



**Securities and Exchange Commission of Pakistan
(Insurance Division)**

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

The Credit Insurance Company Limited

Show Cause Notice Issue Date: July 6, 2012
Date of Hearing: November 30, 2012
Attended By: Mr. M. Ikhlaq Butt, Chief Executive Officer
Date of Order: December 28, 2012

ORDER

(Under Section 46(1) 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 Credit Insurance Company Limited ("the Company") for not complying with Section 46(1) read with Section 51(1) of the Insurance Ordinance, 2000 ("the Ordinance").

Background Facts

2. The relevant provision of Section 46(1) of the Ordinance states that:

"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,

- (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;*

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- (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."

3. Regulation No. 3(1) of Part - B of the Securities and Exchange Commission (Insurance) Rules, 2002 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."

4. Regulation No. 4 of Part - B of the Securities and Exchange Commission (Insurance) Rules, 2002 states that:

"1. The form of Published Financial Statements shall consist of the following which shall be submitted according to the published Forms annexed to these Regulations:

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- Required to be filed under S233 (5) of the Companies Ordinance 1984, for which the revised forms are being hereby prescribed :
 - Balance Sheet (Form GA).
 - Profit and Loss Account (Form GB).
- The following which shall be deemed to be required under S233(5) of the Companies Ordinance 1984:
 - Statement of Cash Flows (Form GC).
 - Statement of Premiums (Form GD).
 - Statement of Claims (Form GE).
 - Statement of Expenses (Form GF).
 - Statement of Investment Income (Form GG).

2. Where the forms contain certain classifications which are not applicable to the reporting insurer, then such classifications may be removed from the Published Financial Statements.

3. The Published Financial Statements shall also include, as Notes to the Accounts, the details set out in Form GL annexed to these Regulations. Other information required to be disclosed by any International Accounting Standard, the Companies Ordinance 1984 or the listing rules of any stock exchange on which the shares of the insurer are listed shall also be disclosed as Notes to the Account."

5. 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."

6. It was observed that the Company has not submitted the Published Financial Statements & Regulatory Returns for the year ended December 31, 2011 within the stipulated timeframe i.e. within four months from the date to which these financial statements are made up. Additionally, it is pertinent to mention that no extension was given to the Company in terms of the Proviso of Section 51 (1) of the Ordinance. Furthermore, the Commission vide its letter of May 10, 2012 mentioned the fact to the Company and asked to Company to provide a documentary evidence, in case the said Published Financial Statements & Regulatory Returns have already been filed with the Commission. However, the Company vide their letter no. Gen/095/12 dated May 12, 2012 informed that the Annual General Meeting of the Company was held on

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April 30, 2012 and stated that the financial statements and the returns will be submitted to the Commission in due course. The Company vide their letter no. Gen/096/12 dated May 13, 2012, stated that due to the prevailing issue of power shortage, the Company could not prepare the financial statements within the due time, and requested the Commission to grant maximum extension for completion of the requisite financial statements. The Company's application for grant of extension was already time barred, as the Company was required to apply for an extension on or before April 30, 2012.

7. In view of the foregoing paras, it appeared that the Company has failed to comply with the afore-mentioned Sections of the Ordinance read with relevant Regulations, which attract the penal provision as provided under Section 156 of the Ordinance.

Show Cause Notice

8. Accordingly, the Show Cause Notice was issued on July 6, 2012 under Section 46(1) read with Section 51(1) and Section 156 of the Ordinance to the Chief Executive and Directors of the Company, calling upon them to show cause as to why the penalty, as provided under Section 156 of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with provisions of Section 46(1) read with Section 51(1) of the Ordinance.

Company's Response to the Show Cause Notice

9. In response to the said Show Cause Notice, the Company, vide their letter no. ACCTS/127/12 dated July 11, 2012, have made the following argument:

"...We wish to inform you that we have already applied for the extension of filing of returns u/s 51 (1) for a period of ten days vide our letter Gen/ 120/12 dated July 2, 2012 (copy of the letter and courier receipt attached) we have not received any response to our abovementioned letter, we consider that the required extension period under the law has been allowed by your honour. However due to breakage of computer software and heavy energy crisis, we could not prepare the required returns on prescribed period of time.

...

We have already inform you that the Annual Accounts of the Company was already been Audited and Annual General Meeting was held on April 30, 2012. We will submit you the printed copy of accounts within a short period of time which could not be printed by the press due to the prevailing energy crisis of the Country..." (Underlined to put emphasis)

Handwritten signature/initials



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10. Upon examining the above quoted argument of the Company and the annexure thereto, it was observed that the Company had sought extension of 10 days in respect of the submission of reply to the Commission's letter no. ID/SD/TCICL/2012/13877 dated June 26, 2012, which pertained to the filing of the quarterly Statement of Assets and Liabilities. The Company's letter no. Gen/120/12 dated July 2, 2012, in respect of the subject "Submission", stated that:

"...We wish to inform you that we are in the process to your required "statement of Assets and Liabilities".

We shall be grateful if you could allow us further period of ten days to submit our reply." (Underlined to put emphasis)

11. Therefore, the above quoted contents of the Company's letter no. Gen/120/12 dated July 2, 2012 are not relevant in this case; however, as mentioned earlier, the Company has applied for maximum extension in preparing and filing the Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2011 vide Company's letter no. Gen/096/12 dated May 13, 2012.

12. Subsequently, the Company, vide letter no. ACCTS/146/12 dated August 16, 2012, filed its Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2011.

Hearings of the Case & Subsequent Developments

13. Although the Company did not opt to be called for a hearing in the matter, the hearing in the matter was initially scheduled for September 24, 2012, which was communicated to the Company via hearing notice no. ID/Enf/Credit/2012/14458 dated September 12, 2012. However, the Company, vide their letter no. ACCTS/157/12 dated September 20, 2012, have shown their inability to attend the hearing in Karachi and further requested the Commission to conduct a hearing in Lahore or Islamabad.

14. Thereafter, another hearing opportunity was given to the Company, its Directors and the Chief Executive Officer of the Company, and hearing notice no. ID/ENF/Credit/2012/14820 dated November 2, 2012 was issued to them, whereby hearing in the matter was scheduled for November 21, 2012.

15. The Company, vide their letter no. Gen/191/12 dated November 19, 2012, again requested the Commission to fix the hearing in Lahore. Therefore, the Commission, while considering the repeated request of the Company to fix the hearing in Lahore, re-scheduled the hearing for November 30, 2012, at its Lahore



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Office. And, this was communicated to the Company vide hearing notice no. ID/ENF/Credit/2012/14982 dated November 27, 2012.

16. Brief proceedings of the hearing of November 30, 2012 are as follows:
- a. The said hearing was attended by Mr. M. Ikhlaq Butt, Chief Executive Officer of the Company (the "Company's representative").
 - b. The Company's representative mentioned that due to the prevailing power crisis in the city of operations, the Company has not been able to print its Annual Audited Accounts for the year ended December 31, 2011 that were considered and approved in the Annual General Meeting, which was held on April 30, 2012, and the minutes of the said Annual General Meeting have already been provided to the Commission.
 - c. The Company's representative, while presenting the copies of the Company's letter dated May 12, 2012 and May 13, 2012 stated that the Company had applied for maximum extension in filing of the financial statements and regulatory returns for the year ended December 31, 2011, and since, no response from the Commission was received, therefore, it was assumed that the extension has been granted by the Commission. Thereupon, it was mentioned that the Company was required to apply for an extension on or before April 30, 2012. However, even if the Company had applied on or before April 30, 2012 and the Commission had granted a maximum extension of one month in terms of the proviso of Section 51(1) of the Ordinance, the Company would have still failed to comply with the requirements of the Ordinance by filing the Annual Accounts and Regulatory Returns vide letter no. ACCTS/146/12 dated August 16, 2012, which is after the date of the maximum allowable extension.
 - d. The Company's representative further mentioned that the Company is undergoing a situation of extreme crisis, the Company is losing its staff and financial crisis have ruined the Company, and the management of the Company is striving hard for the survival of the Company.
 - e. The Company's representative has admitted that the default has been committed by the Company and requested that it may be condoned in the matter of non-submission of the Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2011 within the stipulated timeframe, and assured that the Company will ensure compliance with the applicable laws and rules, in letter and spirit, and for this purpose the Company will also submit an assurance in writing.

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17. Thereafter, the Company vide their letter no. Gen/200/12 dated December 3, 2012, undertook that the Company will make sufficient efforts to overcome the problems and to submit financial statements in time.

Consideration of Company's Submissions

18. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the Company's representative, Mr. M. Ikhtlaq Butt, Chief Executive Officer of the Company), and have also referred to the provisions of the Ordinance. I am of the view that there has been an established default under the relevant provision of the Ordinance, as the Company was required to file its Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2011 on or before April 30, 2012; however, the Company had applied for maximum extension in filing these accounts and returns vide the Company's letter no. Gen/096/12 dated May 13, 2012, but the Company had filed the said accounts and returns vide its letter no. ACCTS/146/12 dated August 16, 2012, which is after the date of maximum allowable extension of one month in terms of the proviso of Section 51(1) of the Ordinance. Additionally, the Company's representative has also admitted that the default of Section 46(1) read with Section 51(1) of the Ordinance has been committed.

19. 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 and breach of these statutory duties will usually be a criminal offence, punishable by fine or imprisonment. 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 Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of the Section 46(1) read with Section 51(1) of the Ordinance i.e. the Directors of the Company were required to file the Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2011 within the timeframe as stipulated under the aforementioned provisions of the Ordinance, therefore, it could be legitimately inferred that the default was committed.

Conclusion

20. After carefully examining the arguments and studying the facts and findings of the case as mentioned in the above paras of this Order, the default of Section 46(1) read with Section 51(1) of the Ordinance and Regulations 3 and 4 of Part B of

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Annexure II of the Rules is established, and the Company has also accepted its default. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed onto the Company and/or its Directors.

21. Section 156 of the Ordinance 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, 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."

Order

22. In exercise of the power conferred on me under Section 156 of the Ordinance, instead of imposing the maximum penalty, a lenient view is taken and a fine of Rs. 20,000/- (Rupees Twenty Thousand Only) is imposed onto the Company, based on the following grounds:

- a. that the Company and its management had failed to ensure compliance with the provisions of Section 46(1) read with Section 51(1) of the Ordinance, by not filing the Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2011 within the stipulated timeframe;
- b. that the Company had applied for maximum extension vide their letter no. Gen/096/12 dated May 13, 2012; however, the accounts and returns were filed after the deadline for maximum allowable extension;
- c. that the non-filing of the Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2011 has not adversely affected the shareholders and the policyholders of the Company; and
- d. that the Company vide their letter no. Gen/200/12 dated December 3, 2012, has undertaken that the Company will make sufficient efforts to overcome the problems and to submit financial statements in time.

23. *M/s. The Credit Insurance Company Limited* is hereby directed to deposit the aforesaid fine of Rs. 20,000/- (Rupees Twenty Thousand Only), 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 receipt of this Order and

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furnish receipted vouchers issued in the name of Commission for information and record.

24. The Company and its management are also warned and directed to take special care in filing the Annual Audited Accounts, Regulatory Returns and other statutory returns, as are required by the law.

25. This Order is issued without prejudice to any other action that the Commission may initiate against the Company in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Tariq Hussain
Director