



INSURANCE DIVISION
Islamabad

118

Before Fida Hussain Samoo, Commissioner (Insurance)

In the matter of

Silver Star Insurance Company Limited

Show Cause Notice Number ID/Enf/SSICL/2017/9207 dated April 13, 2017
and Issue Date:

Date of Hearing: July 24, 2017 & September 13, 2017

Attended By:

1. Mr. Shehzada Mazhar
Advocate Supreme Court
M/s. Mazhar Law Associates Advocates &
Solicitors
2. Mr. Zahid Umar
Advocate High Court
M/s. Mazhar Law Associates Advocates &
Solicitors
3. Mr. Jawad Khan Lodhi
Advocate High Court
M/s. Mazhar Law Associates Advocates &
Solicitors

Date of Order: September 28, 2017

ORDER

Under Section 11, Section 28, Section 41 Section, Section 46 and Section 51 read with
Section 63(1) and Section 156 of the Insurance Ordinance, 2000

.....

This Order shall dispose of the proceedings initiated against M/s. Silver Star Insurance Company limited (the "Company"), and its Board of Directors for alleged contravention of Section 11, Section 28, Section 41, Section 46 and Section 51 read with Section 63(1) and Section 156 of the Insurance Ordinance, 2000 (the "Ordinance"). The Company and its Board of Directors shall be referred to as the "Respondents" hereinafter.



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

3. As per annual accounts for the period ended December 31, 2013 last reported by the Company, the paid up capital of the Company was Rs. 305.648 million. However, the paid up capital of the Company was required to be raised to Rs. 350 million and to Rs. 400 million to meet the minimum paid up capital requirement as on June 30, 2016 & December 31, 2016 respectively in compliance with Rule 11 of the Insurance Rules, 2017¹ (the "Rules"). The Company vide its letter dated June 30, 2016 apprised the Commission that:

"... due to continuing inordinate delay by the sponsors and majority shareholders in arranging equity injection for enhancement of Paid-up Capital by 30th June, 2016, as per SECP directives, the Company has, for the time being, decided to stop its underwriting/ insurance business, up till the time Paid-up Capital requirements are not fulfilled..."

4. The Company did not comply with Section 41 of the Ordinance, read with Circular 24 of 2010 under which the Company was required to submit its reinsurance treaty arrangements for the year 2017. The Company was advised vide letters No. ID/PRDD/Treaty/2017/8176 & ID/PRDD/Treaty/2017/8586 dated January 18, 2017 and February 22, 2017 respectively to submit its reinsurance treaty arrangements for the year 2017. The Company vide its letter No. HO/SSISC/061/2017 dated March 8, 2017 submitted that:

"...due to the stoppage of underwriting since July, 2016 the need of reinsurance treaty arrangements for 2017 had not arisen. It is therefore requested that after the fulfillment of the paid up capital requirements, the reinsurance treaty arrangements would be taken up and accordingly provided..."

5. The Company did not file its Annual Accounts and Regulatory Returns for the year ended 2014 and 2015 in contravention of Section 46 read with Section 51 of the Ordinance.

6. The Company did not pay the annual supervision fee for the year 2016 before the due date i.e. January 15, 2017, in violation of Section 11(3) of the Ordinance. The Company was advised vide letters No. ID/PRDD/ASF/2016/7941 & ID/PRDD/ASF/2017/8354 dated December 28, 2016 and January 31, 2017 to pay the annual supervision fee. However, no response was received until date of the SCN.

7. Section 11(1) (a),(d),(f) & (h) of the Ordinance provide that :-

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

¹ Rule 9 of the Securities and Exchange Commission of Pakistan (Insurance Rules), 2002



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 2

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

....

(d) the provisions of this Ordinance relating to the obtaining of reinsurance arrangements are complied with;

....

(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;

...

(h) the insurer is, and is likely to continue to be, able to comply with such other of the provisions of this Ordinance as are applicable to it.

...”

8. Section 11(3) of the Ordinance states that:

“(3) An insurer registered under this Ordinance shall pay to the Commission, on or before the fifteenth day of January in every calendar year, an annual supervision fee of the greatest of:

(a) Rs. 100,000;

(b) one rupee per thousand of gross direct premium written in Pakistan during the calendar year preceding the calendar year ended on the previous 31st day of December; or

(c) such amount as may be prescribed.”

9. Rule 8² of the Rules states that:

8. Annual supervision fee to be paid by an insurer in terms of clause (c) of sub-section (3) of section 11 of the Ordinance.- Every insurer registered under the Ordinance shall pay to the Commission, on or before the fifteenth day of January in every calendar year, an annual supervision fee at the rate of Rs. 2.00 per thousand of gross direct premium written in Pakistan during the calendar year preceding to the last year, subject to a maximum of rupees fifty million.]

10. Relevant provision of Section 28 of the Ordinance provides 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.”

11. Rule 11 of the Rules requires every non-life insurer, registered under the Ordinance, to raise its paid up share capital in the manner as given hereunder to carry on insurance business:

11. Minimum paid-up capital requirement for insurers.- (1) For the purposes of sub-section (2) of section 28, the amount given in the table below shall be the minimum

² Rule 7A (b) of the Securities and Exchange Commission of Pakistan (Insurance) Rules, 2002



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 3

required amount of paid-up capital for an insurer registered under the Ordinance to carry on insurance business:-

Minimum Paid-Up Capital Requirement					
Amount given in million rupees					
	Year 2015	Year 2016		Year 2017	
	31 st December	30 th June	31 st December	30 th June	31 st December
(1)	(2)	(3)	(4)	(5)	(6)
Life Insurer	500	550	600	650	700
Non-Life Insurer	300	350	400	450	500

12. The relevant provision of Section 41 of the Ordinance provides that:

“Requirement to effect and maintain reinsurance arrangements.- (1) An insurer shall effect and shall at all times maintain such reinsurance arrangements as are, in the opinion of the directors (or such other person or body responsible for conducting the management and business of the insurer), formed on reasonable grounds, having regard to the exposures of the insurer in respect of individual contracts accepted and in respect of aggregate losses arising out of individual events, adequate to ensure continuing compliance by the insurer with the provisions of this Ordinance relating to solvency.

(2) Every insurer shall submit to the Commission, in the manner prescribed by the Commission and not less than one month prior to the coming into effect, or as soon as practicable thereafter, of any treaty reinsurance arrangement entered into by the insurer as cedant, such features of that reinsurance arrangement as may be prescribed by the Commission.”

13. Section 46 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;
- (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.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Insurance Division

Continuation Sheet 4

(2) Every insurer shall furnish, to the Commission, following the last day of December, March, June and September in each year, a statement of assets and liabilities in the form and prepared in accordance with the regulations prescribed under the preceding subsection made up as of that date and such statement shall be certified by a principal officer of the insurer.

Provided that an actuarial valuation of policyholder liabilities as at the date to which such statement is made up is not required by virtue of this subsection alone, and that the regulations prescribed under this sub-section shall provide for the determination of the value which is to be attributed to policyholder liabilities for the purposes of this sub-section.

...

(4) The statements referred to in the foregoing sub-sections shall be prepared in respect of all insurance business transacted by an insurer except that in the case of an insurer incorporated in a jurisdiction outside Pakistan, the statement shall be prepared in respect of the insurance business transacted by the insurer in Pakistan.

...

(6) The statements referred to in sub-section (1) shall be signed, in the case of a company, by the chairman, if any, and two directors and the principal officer of the company, or in the case of an insurer incorporated in a jurisdiction outside Pakistan, by its principal officer in Pakistan and any two directors (or the closest comparable officer equivalent thereto) and shall be accompanied by a statement containing the names and descriptions of the persons in charge of the management of the business during the period to which such accounts and statements refer; by a report by such persons on the affairs of the business during that period; and a statement by such persons signed by the same persons who have signed the accounts that

(a) in their opinion the annual statutory accounts of the insurer set out in the forms attached to the statement have been drawn up in accordance with the Ordinance and any rules made thereunder;

(b) the insurer has at all times in the year complied with the provisions of the Ordinance and the rules made thereunder relating to paid-up capital, solvency and reinsurance arrangements; and

(c) as at the date of the statement, the insurer continues to be in compliance with the provisions of the Ordinance and the rules made thereunder relating to paid-up capital, solvency and reinsurance arrangements."

14. Section 51 of the Ordinance states that:

"Submission of returns.- (1) The audited statements and report referred to in subsections (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:



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 5

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.

(2) The statement referred to in sub-section (2) of section 46 shall be furnished as a return to the Commission in such manner as may be prescribed by the Commission, but in any case including at least one printed copy, within six weeks from the date to which it is made up:

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 fifteen days.

(3) One printed copy of the returns shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a chief executive (by whatever name called), also by him, and in the case of the report and statement referred to in section 50 by the actuary who carried out the investigation.

(4) Until 31 December 2000, this section shall apply as though the periods of four months and six weeks contained therein shall be substituted respectively by periods of six months and eight weeks."

15. In view of the above, the Commission initiated proceedings against the Respondents by issuance of a Show Cause Notice bearing number ID/Enf/SSICL/2017/9207 dated April 13, 2017, thereby calling upon them to show cause as to why the Commission may not issue a direction to cease entering into new contracts of insurance under Section 63(1) and why the fine, as provided under Section 156 of the Ordinance should not be imposed for contravention of Section 11, Section 28, Section 41 Section, Section 46 and Section 51 of the Ordinance.

16. The Authorized Representative of the Company, Shehzada Mazhar of Mazhar Law Associates sought extensions in submitting reply to the Show Cause Notice which are as under;

Sr. No	Date of letter through which extension sought	Period of extension sought	Date of Commission's letter through which granted	Period of extension given	Show Cause Reply submitted
1	May 2, 2017	15 days	May 5, 2017	May 12, 2017	No
2	May 11, 2017	15 days	May 16, 2017	May 24, 2017	No
3	May 24, 2017	7 days	May 26, 2017	June 2, 2017	Response submitted on May 27, 2017



17. The response to the aforementioned Show Cause Notice was received from the Authorized Representative on behalf of the Respondents vide letter dated May 27, 2017, which is reproduced below:

“

PRELIMINARY SUBMISSIONS

- 1. The instant Show Cause Notice has been purportedly issued on the premise of the non-compliance of the conditions imposed on the registered insurers including our client, by the provisions of the Insurance Ordinance, 2000, and has tried to hit at the sound and prudent management of our client by reason of the failure to maintain the minimum paid up share capital, filing of audited returns payment of Annual Supervision Fee and the maintenance of the reinsurance arrangements. Be that as it may, the instant submissions are being made at the cost of repetition, and on the premise that the bulk of allegations have repeatedly been answered to the best of the satisfaction of your good office and have been addressed to the best of the provided capacity of my client in the given set of circumstances surrounding our client which for all legal intents and purposes have not arisen by any reason or fault of our client.*
- 2. As a matter of fact, our client has not committed any action detrimental to the interests of its policy holders and stakeholders; has not ventured into any action that is contrary to the standards of integrity and professionalism set out by law and your good office and as followed by our client since its very inception to- date in spite of the fact that our client has been encountered with a situation neither created by it nor within its control. As far as the concern of the requirement of the minimum paid up capital is concerned, it has already been informed to your good office, and the said contention has been reproduced by your good office through the instant show cause notices as well that our client has informed you vide letter dated 30.06.2016 bearing No. HO/SSIC/1151/16 that it has stopped its underwriting/ insurance business due to the inability to meet the minimum paid up capital requirement till 30th June, 2016 by reason of the inordinate delay by the sponsors and majority shareholders. It is pertinent to mention over here that the instant position has not arisen by any fault of our client, and the business of our client has been jolted a severe blow due to the registration of a criminal case against our client and others, which has resulted in an overall impact on the business of our client, and has also resulted in the confiscation of the entire record of our client by the investigation authorities which necessitated the writing of the closure of insurance business by our client, with the intent to clear itself from the criminal proceedings therein. The said stance most certainly should be seen with a benevolent eye by your office and more room and time should be granted to our client to ensure its path of revival of business rather than moving to punish our client, for it is well settled law that mere pendency of a case does not make one a culprit and our client cannot be treated as a culprit because there is every likelihood of success of our client in the pending criminal case.*
- 3. It is however reiterated that our client is persistently putting in efforts to arrange for the required paid up capital in order to meet the requirements of your office and resume with its business as the instant situation is most certainly not favourable to our client and we are proceeding with an intent and hope to overcome the instant issue at the earliest.*

R

154



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 7

4. That the issue pertaining to the payment of the Annual Supervision Fee for the year 2017, please be informed that the same has been resolved vide letter dated 23rd May, 2017, bearing No. MLA/SM/L/17-169, wherein the payment of Rs. 2,88,713 has been paid to your good office in lieu of fee for the Annual Supervision of the year 2017. It would not be out of place to mention over here that the said fee has been paid manually after problems in the creation of e- challan not being issued to our clients due to some technical issues which was resolved by your courteous permission for deposit of the same manually. The delay in the same was caused by this problem, and the calculations so made for the year 2017 have been made on the basis of unaudited returns of 2015, which had arisen due to the seizure of record by the Federal Investigation Agency (FIA) in" April, 2015 which included all the returns and books of accounts of our client. The deposit of the Supervision Fee is in any case subject to finalization and our client is committed to the fate of any differential amount whether higher or lower, upon finalization.
5. Addressing the concern of your good office with respect to the submission of the reinsurance arrangements and maintenance of the same, please be informed that the necessity of the same no longer persists in the situation faced by our client wherein, our client has stopped the underwriting business and in the situation the maintenance of the arrangements is not applicable to our client. The situation has already been conveyed to your good office to your satisfaction; however, persistent efforts are underway with respect to resolving the issues pertaining to the minimum paid up capital and the maintenance of reinsurance arrangements. Therefore the instant notice under reply is liable to be withdrawn on this count.
6. That the submissions of our client with respect to the requirements of accounting and reporting are concerned, it is most humbly submitted that our client has never violated the provisions pertaining to the maintenance, preparation and reporting of the annual and quarterly accounts. However, the instant position has been originated by virtue of the seizure of the record pertaining to year 2015 by FIA, pursuant to the registration of FIR against our client and others, which has constrained our client to submit the reports therein, however there is no instance of non-maintenance of any record by our client. The incapacitation of our client has been occasioned by reason of the seizure of complete record of our client, which is being contested with full force and vigour by our client before the trial court and also the Honourable High Lahore High Court, Lahore through constitutional petition which is still pending adjudication. It is the commitment of our client that the same shall be provided on the return of the confiscated record and the present non-compliance of the same cannot be attributed to our client but is something caused by an illegal transgresses of authority by the FIA.
7. Similar position prevails as regards the submission of returns wherein it is an admitted fact and your good office is also well aware of this fact that the record of our clients had been seized by the Federal Investigation Agency (FIA) upon initiation of criminal proceedings against our clients, which confiscation was contested by our clients with full vigour before the Learned Trial Court taking cognizance of the matter, but the same has also been contested in the Honourable Lahore High Court, Lahore through a constitutional petition, which is still pending adjudication in the Honourable High

8



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 8

156

Court, and it has been the resolve and the commitment of our clients that the submission of audited accounts shall be duly complied with and fulfilled immediately on the retrieval of our client's seized record from FIA. It is settled law that "An act of Court cannot prejudice any party" and our clients cannot be put to punishment for an act not in their control and subjudice before the Honourable Courts. It would also be relevant to mention over here, that our client has already been subjected to fine on account of the non-submission of accounts and any further coercive and punitive action by your office on this count would tantamount to double jeopardy of my client and would be an illegal act on the part of your good office, hence requires the immediate withdrawal of the same by your good office.

8. That the above mentioned contentions have clearly demonstrated that n illegality or contravention of the provisions of the statute has been committed by our client and calls for the withdrawal of the instant Show Cause Notice with immediate effect.

REPLY ON MERITS

1. Admitted.
2. The contents of the instant paragraph being production of provisions of statute are denied lacking applicability on our client.
3. Denied for want of applicability. The Annual Supervision Fee has been deposited by our client.
4. Denied on ground of inapplicability on our client as the said fees has been submitted by our client.
5. Denied for want of applicability on our client. Contents of the preliminary submissions are to be taken for detailed reply of the instant para.
6. The provisions mentioned herein have been replied already and contents of preliminary submissions are to be construed for the instant reply.
7. Denied for want of applicability. Detailed reply has already been provided in preliminary submissions
8. Denied for want of applicability. Detailed reply has already been provided in the preliminary submissions.
9. Denied for want of applicability. Detailed reply has already been provided in the preliminary submissions. It is also reiterated that the provision of Section 51 allows for the extensions in time for the filing of the same and the case of our client, in the position it has been forced due to confiscation of record is deemed to be considered as such.
10. That this paragraph is denied being illegal, it is significant to mention over here that the paid up capital for the year 2013 was in accordance with law. It is pertinent to clarify here in connection with the FIR against our client by FIA, the records of our client for



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 9

157

- the concerned period were confiscated by the FIA and due to the very reason paid up capital requirement has not been fulfilled for the period consequently for the upcoming period of 2016 the paid up capital requirement could not be met up by our client. However our client has assured your good office that as soon as capital requirement will be fulfilled the requirement of paid up capital will be satisfied accordingly and the business shall be resumed accordingly.
11. Admitted to the extent that the letter dated 30th June 2016 was addressed to your good office and our client has apprised your good office regarding the Paid Up Capital requirement that sponsors and majority shareholders in arranging equity injection for enhancement of Paid Up Capital by 30 June 2016, and it was also informed to your good office our client has decided to stop its underwriting insurance business, up till the time paid up capital arrangement is not fulfilled, it pertinent to mention over here that no rights and interest of stakeholder is affected during this period. Reliance is placed on 2013 CLD 261. Rest of the para is denied.
 12. This paragraph is vehemently denied, that since our clients had already informed. your good office, that our client has stopped the business of insurance since 30th June 2016 and is out of business since then and need for the instant demand had not arisen. However, our client is most committed to meeting the requirements of the paid up capital and hence the reinsurance arrangements
 13. Admitted to the extent of issuance of direction by your good office however said directions have been duly answered by our client, it is again reiterated here that it was communicated to your good office that our client has discontinued its business and all underwriting/ insurance business is stopped since July 2016.
 14. The contents of the instant para have been duly replied in the preceding paragraphs and also the preliminary submissions
 15. That this paragraph is denied and the submission of Annual Audited Accounts is concerned, your good office is also well aware of this fact that the record of our clients had been seized by the Federal Investigation Agency (PIA) upon information of some criminal proceedings against our clients, which confiscation was contested by our clients with full vigour before Learned Trial Court taking cognizance of the matter. It is further necessary to mention here that the accounts for the first quarters was audited and remaining two quarters were not audited, as soon as the record will be audited and available with our client the annual audited accounts will be audited and provided to your good office in accordance with law. It is now clearly demonstrated that no illegality or contravention of the provisions of the statute have been committed by our client and calls for the withdrawal of the instant Show Cause Notice with immediate effect. Your good office has even levied penalty on our client to this effect and any further punitive action by your good office would tantamount to double jeopardy of our client.
 16. Vehemently denied. The Annual Supervision Fee for the year 2016 and 2017 have been duly submitted by our client, thus this paragraph is illegal being based on misunderstanding and irrelevant consideration as it is mentioned in previous paragraphs that since the company has discontinued its insurance business since July



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 10

158

2016, in spite of this fact our client has paid the requisite amounts and complied with the provisions of the relevant statute. Copies of the letters are enclosed with the reply.

17. This paragraph is denied, our client has not contravened any provisions of the Act and duly complied with the provision of the Statute in every respect and aspect, and no such penalty or fine is liable to be imposed upon our client in this respect.
18. This paragraph is denied, our client has not contravened any provisions of the Act and duly complied with the provision of the Statute in every respect and aspect, and no such penalty or fine is liable to be imposed upon our client in this respect, therefore in the above mentioned circumstances in Supra paragraphs may be considered in good faith by this good office and the instant Show Cause Notice may be withdrawn in the interest of justice, law and fair-play or otherwise our client has to suffer an irreparable loss
19. Legal. Needs no reply.

PRAYER

It is most respectfully submitted that the show cause notice 13-04-2017 bearing number ID/Enf/SSICL/2017_ may be withdrawn and cancelled with immediate effect,. being declared, as illegal arbitrary and devoid of any force of law and merits of the case on the basis of the compliance of the directions of your good office made by our client. The office is available for further correspondence in this regard"

18. Thereafter, the Commission, vide its notice no. ID/Enf/SSICL/2017/9958 dated June 12, 2017, scheduled the hearing for June 19, 2017 at 11:30 am. The Authorized Representative of the Company vide letter dated June 15, 2017 requested to adjourn the hearing to some other date. The Commission considering the request of the Authorized Representative, rescheduled the hearing on July 3, 2017 vide letter dated June 21, 2017. However, Mr. Zahid Umar who appeared for hearing at Commission's Lahore Office on July 3, 2017 via video link again requested for adjournment of the hearing.

19. Subsequently, the Commission vide letter dated July 14, 2017 rescheduled the hearing on July 24, 2017, which was attended by Mr. Shezada Mazhar, Mr. Zahid Umar and Mr. Jawad Khan Lodhi of M/s. Mazhar Law Associates as Authorized Representatives on behalf of the Respondents. The hearing of July 24, 2017, was held through video link connecting Head Office of the Commission with its Lahore Office where the Authorized Representatives were present.

20. Brief proceedings of the hearing of July 24, 2017 are as under;

- i. The Authorized Representative stated that the Commission is aware of the issues faced by the Company as the Commission has been kept informed from time to time;
- ii. The Authorized Representative further apprised that the Company itself has stopped its insurance business since June 2016. However, annual supervision fees for the year 2016 has been paid;



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 11

- 159
- iii. The Authorized Representative stated that writ petition is pending with High Court regarding retrieval of record which has been seized by FIA;
 - iv. He maintained that upon decision of the court, the record of the Company would be provided to the Commission. Due to this legal hitch the Company is not in a position to prepare its accounts;
 - v. The Authorized Representative stated that the Board of the Company has been changed after its removal by the Commission vide its Order dated May 9, 2016;
 - vi. He further stated that a fine has already been imposed on to the Company vide Order dated March 24, 2017 under Section 171 of the Companies Ordinance, 1984 for not convening Annual General Meetings;
 - vii. He insisted that no time frame could be given for conclusion of court case. However, he requested the Commission to grant a period of 60 days after retrieval of record from FIA to address the deficiencies;
 - viii. The Authorized Representative was granted a period of 15 days to provide Board Resolution, confirming stoppage of Company's underwriting/insurance business, obtaining response of the auditor whether any backup data available for accounts preparation and whether the deficiencies as highlighted by the Commission have been communicated to the court in order to retrieve the record.

21. Upon expiry of the time provided to the Authorized Representative, another hearing was scheduled on September 7, 2017. Nonetheless, Mr. Shehzada Mazhar vide letter dated September 7, 2017 requested to adjourn the hearing to any other appropriate date. The request of the Authorized Representative was considered and the hearing was rescheduled on September 13, 2017 vide letter dated September 8, 2017. The aforesaid hearing was attended by Authorized Representatives of the Company namely M. Jawad Khan Lodhi and Mr. Zahid Umar at CRO Lahore connected with the Head Office through video link.

22. Proceedings of the hearing of September 13, 2017 are summarized below:

- i. The Authorized Representative failed to provide the information as committed during the hearing held on July 24, 2017;
- ii. Regarding paid up capital, the Authorized Representative reiterated that the Company is committed to revive the business;
- iii. He maintained that Company is trying to retrieve the record from FIA for preparation of financial statements. However, hearing of the petition filed by the Company has not yet been fixed in the court.
- iv. The Authorized Representative insisted that the Company has already been penalized under Section 171 of the Companies Ordinance, 1984. Another adverse action would tantamount to double jeopardy;
- v. The Authorized Representative further stated that the Company as of now is unable to meet all the requirements. He was of the view that the Company has not caused any loss to the stakeholder;
- vi. The Authorized Representative assured that the Company will not commence business until it meets paid up capital requirement;

12



- vii. The Authorized Representative was clarified that conditions imposed on registered insurers under Section 11 of the Ordinance are mandatory and insurer cannot undertake insurance business without complying the said conditions;
- viii. The Authorized Representative stated that Directors have already been removed under Section 65 of the Ordinance. He was of the view that what Commission is trying to do, the Company has already complied with and stopped its business; and
- ix. The Authorized Representative argued that there should be room for revival of the Company and requested that business should be allowed to revive once deficiencies are met.

23. The Company was required to comply with mandatory provisions of Section 11, Section 28, Section 41 Section, Section 46 and Section 51 of the Ordinance.

24. The Authorized Representative claimed that the Company was making efforts to comply with the conditions under Section 11 of the Ordinance and resume its business at the earliest. However, the Company failed to comply with the said requirements.

25. Paid up capital of the Company was required to be raised to Rs. 350 million and to Rs. 400 million to meet the minimum paid up capital requirement as on June 30, 2016 & December 31, 2016 respectively. The Company failed to comply with the said paid up capital requirement.

26. The Authorized Representative in its reply dated May 24, 2017 to the SCN apprised the Commission that the issue pertaining to the payment of the Annual Supervision Fee for the year 2016 has been resolved. In this connection, a copy of demand draft amounting to Rs. 288,713/- was enclosed. The annual supervision fee for the year 2016 was required to be paid by January 15, 2017. Whilst the evidence submitted by the Company shows that payment was made after that date i.e. on May 24, 2017.

27. During the course of proceedings it has been stated by the Authorized Representative that the Company has stopped its underwriting after June 30, 2016, accordingly the need of reinsurance treaty arrangements for 2017 did not arise. For the sake of brevity, Section 11 (1)(d) and Section 41(1) of the Ordinance are reproduced hereunder;

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

(d) the provisions of this Ordinance relating to the obtaining of reinsurance arrangements are complied with;”

“Requirement to effect and maintain reinsurance arrangements.- (1) An insurer shall effect and shall at all times maintain such reinsurance arrangements as are, in the opinion of the directors (or such other person or body responsible for conducting the



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 13

161

management and business of the insurer), formed on reasonable grounds, having regard to the exposures of the insurer in respect of individual contracts accepted and in respect of aggregate losses arising out of individual events, adequate to ensure continuing compliance by the insurer with the provisions of this Ordinance relating to solvency."

28. Hence it is apparent from the above provisions of the Ordinance that the insurer is required to maintain reinsurance arrangements at all times.

29. The Company has not filed its Annual Accounts and Regulatory Returns for the year ended 2014 and 2015 in contravention of Section 46 read with Section 51 of the Ordinance. The Authorized Representative has presented reason for this non-compliance that the record of the Company was seized by the Federal Investigation Agency (FIA) upon initiation of criminal proceedings against the Company. The Company has contested the confiscation of record before the Trial Court and Lahore High Court. The petition is still pending adjudication in the Honourable High Court. The Company has committed to submit the audited accounts immediately upon retrieval of record from the FIA.

30. This argument has repeatedly been presented by the Company that the record of the Company has been seized by FIA and Company awaits its retrieval in order to prepare accounts and regulatory returns as required under Section 46 and Section 51 of the Ordinance. During the hearing, the Company has also requested to allow the Company two months time for removal of deficiencies once the record is retrieved from FIA. However, the Commission in its order dated May 9, 2016 under Section 65 read with Section 156 of the Ordinance clarified that :

"...The seizure memos of FIA, annexed with the Report disclose that record seized contains bogus claims files, photocopies of CPRs, bogus stamps in original, computer servers, bogus policies record and manual registers of claims and TDR's. The seizure memo do not report that the book of accounts, required to be maintained under Section 45 (5) and 45 (6) of the Ordinance, were seized by FIA. Moreover, the seizure memos do not confirm that accounting records and underlying information was held by the FIA....."

31. The Company should have alternate arrangements in place for preparation of accounts. Furthermore, during the hearing on July 24, 2017, the Authorized Representative of the Company was advised to present evidence that deficiencies/non-compliances as highlighted by the Commission have been communicated to the Hon'ble Court in order to retrieve record. The Authorized Representative did not provide any such information within stipulated time of 15 days.

32. With regards to the argument that Company has been penalized previously through imposition of fine and removal of the Board of Directors of the Company by the Commission, it is clarified again that order dated May 9, 2016 (under Section 65 read with Section 156 of the Ordinance) and March 24, 2017 (under Section 171 of the Companies Ordinance, 1984) were separate proceedings, initiated on different grounds. The SCN dated April 13, 2017 was the fresh proceedings initiated for contravention of



Section 11, Section 28, Section 41 Section, Section 46 and Section 51 of the Ordinance read with Section 63(1) and Section 156 of the Ordinance and is in no way tantamount to double jeopardy. Therefore it cannot be co-mingled with others proceedings initiated against the Company in the past.

33. The Company failed to meet the conditions of registration under Section 11 of the Ordinance i.e. compliances with paid up share capital, obtaining of the reinsurance arrangements, submission of accounts and payment of Annual Supervision fee, which were duly highlighted in the SCN. The Company has however, paid Annual Supervision fee subsequent to the issuance of SCN. Other conditions as stated above have not been complied with by the Company. The Authorized Representatives admitted this fact during the course of hearing. It has also been intimated that the Company itself has stopped its underwriting/insurance business w.e.f June 30, 2016 due to its inability to meet the minimum paid up capital requirement.

34. 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 11, Section 28, Section 41 Section, Section 46 and Section 51 of the Ordinance is established. Therefore, a direction under Section 63(1) of the Ordinance can be given to the Respondents to cease entering into new contracts of insurance and fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents.

35. Section 63(1) of the Ordinance states that:

"Power of Commission to issue direction to cease entering into new contracts of insurance.- (1) The Commission may issue a direction to cease entering into new contracts of insurance if it believes on reasonable grounds that an insurer registered under this Ordinance has failed, or is about to fail, to comply with the conditions of registration set out in section 11."

36. Section 156 of the Ordinance provides 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."

37. 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



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 15

163

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 11, Section 28, Section 41 Section, Section 46 and Section 51 of the Ordinance, therefore, it could be legitimately inferred that the default was committed knowingly and willfully.

38. In exercise of the power conferred on me pursuant to Section 63(1) of the Ordinance, I hereby direct M/s. Silver Star Insurance Company Limited to cease entering into new contract of insurance for the reasons set forth above and this direction shall have effect one month from the date of direction. However, I take a lenient view and do not impose penalty on the Respondents under Section 156 of the Ordinance. Further, the given direction to cease entering into new contract of insurance shall only be revoked if the reasons for direction stated above shall have ceased to exist.

39. For the purpose of Section 63(4) of the Ordinance, statement of the reasons for the direction is given in Paras 3 to 5 and 25 to 35 of this Order. The same is also summarized below:

- i. The Company has failed to meet the paid up capital requirement;
- ii. The Company has failed to obtain reinsurance treaty arrangements; and
- iii. The Company has failed to file its Annual Accounts and Regulatory Returns.

40. 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.

Fida Hussain Samoo
Commissioner (Insurance)

