



SECP  
Insurance Division  
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

*In the matter of*

The Universal Insurance Company Limited

Show Cause Notice Issue Date: September 26, 2013  
Date of Hearings: January 06, 2014  
Attended By: Mr. Amir Raza, Principal Officer  
Date of Order: May 12, 2014

**ORDER**

(Under Section 166 read with Section 156 of the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s The Universal Insurance Company Limited and others (herein referred to as "the Respondent") for not complying with Section 166 read with Section 156 of the Insurance Ordinance, 2000 ("the Ordinance").

**Background Facts**

2. M/s The Universal Insurance Company Limited ("the Company") is a public limited company, incorporated under the Companies Ordinance, 1984 ("the Companies Ordinance"), and its shares are quoted on Karachi and Lahore Stock Exchanges.

3. The relevant provision of Section 166 of the Ordinance states that:

*"Insurance of public property.- (1) This section applies to direct nonlife insurance of public property.*

*(2) In this section –*

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- (a) "Company" means the National Insurance Company Limited;  
(b) "public property" means:

(i) any property, movable or immovable, which belongs to, or the safety of which is the legal responsibility of, -

(A) the Federal Government, a Provincial Government or a local authority or statutory corporation; or

(B) any company, firm, undertaking, institution, organisation or other establishment which is managed or controlled by the Federal or a Provincial Government or local authority or statutory corporation or in which such Government, by itself or jointly with a local authority or corporation or company managed or controlled by it, holds a controlling financial share or interest or which is specified by the Federal Government for the purposes of this clause; and

(ii) a project financed out of an external loan, or with external aid until it reaches:

(A) in the case of an industrial project, the stage at which it is capable of commencing normal production; and

(B) in the case of any other project, the stage at which it is capable of being put to the use for which it is intended; and

(c) "statutory corporation" means a body corporate, other than a company, established or set up by the Federal Government or a Provincial Government in pursuance of any law.

(3) Subject to the provisions of sub-sections (4) and (5), all insurance business relating to any public property, or to any risk or liability appertaining to any public property, shall be placed with the Company only and shall not be placed with any other insurer:

Provided that marine, aviation and transport insurance relating to goods the import of which is financed out of an external loan, or with external aid, may, at the option of the importer, be placed with any insurer authorised to carry out such insurance business in the country giving the loan or aid.

(4) The Federal Government may -

(a) by order in writing exempt from compliance with subsection (3) any property or liability to which that subsection applies; or

(b) by notification in the official Gazette exclude from the application of sub-section (3) such property or liability as is specified in that notification.

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(5) If the Company declares in writing that it is not able, by virtue of the operation of a provision of this Ordinance or for any other reason, to enter into a contract of insurance to which sub-section (3) refers, the property or liability which is the subject of that proposed contract of insurance shall be exempted from the provisions of sub-section (3) to the extent of the insurance proposed to be obtained by means of that contract of insurance.

(6) Any person who insures, and any insurer which accepts insurance of, any property or liability, knowing such insurance to be in contravention of sub-section (3), shall be guilty of an offence:

*Provided that no person shall be in contravention of sub-section (3) by reason only of that sub-section becoming applicable to property or liability to which it was not applicable at the time that a contract of insurance in respect of that property or liability was taken out."*

4. The Commission is in receipt of a copy of Fire Policy No. 130-77P-BMC-29-5-09 issued by M/s Universal Insurance Company Limited (the "Company"), with a total sum insured of Rs. 151,050,000/- against annual premium of Rs. 1,900,000/- (including 10% Federal Excise Duty, 1% Federal Insurance Fee and Rs. 20/- on account of Stamp Duty), which was issued to M/s 62-Composite Signal Battalion, Misrial Complex, Misrial Road, Rawalpindi, covering 337 emergency call booths installed on Islamabad-Lahore Motorway (M-2).

5. It would be pertinent to state that M/s 62-Composite Signal Battalion was looking after the operations and maintenance of 337 emergency call booths installed on the Lahore-Islamabad Motorway (M-2), and in order to protect these emergency call booths against damages from accident, the aforementioned Fire Insurance Policy was effected.

6. The Commission, vide its letter dated January 21, 2013, had asked the Company to disclose the number of times the Company had issued the policies to the public sector organizations covering the public properties with or without the sanction / permission from the Federal Government under Section 166 of the Ordinance, which was not responded by the Company, and hence, the Commission, vide its letter no. ID/Enf/S.166/2013/15794 dated March 4, 2013, again asked the Company to disclose the required information within 7 days of receipt of that letter. Later on, the Company, vide its letter no. UIC/HO0517/2013 dated March 6, 2013, stated that the Company has not issued any insurance policy to any public sector organization in respect of any public property after the promulgation of the Ordinance.

7. In view of the above, it appears that the Company has concealed the factual information and that it has contravened the provisions of Section 166 of the Ordinance by insuring the aforementioned property i.e. 337 emergency call booths installed on

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the Lahore-Islamabad Motorway (M-2) on account of M/s 62-Composite Battalion, for which the Commission may take action under Section 156 of the Ordinance.

8. In view of the abovementioned facts, it appeared that the Respondent have failed to ensure compliance with the provisions of Section 166 of the Ordinance, for which the penal action as provided under Section 156 of the Ordinance may be taken against them.

### Show Cause Notice

9. Accordingly, the Show Cause Notice was issued on September 26, 2013 under Section 166 read with Section 156 of the Ordinance to the Chief Executive and Directors and 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 166 of the Ordinance.

### Company's Response to the Show Cause Notice

10. The Company vides its letter dated October 10, 2013, submitted reply to the Show Cause Notice, whereby they had stated that:

*".....We have to submit that we issued policy number 136-77P-BMC-29-5-09 to Ms.62-Composite Battalion Misrial Complex, Miserial Road Rawalpindi covering 337 emergency call booth installed on Islamabad - Lahore motorway (M2) on the assumption that the emergency call booth are not public property and does not come within purview of Section 166 of the Insurance Ordinance 2000. The Insurance policy was obtained by M/s.62-Composit Signal Battalion which is an organization and could not be termed as Federal Government, Provisional Government or a local authority or a statutory corporation.it was also bona-fide assumption that the said battalion is not any company, firm, undertaking, institution, organization other establishment which is managed or controlled by the Federal or a Provincial Government or local authority or a statutory corporation*

*It is also submitted that we were made to believe by the insured 62-Composite Battalion that the booths which are subject matter of the insurance policy are property of the said company. It is very humbly submitted that the information provided by us vide our letter Ref. UIC/HO-0517/2013 dated 06-03-2013 that we had not issued any insurance policy to the public sector organization on the bona-fide assumption and the information imparted to us by the 62 Composit Battalion.*

*It is also submitted that we received a premium amounting to Rs. 1,900,000/- and have paid Rs. 3,737,612 for the losses.*

*In this respect our company sustained a heavy loss due to this policy. It is again very humbly submitted that possibility of worgn assumption and interpretation of law on the subject can not be ruled out but we acted on the utmost bona-fide and confidence,*

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*the insurer has to repose in the clients and we have promptly paid claim which is in excess to the premium received by us. However we undertake and assure your good self to be more careful in future.  
It is therefore, prayed that the show cause notice may be withdrawn in view of the mitigating circumstances in this matter."*

### **Hearings of the Case & Subsequent Developments**

11. The hearing in the matter was scheduled on January 6, 2014 at 2:30 P.M., accordingly, the said hearing was attended by Mr. Amir Raza, Principal Officer Company, on behalf of the Respondent (herein referred to as "the Representative).

12. Brief proceedings of the hearing of January 6, 2014 are as follows:

- a. The case was briefed by the Deputy Director on the instruction of the Director Insurance, the Representative replied, in their view this battalion is separate from Pakistan Army, therefore, in their view it is not constitute as required under section 166 as public property;
- b. The Representative further stated there is no mala fide intention for taking this risk, in their view that the subject matter underwritten risk was not a public property, even if the Commission conclude that this is public property then we request you to take lenient view in this regard and condone us as the Company already incurred loss in this risk and also paid the claim on it;
- c. The Representative also ensured that the Company should be very careful and will not repeat in future, and also assured you that in future without exemption they will not write any such business and will comply the adherence of the laws and rules in its letter and spirit.
- d. The Representative also submitted the written response of the notice during the hearing, which stated that;

*".....That we issued policy number 130-77P-BMC-29-5-09 to M/s.62-Composit Signal Battalion Misrial Complex, Miserial Road Rawalpindi covering 337 emergency call booth installed on Islamabad -Lahore Motorway (M-2) on the assumption that the emergency call booth are not public property and does not come within the purview of Section 166 of the Insurance Ordinance 2000 because call booths were to be installed by M/s. 62-Composite Signal Battalion which cannot be termed as Government.*

*The term Government is neither defined in the Insurance Ordinance 2000 nor in Insurance Rules 2002 and SECP (Insurance) Rules 2002. In the absence of any definition assigned to the term federal Government, or a company, Firm, undertaking, institution, organization or other establishment which is managed and controlled by the federal Government, Provisional Government.....it cannot be safely said that the said M/s. 62-Composit Signal Battalion comes*



*within the purview of Government or an organization controlled by Government*

*That Article 99 the Constitution of Islamic Republic of Pakistan provides about conduct of business of Federal Government and Article 243 is with regard to the army. The two organs of the state i-e Federal Government and the Army are separate constitutional establishments. It is humbly submitted that even in the Constitution, the term Government has not been defined. Both the entities, the Federal Government and the Army are independent and autonomous in nature. The organization in the Army i-e M/s. 62-Composit Signal battalion is not controlled by the Federal Government.*

*That Article 166 is inapplicable to the present case in hand.*

*That due to human error possibility of wrong assumptions and conceptions resulting in erroneous interpretation of the law on the subject cannot be ruled out. That the policy covering 337 emergency call booths was issued bone-fidely as it is learnt that some other insurance companies have also issued policies in this regard.*

*That in view of the above submissions regarding interpretation of Section 166 of the Insurance Ordinance 2000 no concealment or mis-statement can be attributed to us. There is no mens-rea (criminal intent) on our part.*

*That it is humbly submitted that was received a premium amounting to Rs. 1,900,000/- and have paid Rs. 3,737,612/- for the losses sustaining a huge amount of Rs.1, 837,612/-. Our company has sustained losses due to policy under reference. We acted on the utmost bona fide, good conscious and in a manner of transparency, we came up to the confidence that our clients reposed in us however we undertake and assure your good self to be more careful in future.*

*It is therefore prayed that the show cause notice may kindly be withdrawn in view of the mitigating circumstances in this matter, a lenient view is prayed for....."*

### Consideration of Company's Submissions

13. I have carefully examined and given due consideration to the written and verbal submissions 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. The Representative of the notice has also admitted this as well and showed the commitment of the Company to fulfill the requirement and will not repeat the wrong practice in future. In this regard, I further considered that the written reply submitted during the hearing do not have cogent and find no merit on it.

14. 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

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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 166 of the Ordinance i.e. the Directors of the Company were required to follow the laws in letter and spirit at any cost, therefore, it could be legitimately inferred that the default was committed.

15. The Company, being a listed concern, should have a better and proactive approach towards compliance of the applicable laws.

16. This is also the fact that the Company has conceal the fact and did not disclosed the information and even denied the fact till the time Show Cause Notice has been issued to the Company.

### Conclusion

17. 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 166 of the Ordinance is established, and to a greater extent, the Company has also accepted its default at the time of hearing and give their assurance to the Commission that this sort of misrepresentation will not be occurred in future. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed on the Company.

18. 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 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

19. In exercise of the power conferred on me under Section 156 of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, condone the Company

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due to fact that the Company was follow the wrong market practice and ensure that such practice will not repeat in future and at the time of hearing of the show cause notice the Respondent has endorsed that no public property were ever underwrite by the Company, and also showed their willing ness to adopt the provision of section 166 of the Ordinance in letter and spirit.

Also, the Company is hereby issued a **stern warning** that in case of similar non-compliance in future a stronger action against the Company will be taken.

20. 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