



SECP

Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

The Universal Insurance Company Limited

Show Cause Notice Issue Date: August 2, 2013
Date of Hearings: October 28, 2013
Attended By: Mr. Amir Raza (Principal Officer)
Date of Order: December 26, 2013

ORDER

(Under Section 36 read with Section 11(1) (c), Section 63(1) and Section 156 of the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s The Universal Insurance Company Limited ("the Company") for not complying with Section 36 read with Section 11(1) (c) and Section 63 (1) and Section 156 of the Insurance Ordinance, 2000 ("the Ordinance").

Background Facts

2. The relevant provision of Section 11(1) (c) of the Ordinance states that:

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

...
(c) the provisions of this Ordinance relating to minimum solvency requirements are complied with;

..."

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3. The relevant provisions of Section 36 of the Ordinance state that:

“Insurers of non-life insurance business to have assets in excess of minimum solvency requirement.- (1) An insurer registered under this Ordinance to carry on non-life insurance business shall at all times have admissible assets in Pakistan in excess of its liabilities in Pakistan of an amount greater than or equal to the minimum solvency requirement.

(2) An insurer incorporated in Pakistan and registered under this Ordinance to carry on non-life insurance shall at all times have admissible assets in excess of its liabilities of an amount greater than or equal to the minimum solvency requirement.

(3) For the purposes of this section, the minimum solvency requirement is the greatest of:

(a) such required minimum amount as may be prescribed by the Commission;

(b) such percentage as may be prescribed by the Commission of its earned premium revenue in the preceding twelve months, net of reinsurance expense subject to a maximum deduction for reinsurance of fifty per cent of the gross figure; and

(c) such percentage as may be prescribed by the Commission of the sum of its liability for unexpired risk and its liability for outstanding claims, net of reinsurance subject to a maximum deduction for reinsurance in each case of fifty per cent of the gross figure:

Provided that in the case of an insurer incorporated in a jurisdiction outside Pakistan the amounts set out in clauses (b) and (c) of this sub-section shall be calculated with reference to the earned premium revenue, unexpired risk liability and outstanding claims liability and related reinsurance balances of that insurer in respect of its insurance business in Pakistan only.”

4. Rule 13 of the Securities and Exchange Commission (Insurance) Rules, 2002 (the “Rules”), stated that:

“Solvency of non-life insurer.- (1) For the purposes of clause (a) of subsection (3) of section 36 of the Ordinance, the following shall be the prescribed amount, namely:-

(a) until 31 December 2011, fifty million rupees; and

(b) thereafter as per the following table

On or After	Rupees
'31 December 2012	One hundred million
'31 December 2013	One hundred and twenty five million



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 2

'31 December 2014	One hundred and fifty million
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(2) For the purposes of clause (b) of sub-section (3) of section 36 of the Ordinance, the following shall be the prescribed percentage, namely:-

- (a) In the case of an insurance company registered after the commencement date, twenty per cent; and
- (b) in the case of an insurance company registered at the commencement date-
- (i) ten per cent until the 31st December, 2002;
 - (ii) fifteen per cent until the 31st December, 2004; and
 - (iii) thereafter the percentage as set out in clause (a) of this sub-rule.

(3) For the purposes of clause (c) of sub-section (3) of section 36 of the Ordinance, the following shall be the prescribed percentage, namely:-

- (a) In the case of an insurance company registered after the commencement date, twenty per cent; and
- (b) in the case of an insurance company registered at the commencement date-
- (i) ten per cent until the 31st December, 2002;
 - (ii) fifteen per cent until the 31st December, 2004; and
 - (iii) thereafter the percentage as set out in clause (a) of this sub-rule."

5. While reviewing the Financial Statements and Regulatory Returns of the Company for the year ended December 31, 2012, it was noted that the Company was not having admissible assets in excess of liabilities to meet the minimum solvency requirements of Rs. 100 Million as prescribed through Rule 13(1) (b) of the SEC (Insurance) Rules, 2002.

Detailed calculations for ascertaining solvency position of the Company are as follows;

Solvency Calculations - December 31, 2012	(Amount in Rs.)
Admissible assets as per regulatory return	552,864,000
Liabilities as per balance sheet	522,012,000
Total net admissible assets (Excess of assets over liabilities)	30,852,000
Solvency Requirement	
Higher of method A, B & C	100,000,000
Total net admissible assets (Excess(Shortage) of assets over liabilities	30,852,000
Excess/ (Shortage) of minimum solvency requirement	(69,148,000)
Solvent (Yes/No)	No

My:



6. In view of the foregoing paras, it appeared that the Company has contravened the provisions of Section 36 of the Ordinance, as the Company appeared to be insolvent as on December 31, 2012 by an amount of Rs. 69,148,000, which is non-compliance of the Section 11 of the Ordinance as well.

Show Cause Notice

7. Accordingly, the Show Cause Notice was issued on August 2, 2013 under Section 36 read with Section 11(1) (c), Section 63(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 63(1) and Section 156 of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with provisions of Section 36 read with Section 11(1) (c) of the Ordinance.

Company's Response to the Show Cause Notice

8. The Company vides its letter dated August 23, 2013, submitted reply to the Show Cause Notice, whereby they had stated that:

"...it is being clarified that, as at 31 December 2011, the Company had admissible assets in excess of liabilities by an amount of Rupees 136.444 million which when compared to minimum solvency requirement of Rupees 50.00 million at that time resulted in positive solvency of Rupees 86.444 million but due to deterioration in IFS rating of the Company and amendments in minimum solvency requirement through S. R. O 16 (I) 2012 dated January 9, 2012 further squeezing the minimum solvency margin of insurers, resulted in negative solvency of the Company as at 31 December 2012. During the financial year 2013, remedial measures like change of top management of the Company, closing/resuffling/merger of non-profitable branches, prudent underwriting, downsizing of inefficient staff, development of new credit policy, competitive premium rates, effective and efficient recovery department, target based incentives and improvement in claim settlements, etc. have been taken to strengthen the financial position and enhance the business of the Company. Further, in addition to above mentioned remedial measures regarding operations of the Company, the management, has following plans to strengthen the minimum solvency margin and liquidity position of the Company.

- 1. To inject equity amounting of Rupees 150.00 million over the period of 3 years out of which Rupees 70 million would be injected during the month of September 2013.*
- 2. To dispose off the properties amounting to Rupees 54.348 million (Estimated realizable value)*



3. To dispose off the investments amounting to Rupees 26.810 million (Current market rates of KSE)

.....”

Hearings of the Case & Subsequent Developments

9. The hearing in the matter was scheduled on October 28, 2013 at 11:00 A.M., accordingly, the said hearing was attended by Mr. Amir Raza, Principal Officer of the Company, on behalf of the Company, the Chief Executive and the Directors of the Company.

10. Brief proceedings of the hearing of October 28, 2013 are as follows:

- a. The case was briefed by the Deputy Director with the instruction of the Director Insurance, Mr. Raza replied with restated their earlier reply dated August 23, 2013 and also submit the written response during the hearing about the notice that the Company is trying to remove the default and for that a road map as given in earlier and this response would be appreciated by the Commission in this regard.
- b. Mr. Raza also admitted that the Company is non-compliance of the section 36 of the Ordinance and stated that the Company is in the process of improving the solvency through the road map approved by the Board of Director regarding three measures as mentioned in the written reply;
 - i. To inject capital amounting to Rs. 70 million by December 16, 2013,
 - ii. To dispose of the Company's properties amounting to Rs. 17.290 million,
 - iii. To dispose of the investments in related parties, available for sale investments and investments at fair value through profit or loss.
- c. On making an inquiry regarding the non-compliance Mr. Raza replied that the default is committed and also requested to allow the Company to meet the requirement of Section 36 till December 31, 2014. This was not allowed by the Director Insurance;
- d. After detailed arguments Mr. Raza requested to the Commission that default may please be condoned for the non-compliance and reiterated that by December 31, 2013 the Company would be solvent;

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- e. The authority asked to Mr. Raza if he can provide an undertaking that in the year 2013 the Company would not be short of Solvency and no non-compliance will be there and if you undertake that by Board of Directors of the Company, then we shall take the lenient view;

11. As agreed during the hearing of October 28, 2013, the Company vides letters dated November 18, 2013 appraised the Commission about the resolution passed by the Board of Directors and endorsed that the requirements of solvency should be met by December 31, 2013.

Consideration of Company's Submissions

12. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the Company's Legal Counsel and representative, 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. The Company's Legal Counsel has also admitted this as well and showed the commitment of the Company to fulfill the requirement.

13. 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 over looked and 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 36 read with Section 11(1) of the Ordinance i.e. the Directors of the Company were required to maintain adequate solvency so as to comply with the minimum solvency requirement as on December 31, 2012 and even thereafter, which was grossly overlooked by the Directors of the Company, and that the Company was required to act proactively for maintaining the minimum solvency requirement as stipulated in the law, therefore, it could be legitimately inferred that the default was committed.

14. The Company, being an unlisted concern, should have a better and proactive approach towards compliance of the applicable laws.

Conclusion

15. 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 36 read



with Section 11(1)(c) of the Ordinance is established, and to a greater extent, the Company has also accepted its default. Therefore, the penalty as provided under Section 63(1) and Section 156 of the Ordinance can be imposed on the Company.

16. 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."

17. And, 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

18. In exercise of the power conferred on me under Section 63 (1) and 156 of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, condone and **stern warned** the Company due to fact:

- a. THAT the Company was solvent by the end of year December 31, 2011 and adherence of the minimum solvency requirement at all time before this notice;
- b. THAT the Company's management has adopted and undertake via a resolution that the minimum solvency requirement as laid down the laws should be fulfilled and should take care to adherence of the applicable laws rules in this regards in future; and
- c. THAT the Company also took remedial measured to come up to meet the shortfall by injecting new equity and disposing of its properties and investments in associated to bring the Company's Solvency position as required by the laws; and

As:



19. 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.

Tariq Hussain
Director