



SECP
Insurance Division
Karachi

[Karachi]

Before Mr. Tariq Hussain, Director (Insurance)

In the matter of

M/s TPL Direct Insurance Limited

Date of Show-Cause Notice: November 29, 2013
Date of Hearing: February 26, 2014
Attended by:
1. Mr. Syed Kazim Hasan
Director / Chief Operating Officer
TPL Direct Insurance Limited
2. Mr. Ali Hassan
Senior Manager - Finance
TPL Direct Insurance Limited
Date of Order: August 12, 2014

ORDER

(Under Section 32(2) and Section 11(1)(c) Read with Section 32(7), Section 36, Section 63(1) and Section 156 of the Insurance Ordinance, 2000)

This Order shall dispose of the proceedings initiated against M/s TPL Direct Insurance Limited (hereinafter referred to as ("the Company") and others for making a default in complying with the requirements of Section 32(2), Section 11(1)(c) read with Section 32(7) and Section 36 of the Insurance Ordinance, 2000 ("the Ordinance").

Background Facts

The relevant facts for the disposal of this case are briefly stated as under:

2. The relevant provision of Section 32(2) of the Insurance Ordinance 2000 ("the Ordinance") states as follows:

"(2) For the purposes of this Part, subject to sub-section (1), the following are not admissible assets:

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....
(k) balances with, shares in, loans to or other amounts due from any body that is related to the insurer or to any director of the insurer;
...."

3. The term "related" has been defined under Section 32(7) of the Ordinance, which states that:

"For the purposes of this section, two or more persons are "related" if they are under common control, or if they are connected by an ownership interest of more than 49% or, if they are natural persons, they are members of the same family."

4. M/s TPL Trakker Limited is a related party of the Company in terms of the description given under Section 32(7) of the Ordinance, as M/s TPL Trakker Limited holds 67.39 percent shares of the Company and that as per the Annual Audited Report of M/s TPL Trakker Limited, the following Directors of the Company are / were also present on the Board of M/s TPL Trakker Limited:

S.No.	Name of the Director
1	Mr. Jameel Yousaf
2	Mr. Ali Jameel
3	Mr. Saad Nisar
4	Mr. Mustafa Ali

5. It was observed that the Company has treated various balances, loans and other amounts with related party "M/s TPL Trakker Limited" as admissible assets in the Statement of Assets for Solvency Purposes as at December 31, 2012. The breakup of these balances is as follows:

Balance, Loans and Other Amount with Related Party "TPL Trakker Limited"	Amount
Advance to Holding Company	Rs. 234,211,844/-
Prepaid Annual Monitoring and Other Charges	Rs. 42,973,852/-
Sundry Receivables from the Holding Company	Rs. 7,616,448/-
Capital Work in Progress Advance for Purchase of C-Track Units	Rs. 45,886,334/-
TOTAL	Rs. 330,688,478/-

6. The total admissible assets as per the Statement of Assets for Solvency Purposes (Form GJ) as on December 31, 2012 were reported as Rs. 592,300,877/-, in which the abovementioned balances, loans and other amounts with related party have been included as admissible assets, which is not permissible in terms of Section 32(2)(g) of the Ordinance.

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7. As per the reported balances / figures, the solvency position of the Company as on December 31, 2012 has been as follows:

Admissible Assets	Amount
Admissible Assets as per Regulatory Returns (Form GJ)	Rs. 592,300,877/-
Liabilities as per Balance Sheet (Form GA)	Rs. 455,766,657/-
Total Net Admissible Assets (Excess Assets Over Liabilities)	Rs. 136,534,220/-

Solvency Calculation

Higher of Method A, B and C (Solvency Requirement)	Rs. 123,970,844/-
Total Net Admissible Assets (Excess / (Shortage) of Assets over Liabilities)	Rs. 136,534,220/-
Excess / (Shortage) of Minimum Solvency Requirement	Rs. 12,563,376/-
Solvent (YES / NO)	YES

8. In view of the abovementioned facts, it appeared that the Company has contravened the provisions of Section 32(2)(g) read with Section 32(7) of the Ordinance, and that if the above stated balances, loans and other amounts with related party be taken out from the reported admissible assets as on December 31, 2012, the Company would have been insolvent by an amount of Rs. 318,105,102/-, and hence, the Company would also be in contravention of the provisions of Section 11(1)(c) read with Section 36 of the Ordinance.

9. The provision of Sub-section 1(c) of Section 11 of the Ordinance provides that:

"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;

..."

10. The provisions of Section 36 of the Ordinance state as follows:

"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.

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(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."

11. In view of the abovementioned observations, it appeared that the Company has contravened the provisions of Section 32(2) and Section 11(1)(c) read with Section 32(7) and Section 36 of the Ordinance, for which the Company could have been issued a direction in terms Section 63(1) of the Ordinance, or it could have been penalized in terms of Section 156 of the Ordinance along with its Directors (including the Chief Executive).

Show-Cause Notice

12. On November 29, 2013, a Show-Cause Notice under Section 32(2) and Section 11(1)(c) read with Section 32(7), Section 36, Section 63(1) and Section 156 of the Ordinance was served to the Directors and Chief Executive of the Company, whereby the Company and its Directors (including the Chief Executive) were asked to clarify their position as to why the penalty as provided under Section 156 of the Ordinance may not be imposed on them for contravening the provisions of Section 32, Section 11(1) and Section 36 of the Ordinance, or that the direction under Section 63(1) of the Ordinance may not be issued to the Company for contravening the provisions of Section 11(1)(c) of the Ordinance.



Company's Reply, Hearing & Subsequent Developments

13. The Company, in response to the Show-Cause Notice vide its letter of December 4, 2013, showed their intention to appear in person for clarify their position for the aforesaid contravention(s) of the Ordinance. The Company requested that a suitable time be advised to them for the provision of clarification in person, as mentioned therein.

14. Accordingly, the hearing in the matter was scheduled for February 26, 2014 at 10:30 a.m., which was communicated to the Company vide Commission's letter no. ID/ENF/TPL-Direct/2014/18952 dated February 20, 2014.

15. The hearing of February 26, 2014 was attended by Mr. Syed Kazim Hasan, Director / Chief Executive of the Company and Mr. Ali Hassan, Senior Manager - Finance. The representatives of the addressees of the Show Cause Notice stated that the Commission, through its Circular No. 15 of 2010 dated July 6, 2010, had allowed the investments in / balances with / loans to the related parties. The representatives were briefed about the applicability of the Commission's Circular No. 15 of 2010 and mentioned that the said Circular has ceased to have effect by virtue of Section 32(8)(g) of the Ordinance. Thereupon, the representatives sought a timeframe till March 24, 2014 to take up the matter with the management / Directors of the Company for seeking their guidance in this regard and to come up with a concrete solution before the Commission.

16. On March 24, 2014, the Company had sent a letter in the matter of the Show Cause Notice under consideration, which stated that:

"...Section 32(2)(g) of the Insurance Ordinance 2000 ("the Ordinance") reveals that "balances with, shares in, loans to or other amounts due from anybody that is related to the insurer or to any director of the insurer" are not admissible assets. However, SECP has powers under Section 32(1)(d) of the Ordinance to declare any assets as admissible for the purpose of solvency requirement.

SECP under the authority of Section 32(1)(d) vide its circular no. 15/2010 dated 6 July 2010 has provided certain relaxations for admissibility of related party assets for solvency purposes. Clause (c) of the said circular states:

".....Similarly, if an insurer has any balance due from a related party in the normal course of business (including amounts receivable under co-insurance /

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reinsurance arrangements) these will not be inadmissible only because such amounts are receivable from a related party."

It is pertinent to mention here that TPL Direct Insurance Ltd is pre dominantly an auto insurance company which constitutes 98% of its total premium portfolio. TDIL installs tracking devices to minimize its losses from theft / snatch of vehicles as well as for risk profiling of its portfolio. The activity has resulted in TDIL ensuring one of the lowest claims ratios in the industry as 43%.

During the meeting held on 26 February 2014, point was raised by your esteemed office that the circular 15 of 2010 issued by SECP on 6 July 2010 was valid for a period of 12 months only, based on the provisions of 32(8)(g) of the Ordinance. After carefully reviewing the section 32(8)(g) of the Ordinance and deliberating with our legal advisor, we have formed the opinion that section 32(8)(g) was not invoked with SECP's circular 15 of 2010. Section 32(1)(d) of the Ordinance give powers to SECP to declare any assets as admissible. SECP has issued circular 15 of 2010 directly under the powers vested in section 32(1)(d) and operates as an industry wide clarification and elaboration of section 32(2)(g). The circular states that:

"As a result of recommendations of a committee formed by the Commission to review solvency regulations and after consultations with the insurance companies, it has been decided as follows:"

The statement suggests that the circular has been issued by SECP on the recommendation of its committee to the insurance industry. Further, the circular neither mentions any reference to section 32(8)(g) nor it specifies any time frame for its applicability. It is pertinent to mention here that section 32(8) applies to declarations made in writing to insurers on application by the insurer. Extract from section 32(8) of the Ordinance is reproduced below:

"A declaration by the commission under clause (d) of sub-section (1);

- (a) may be made on the application of the insurer;*
- (b) shall be made in writing to the insurer;....."*

The SECP's circular 15 of 2010 was neither made to any specific insurer nor on the application of any insurance company."

17. First of all, it would be of profound importance to state that the Commission had issued Circular No. 15 of 2010 in pursuance of the provisions of Section 32(1)(d) of the Ordinance, which had to be issued as per the procedure given under Section 32(8)(g) of the Ordinance. Accordingly, the

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Commission had consulted all the insurers after the review committee had made its recommendations to the Commission. The recommendations of the review committee, which were in writing, along with the said consultations with all the insurers were considered and treated as applications from all the insurers. For the sake of brevity, application of the insurers was there and that too in writing, on the basis of which the said Circular was issued.

18. Section 32(8)(g) of the Ordinance compliments the provision of Section 32(1)(d) of the Ordinance, hence, Section 32(1)(d) of the Ordinance can never be read and interpreted in isolation. Nowhere else in the Ordinance does the Commission is empowered to determine, declare or prescribe an asset to be admissible either by rulemaking or by circular.

19. The Circular No. 15 of 2010 has ceased to have effect after the expiry of 12 months from its issuance, regardless of whether there was any provision in that Circular as to its temporary effect in terms of Section 32(8)(g) of the Ordinance. Hence, even if the time for the Circular's effectiveness is not provided, its applicability / effectiveness cannot go beyond the scope as provided under Section 32(8)(g) of the Ordinance.

Consideration of the Submission

20. 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 as required by the Ordinance under Section 32(2) of the Ordinance i.e. the Directors of the Company were required to ensure compliance with the provisions of Section 32(2) of the Ordinance, therefore, it could be legitimately inferred that the default was committed, though unintentional. The provisions of the Circular No. 15 of 2010 were misunderstood by the Company, hence, the non-compliance.

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Conclusion

21. 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 32(2) of the Ordinance is established, however, proven unintentional. The penalty as provided under Section 156 of the Ordinance could have been imposed on the Company, which states that:

"Penalty for default in complying with, or acting in contravention of this Ordinance.- Except as otherwise provided in this Ordinance, any insurer who makes default in complying with or acts in contravention of any requirement of this Ordinance, [or any direction made by the Commission, the Commission shall have the power to impose fine on the insurer] and, where the insurer is a company, any director, or other officer of the company, who is knowingly a party to the default, shall be punishable with fine which may extend to one million rupees and, in the case of a continuing default, with an additional fine which may extend to ten thousand rupees for every day during which the default continues."

Order

22. In exercise of the power conferred on me under Section 156 of the Ordinance, instead of imposing the penalty onto the Company and / or its Directors (including the Chief Executive), take a lenient view due to the default being unintentional, and thus, condone the Company and its Directors (including the Chief Executive).

However, the Company, its Directors and the Chief Executive are hereby issued stern warning that in case of similar non-compliance in future a stronger action will be taken.

23. 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