, 1997'.

4. In this respect, the Commission issued reminder letter dated May 9, 2019 to the Company to comply with the above-mentioned emails within three (03) days of the date of receipt of the letter. Moreover, reminder was also sent through email dated May 9, 2019 on the email addresses of the Company i.e. pakistanmutual@hotmail.com. However, the Company failed to submit any response to the reminder letter dated May 9, 2019 or email dated May 10, 2019 until the date of this Show Cause Notice.

5. In view of the above, it appeared that the Company failed to comply with S.R.O.245(I)/2019 for which, the Company and its Board of Directors were liable to be penalized under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the "Act").

6. S.R.O 245(I)/2019 ("the directive") dated February 22, 2019 provides that state that:

"iii. Compliance report on statutory regulatory orders issued by the Ministry of Foreign Affairs on United Nations Security Council Resolutions and intimation from National Counter Terrorism Authority/Ministry of Interior regarding updates in list of proscribed persons under the Anti-Terrorism Act, 1997, shall be submitted within three days of receiving the same, through email to aml.dept@secp.gov.pk by authorized officer of the Regulated Person.

Any person to whom this directive applies and who contravenes or fails to comply with the requirements of this directive or submits a return which is false in material respect or where under a misstatement is made shall be liable to imposition of penalty under section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), which may extend to ten million rupees and where such contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues."



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7. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/PakistanMutual/2019/839 dated June 11, 2019 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Section 40A of the Act should not be imposed on them for the aforementioned alleged contraventions of the law.

8. The Respondents did not submit response to the aforesaid SCN. By way of providing final opportunity of hearing, the Commission, vide its notice No. ID/Enf/PakistanMutual/2019/948 dated June 24, 2019, scheduled the hearing for July 11, 2019 at the Head Office of the Commission. The Respondents opted to appear for the hearing through video link from the Commission's Lahore Office.

9. The hearing of July 11, 2019 was attended by the Authorized Representative of the Respondents namely Mr. Umer Abdullah representing the Respondents before the Commission in the instant matter.

10. During the hearing, the Authorized Representative denied receiving the emails sent by the Commission and stated that the postal address of the Company had also been changed. He further apprised the Commission that the Company is dormant and has not carried out new insurance business since the year 2015. The Authorized Representative requested the Commission to take lenient view in the matter and assured that the Company will ensure compliance in future.

11. The Authorized Representative also submitted written reply to the SCN during the hearing which is reproduced below;

"

1. *Pakistan Mutual Insurance Company (Guarantee) Limited (hereinafter the "Company"), vide its resolution of the Board of Directors' dated 25.8.2015 decided to wind up its operations and insurance business with effect from 01.10.2015. Pursuant to the said Resolution it was decided that the Company shall cease to carry on its business and shall also not enter into any new insurance contracts.*
2. *It was also decided that the Company shall initiate the legal process of winding up as provided under Section 144 of the Insurance Ordinance, 2000 read with all other enabling provisions of laws.*
3. *The legal process of the winding up of the Company is pending before the Securities and Exchange Commission of Pakistan ("SECP").*
4. *For a period of over three and a half years the Company (a) has ceased to carry out its business; (b) has not entered into any new insurance contracts; (c) has paid off all its employees and currently not a single person is working as employee of the Company; (d) has closed down all email servers/connections and there is no employee to receive emails for and on behalf of the Company; (e) has shut down all its offices, telephone connections etc.; and (f) is completely non-operational.*



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5. *The Company only uses 12-B Kapurthala House (Old Anarkali), Lahore as its address for purposes of any correspondence.*
6. *The Company vide its letter/reply dated 15.5.2019 informed the SECP that the Company is non-operational and also of all other aforesaid facts and circumstances.*

Submissions on facts:

1. *It is humbly reiterated that the Company is not operational for a period of more than three and half years, consequently not a single person is working as employee of the Company; the Company has closed down all email servers/connections and there is no employee to receive emails for and on behalf of the Company; and the Company has shut down all its offices, telephone connections etc. therefore the Company has not received any of the emails or communications mentioned in paragraph 3 sub-paragraphs (i) to (xiv) to the Show Cause Notice under reply. It is humbly submitted that any failure on part of the Company to respond to any of the communications/emails mentioned in paragraph 3 sub paragraphs (i) to (xiv) of the Show Cause Notice was not deliberate or intentional but was due to the fact that the Company had no knowledge of such communications/emails.*
2. *In reply to paragraph 4 of the Show Cause Notice, it is submitted that the Company vide its letter/reply dated 15,5.2019 informed the SECP that the Company was completely non-operational/non-functional hence that it did not receive any communications/emails from the SECP.*
3. *It is humbly submitted that so long as the Company was operational, it fully complied with the applicable/ relevant laws. Any failure on part of the Company to respond to any of the communications/emails mentioned in Show Cause Notice is primarily due to the fact that the Company had become completely non-operational and it was not aware of any such communications/emails.*

In light of the aforesaid, it is most respectfully submitted that the Company may kindly be granted a period of at least four (04) weeks for it to be able to collect and share the information 5 required under the Show Cause Notice."

12. In terms of the clause (iii) of the directive, the Company was required to submit Compliance report on statutory regulatory orders issued by the Ministry of Foreign Affairs on United Nations Security Council Resolutions and intimation from National Counter Terrorism Authority/Ministry of Interior regarding updates in list of proscribed persons under the Anti-Terrorism Act, 1997, within three days of receiving the same, through email to aml.dept@secp.gov.pk by authorized officer of the regulated person. However, the Company failed to respond to 13 emails that were sent to the Company. Furthermore, copies of the aforesaid emails were also forwarded to the Company through letter dated May 9, 2019 but no response from the Company was received.

13. Respondents main argument regarding non-receipt of emails is not tenable due to the following grounds:-



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- i. Firstly, the email address of the Company i.e. Pakistan mutual@hotmail.com is written/printed on letterhead of the Company and the Company uses the same for its correspondence with the Commission. All original emails and there reminders were sent by the Commission to the Company for statutory compliance at the said email address.
- ii. Secondly, even if the emails address were changed/suspended then the Company should have communicated the valid email address to the Commission immediately. However, in the instant case, the Company did not communicate any change in the email address.
- iii. Thirdly, copies of all emails were again forwarded to the Company through letter dated May 9, 2019, which leaves no ambiguity or question regarding non-receipt of the emails. The aforesaid letter was self-explanatory and contained the following direction;

".....

4. *The Company is hereby reminded to submit the compliance report of above-mentioned emails within 7 days from the date of this letter without fail.*

This direction shall be without prejudice to the penal and civil consequences of the defaults on the part of the Company and its management in making compliance within the period laid down in SRO 245(I)/2019."

- iv. Lastly, plea of the Authorized Representative that the address of the Company has changed is not valid as the address '12-B Kapurthala House (old Anarkali), Lake Road, Lahore' is the updated address provided by the Company whereby all the letters of the Commission to the Company are delivered without fail. Same address is also written/printed on the letter head of the Company.

14. The directive dated February 22, 2019 provides that, any person to whom this directive applies and who contravenes or fails to comply with the requirements of this directive or submits a return which is false in material respect or where under a misstatement is made shall be liable to imposition of penalty under section 40A of the Act, which may extend to ten million rupees and where such contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues.

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 Regulations, S.R.O.245(I)/2019 and/or other legal references. I am of the view that the violation of S.R.O.245(I)/2019, is clearly established, for which the Respondents may be penalized in terms of Section 40A of the Act.

16. Section 40A of the Act states that:



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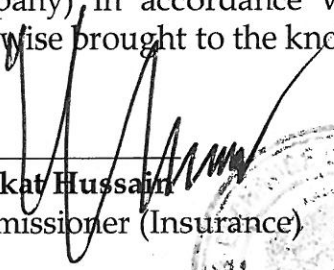
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“Penalty for violation of rules, regulations, directives and notifications. - (1)
Any person who contravenes or fails to comply with any provision of rule made under section 39 or regulation made under section 40 or directive or notification issued under this Act shall be liable to pay by way of penalty a sum which may extend to ten million rupees and where the contravention is a continuing one, with a further penalty which may extend to one hundred thousand rupees for every day after the first during which such contravention continues.

(2) A penalty under sub-section (1) shall be imposed by the Commission after providing a reasonable opportunity of being heard to the party.”

17. In exercise of the power conferred on me under Section 40A of the Act, I, take a lenient view and do not impose fine on the Board of Directors of the Company due to the fact that the business of the Company is ceased and the Authorized Representative has assured to submit compliance report in respect of all emails sent by the Commission in future. However, the Respondents are hereby warned and directed to ensure strict compliance with the directive in future.

18. This Order is issued without prejudice to any other 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.



Shaukat Hussain
Commissioner (Insurance)

