



SECP
Insurance Division
Karachi

[Karachi]

Before Mr. Mohammed Asif Arif, Commissioner (Insurance)

In the matter of

M/s Jubilee Life Insurance Company Limited

Show Cause Notice Issue Date: January 22, 2014

Date of Hearing: May 20, 2014

Attended By: 1. Mr. Naveed Ul Haq, Advocate Supreme Court;
2. Ms. Sidrah Jameel, Advocate Lower Court; and
3. Ms. Zara Bokhari, Associate.

Date of Order: July 2, 2014

ORDER

(Under Section 208 of the Companies Ordinance, 1984)

This Order shall dispose of the proceedings initiated against M/s Jubilee Life Insurance Company Limited (hereinafter referred to as ("the Company")) for making a default in complying with the requirements of Section 208 of the Companies Ordinance, 1984 ("the Ordinance").

Background Facts

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

1. The provisions of Section 208(1), (2) & (2A) of the Ordinance state that:

"Investments in Associated companies and undertaking.- (1) Subject to sub-section (2A) a company shall not make any investment in any of its associated companies or associated undertakings except under the authority of a special resolution which shall indicate the nature, period and amount of investment and terms and conditions attached thereto.

Provided that the return on investment in the form of loan shall not be less than the borrowing cost of investing company.

SECURITIES & EXCHANGE
COMMISSION OF PAKISTAN

Insurance Division, State Life Building-2
4th Floor, Wallace Road, Karachi. Pakistan

Tel: +92-21-32461053, +92-21-32465469 Fax: +92-21-32423248 Web: www.secp.gov.pk



Explanation: The expression 'investment' shall include loans, advances, equity, by whatever name called, or any amount, which is not in the nature of normal trade credit.

(2) No change in the nature of an investment or the terms and conditions attached thereto shall be made except under the authority of a special resolution.

(2A) The Commission may-

- (a) by notification in the official Gazette, specify the class of companies or undertakings to which the restriction provided in sub-section (1) shall not apply; and*
- (b) through regulations made thereunder, specify such conditions and restrictions on the nature, period, amount of investment and terms and conditions attached thereto, and other ancillary matters, companies as it deems fit."*

2. An Onsite Inspection was conducted on the Order of the Commissioner (Insurance) under Section 59A of the Insurance Ordinance, 2000, which was passed on April 17, 2013.

3. During the course of the Onsite Inspection, it was noted that the Company has exceeded the approved limit of investment (Rs.150 million) in M/s International Industries Limited (the "investee company") by an amount of Rs.14.89 million.

4. The investee company was an associated company of the Company at the time when the already approved limit was exceeded, for which, approval in a general meeting as per the requirements of Section 208 of the Ordinance was required.

5. During June 2011, the Company had made an investment in 315,427 shares of the investee company, which resulted in an excess buying of Rs. 14.89 million i.e. beyond the already approved limit.

6. The details provided by the management of the Company showed that as on April 4, 2011, the number of shares of the investee company held by the Company were 1.968 million amounting to Rs.128.27 million.

Subsequently, the Company bought 400,000 shares of the investee company on April 5, 2011, 277,927 shares on June 29, 2011 and 37,500 shares on June 30, 2011.

These purchases resulted in an overall excess buying of Rs.14.89 million i.e. beyond the already approved limit of investment in the investee company.



The investment remained at this level till February 29, 2012 when 600,000 shares of the investee company were sold out by the Company.

7. It would be important to state that no approval of the investment beyond previously approved limit of Rs.150 million was given by members of the Company as required under Section 208 of the Ordinance.

8. The Company ceased to be an associated company of the investee company on August 11, 2011, as one of the Directors of the Company resigned from the board of the investee company.

9. The comments from the Company on the abovementioned observation were called, to which the management of the Company has submitted the following:

"The Company inadvertently made investments on 29 and 30 June 2011 in IIL shares which resulted excess buying of Rs.14.8 million.

Immediately after knowing this fact, the company sold 600,000 shares on February 29, 2012.

IIL ceased to be an associated company with effect from August 11, 2012 due to resignation of the common director from the Board of International Industries Limited.

Keeping in view the above facts, there was no need to take any further remedial actions."

10. Thus, in view of the foregoing paras hereof, it appeared that the Company has contravened the provisions of Section 208 of the Ordinance, by not obtaining the approval of the shareholders / members of the Company for making additional investment i.e. beyond the already approved limit, in the shares of the investee company (M/s International Industries Limited).

11. It would also be pertinent to state that in the year 2011, the Company had made an investment of Rs.10.518 million from individual life policyholder fund in 100,000 ordinary shares of M/s Packages Limited which was an associated company of the Company by virtue of common directorship, and thus, the Company was required to obtain the approval of its members through a special resolution under Section 208 of the Ordinance.

However, the Company did not obtain the approval at the time of investment, which was subsequently pointed out by the Company's external auditor to the Company's management, and it was advised by the external auditor in the meeting of the Board's Audit Committee of February 14, 2012 to regularize the matter. Accordingly, the investment in the shares of M/s



Packages Limited was later on ratified by the members in the 17th Annual General Meeting, which was held on April 23, 2012.

Subsequently, the Company informed about the violation to the Commission on March 5, 2012 and sent a letter dated May 25, 2012 thereby confirming the approval in the general meeting. Therefore, it evidences that the Company has repeatedly violated the provisions of Section 208 of the Ordinance.

Show-Cause Notice

12. On January 22, 2014, a Show-Cause Notice under Section 208 of the Ordinance was served upon the Directors and Chief Executive of the Company, whereby the Company was asked to clarify their position as to why the penalty under Section 208(3) of the Ordinance may not be imposed on them for repeatedly violating the provisions of Section 208 of the Ordinance.

Company's Reply

13. The Company, in response to the Show-Cause Notice vide its letter of February 6, 2014, argued as under:

"...the Investee Company ceased to be an associated undertaking of the Company on August 11, 2011, due to the resignation of the common director from the board of the Investee Company.

2. The investment in the Investee Company (which was now no longer an associated undertaking) subsisted until February 29, 2012, when it was brought to the attention of the Company by the External Auditors in 44th Board Audit Committee meeting held on February 14, 2012 that it was not compliant of Section 208 of the Ordinance.

3. Following this notice, the Company sought to rectify their actions and the said investment of PKR 14.89 million, which was for the purposes of purchasing 315,427 shares in the Investee Company, by selling out 600,000 shares. It may also be observed that the Company divested more shares than was even required under the threshold of the earlier approved investment of PKR 150 million only with a view to ensure absolute and complete compliance of the law.

4. However, the Company realizes that at all time of making the excess investment, the Investee Company was, in fact an associated undertaking. This is why, upon learning that the Company was in violation of Section 208 of the Ordinance, the Company immediately rectified and remedied their actions by divesting their investment in the Investee Company.



5. Due to the fact that the Investee Company ceased to be an associated undertaking on August 11, 2011, as well as the fact that the Company immediately divested itself of the excess investment upon notice from the External Auditors that it was in contravention of Section 208 of the Ordinance, the Company believed that approval from shareholders was no longer necessary and no further corrective actions were required in the matter.

6. The Company would also like to take this opportunity to clarify, with regard to paragraph 11 of the Show Cause Notice, and the allegation that the Company has repeatedly breached Section 208 of the Ordinance, that the investment made to M/s Packages Limited was remedied as soon as it was brought to their attention by their external auditors, and the same was ratified by the members at the 17th Annual General Meeting held on April 23, 2012. In fact, the Company itself brought the matter in the knowledge of the SECP vide letter dated March 5, 2012 and acted as advised vide SECP letter dated March 20, 2012.

7. We respectfully submit to the SECP that our acts were in no way meant to circumvent the laws promulgated in the Ordinance. Our actions were purely inadvertent and unintentional and the purported contravention of Section 208 of the Ordinance was merely an administrative error on our Investment Department's part.

8. Therefore, in view of the above, we humbly request that the SECP withdraw the abovementioned Show Cause Notice, and we shall ensure in future that such oversight on our part will under no circumstances occur again.
(Underlined to put emphasis)

14. The reply of the Company revealed that the Company has divested its investment in the shares of M/s International Industries Limited in order to reach out to a level where the Company does not require any further approval of its members through a special resolution. Moreover, the previous instance of non-compliance of the provisions of Section 208 of the Ordinance by the Company, which occurred due to the Company's investment in M/s Packages Limited, was remedied by obtaining *post facto* approval of the Company's shareholders as soon as it was brought in the notice of the Company's management, and was brought into the notice of the Commission about the non-compliance and its ratification by the Company itself.

15. However, the Directors of the Company, including the Chief Executive, were required to adhere to the provisions of Section 208 of the Ordinance at all times i.e. the approval of the shareholders were required to be obtained prior to making any investment in any of the Company's associated concerns.



Proceedings of the Hearing

16. The Commission had scheduled the hearing in the matter for May 20, 2014 at 11:30 a.m., which was communicated to the Directors and the Chief Executive of the Company via the Commission's hearing notice no. ID/Enf/JLI/2014/19668 dated May 9, 2014.

17. The hearing of May 20, 2014 was attended by Mr. Naveed UI Haq, Advocate Supreme Court, Ms. Sidrah Jameel, Advocate Lower Court and Ms. Zara Bokhari, Associate. The Power of Attorney handed over by the said persons empowered / authorized Mr. Naveed UI Haq, Mr. Hasan Mandviwalla and Ms. Sidrah Jameel, to act and appear for the Directors and the Chief Executive of the Company in their names on their behalf in the matter of the abovementioned Show Cause Notice, and that they be treated as true and lawful advocates, jointly and severally. Accordingly, Mr. Naveed UI Haq and Ms. Sidrah Jameel shall be treated as lawful attorneys of the Directors and the Chief Executive of the Company, and hence, shall be referred to as the "Respondents" hereinafter.

18. The Respondents reiterated the contents of the Company's letters dated February 6, 2014, and requested the Commission to take a lenient view and thus, condone the Directors and the Chief Executive of the Company.

Consideration of the Submission

19. Before proceeding further, I find it relevant to discuss the duties of the Directors. The Directors, in addition to the day to day running of the company and the management of its business, also have some 'fiduciary' duties i.e. duties held in trust and some wider duties imposed by statute and breach of these statutory duties will usually be a criminal offence, punishable by fine or imprisonment. Hence the Directors are gauged against a higher standard of accountability which requires them to be vigilant and perform their duties with due care. In the instant case, however, the Directors have failed to perform their duties with due care and prudence. As the Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Section 208 of the Ordinance i.e. the Directors of the Company were required to obtain prior approval of the shareholders of the Company through a special resolution before making any investment (either for the first time or subsequently beyond the already approved limit for making such investment) in the shares / securities of an associated concern / undertaking.

20. However, the Directors and the Chief Executive of the Company have failed to obtain prior approval of the shareholders of the Company through special resolution before investing the funds of the Company in the shares of M/s Packages Limited, previously, and also before investing the funds of the



Company in the shares of M/s International Industries Limited over and above the already approved limited of Rs. 150 million, therefore, it could be legitimately inferred that the default was committed, repeatedly.

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 208 of the Ordinance is established, which has also been accepted by the Company. Therefore, the penalty as provided under Section 208(3) of the Ordinance can be imposed on the Company, which states that:

“(3) If default is made in complying with the requirements of this section or regulations, every director of a company who is knowingly and willfully in default shall be liable to fine which may extend to ten million rupees and in addition, the directors shall jointly and severally reimburse to the company any loss sustained by the company in consequence of an investment which was made without complying with the requirements of this section.”

Order

22. In exercise of the power conferred on me under Section 208(3) of the Ordinance, instead of imposing the maximum penalty, take a lenient view, and thus, condone the Directors and the Chief Executive of the Company due to the following reasons:

- a. THAT the Company's management including its Directors have ratified the previous instance of the Company's investment in the shares of M/s Packages Limited by obtaining approval of the Company's shareholders in the 17th Annual General Meeting, which was held on April 23, 2012. And, the Company has itself brought the happening of this instance in the knowledge of the Commission vide letter dated March 5, 2012;
- b. THAT the Company divested the portion of its investment in the shares of M/s International Industries Limited, as remedial measure, in order to reach out to a level where no further approval of the shareholders was required;
- c. THAT M/s International Industries Limited has not been the associated concern / undertaking of the Company since August 11, 2011; and
- d. THAT the Company contravention has so far not been reported to have affected any of the shareholders of the Company.



However, the Company (its Directors and the Chief Executive of 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.

23. The Company is also directed to get the Company's investment in M/s International Industries Limited, for the period during which the Company was in contravention of the provisions of Section 208 of the Ordinance, ratified by getting the excess unapproved portion of these investments approved by the Company's shareholders / members, under intimation to the Commission.

24. The Company This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the retired "Chief Executive Officer" and "Directors" of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Mohammed Asif Arif
Commissioner (Insurance)