



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Nasreen Rashid, Executive Director (Insurance)

In the matter of

Union Insurance Company of Pakistan Limited

Date of Show Cause Notice: May 06, 2010

Date of Hearing: June 08, 2010

Attended by: Mr. Muneer Hussain, Chief Accountant- Union Insurance Company of Pakistan Ltd.

Date of Order: July 06, 2010

ORDER

(Under Section 46 (1) (b), Part B of Annexure II of the Securities and Exchange Commission (Insurance Rules), 2002, Section 51(1) read with Section 156 of Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against Union Insurance Company of Pakistan Limited (hereinafter referred to as ("the Company")) for making default in complying with the provisions of Section 46(1)(b) of the Insurance Ordinance, 2000 ("the Ordinance"), Part B of Annexure II of the Securities and Exchange Commission (Insurance Rules), 2002, Section 51(1) read with Section 156 of the Ordinance.

Background Facts

2. The relevant facts for disposal of this case briefly stated, are that while examining the Annual Accounts and relevant documents of the Company it was revealed that the Company had failed to provide the Commission with the regulatory returns.

3. In pursuance of Section 46 of the Ordinance which states that:

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"(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.

Further to the aforesaid provision, Annexure II of Securities and Exchange Commission (Insurance Rules) 2002 clearly states that:

"3. Provisions applicable only to Regulatory Returns

(1) The form of Regulatory Returns shall consist of the following which shall be submitted according

to the published Forms annexed to these Regulations:

- Balance Sheet (Form GA), which shall be deemed to constitute the "Statement of Assets and

Liabilities" required by S46(1)(b)(i) of the Ordinance.

- Profit and Loss Account (Form GB), which shall be deemed to constitute the "statement of

profits and losses" required by S46(1)(b)(ii) of the Ordinance.

- Statement of Cash Flows (Form GC) required under S46(1)(b)(iii) of the Ordinance.

- Statement of Premiums (Form GD) required under S46(1)(b)(iv) of the Ordinance.

- Statement of Claims (Form GE) required under S46(1)(b)(v) of the Ordinance.

- Statement of Expenses (Form GF) required under S46(1)(b)(vi) of the Ordinance.

- Statement of Investment Income (Form GG) required under S46(1)(b)(vii) of the Ordinance.

- Statement of Claims Analysis (Form GH) required under S46(1)(b)(viii) of the Ordinance.

- Statement of Exposures (Form GI) required under S46(1)(b)(ix) of the Ordinance.

- Statement of Assets for Solvency Purposes (Form GJ) which is hereby prescribed under

S46(1)(b)(x) of the Ordinance.

- Classified Summary of Assets in Pakistan (Form GK) which is hereby prescribed under

S46(1)(b)(x) of the Ordinance.



4. In pursuance of Section 51(1) of the Ordinance which states that:

The audited statements and report referred to in sub-sections (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:

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.

Show Cause Notice

5. It was observed that the company was in default with regard to the aforesaid provisions of the Ordinance and therefore a Show Cause Notice ("SCN") dated May 07, 2010 under Section 46(1)(b), Part B of Annexure II of the Securities and Exchange Commission (Insurance Rules), 2002, Section 51(1) read with Section 156 of Insurance Ordinance, 2000 was served to the Chief Executive and Directors of the Company, calling upon them to explain in writing as to why appropriate action may not be taken against the Company under the law for the aforesaid contravention.

Company Reply

6. Vide their letter dated May 19, 2010, the Company, in response to the SCN, requested that the SCN may be withdrawn on the premise that it was facing a variety of different problems after cessation of its business. The company emphasized that it had also applied for extension in holding AGM on the above-mentioned premise as well and treating it as a very special case, the show cause notice may be withdrawn

Hearing Proceedings

7. Therefore a hearing was called at 11:00 a.m. on June 08, 2010 for which a hearing notice was sent to the Chief Executive and Directors of the Company to explain the circumstances which had led to such non-compliance. The said hearing was attended by Mr. Muneer Hussain, Chief Accountant of the Company on behalf of the Chief Executive and Directors of the Company. He accepted the default in submitting the regulatory returns and emphasized that the company was under the impression that since it had applied for extension in holding its Annual General Meeting (AGM), the submission of regulatory returns was also deemed to be given an extension. The Company extended its apology and accepted the mistake and requested to condone the matter for this instance.

Consideration of the Submissions

8. 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 and obligations 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 aforesaid statutory requirement and consequences of the said default, therefore, it could be legitimately inferred that the default was committed knowingly and willfully.



Conclusion

9. 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 51(1) read with Section 156 of the Ordinance has been established. It is pertinent to note that the License of the Company to transact Insurance Business had never been cancelled but the business of the company had been ceased i.e the company could not underwrite any more business. Therefore action against the Company may be taken by imposing a fine under Section 156 of the Ordinance 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, 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

10. In exercise of powers conferred on me under section 156 of the Ordinance, instead of imposing a fine on the company, I am taking a lenient view with regard to this non-compliance of the company and condoning the aforesaid default this time since the financial position of the company is very weak as its underwriting had been ceased. Additionally, the Company has assured of compliance in the future. Hence the CEO and Directors of the Company are hereby **WARNED** to comply with the aforesaid provisions in the future.

Nasreen Rashid
Executive Director (Insurance)