



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 13, 2013  
Date of Hearings: October 28, 2013  
Attended By: Mr. Amir Raza (Principal Officer)  
Date of Order: January 1, 2014

**ORDER**

(Under Section 99 read with Section 156 of the Insurance Ordinance, 2000)

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This Order shall dispose of the proceedings initiated against M/s The Universal Insurance Company Limited (herein referred to as "the Company") for not complying with Section 99 Sub-Section 4 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 99 Sub-Section 4 of the Ordinance states that:

*"...it shall be unlawful for an agent to deduct from premium paid by and received from a policy holder any sums on account of commission due to the agent..."*

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4. November 12, 2012, the Commissioner Insurance ordered an onsite inspection of the Company, in exercise of the powers conferred under Section 59A of the Ordinance, the Inspection team observed that the insurance agent of the company depositing the premium after adjusting the outstanding commission payable in the hand of the company and the same was admitted by the Company vide its letter dated March 12, 2013.

Some of the cases observed by the Inspection team are as follows

Agents Details/Branch	Policy #	Amount (Rs.)
Muhammad Shakeel (AGC-170-002-001)	132-77P-LTH-21-2-12	7,050
	132-77-5-1-12	2,950
	132-77P-LTH-73-8-11	55,782
	170-77P-LTH-11-4-12	4,811
	170-77P-LTH-10-4-12	8,753
	IMP-132-88-14-3-11	525
	IMP-132-88-15-3-11	3,655
	132-77P-LTH-33-3-11	13,564
Muhammad Ishaq (AGC-138-005-001)	PC-138-66-93-10-11	587
LMQ Road Branch, Multan (152)	E-152-77-54-4-11	3,810
Tasawar Hussain (AGC-133-001-001)	133-77P-STK-17-5-12	7,382

5. In view of the abovementioned facts, it appeared that the Company and its agent have failed to ensure compliance with the provisions of Section 99 (4) of the Ordinance, for which the penal action as provided under Section 156 of the Ordinance may be taken against the Company, its Directors and above named agents/branch of the Company.

#### Show Cause Notice

6. Accordingly, the Show Cause Notice was issued on August 13 2013 under Section 99 (4) read with Section 156 of the Ordinance to the Chief Executive and Directors and Agents of 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 and/or its agents for not complying with provisions of Section 99 Sub-Section 4 of the Ordinance.

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

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

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*".....regarding certain insignificant instances of commission adjustment against the premium outstanding of the respective policy. It is clarified that the instances mentioned in the above show cause notice are those cases where premiums of respective policies were deposited short by the commission agents in which case the amounts of premiums outstanding of respective policies were adjusted by the Company against the commission payable of the relevant commission agents. Further, Sub-section 4 of section 99 provides that "it shall be unlawful for an Agent to deduct from premiums paid by and received from a policy holder any sums on account of commission due to the agent..." and according to our understanding Sub-section 4 of section 99 restricts agents to deduct commission due from premiums collected and there is no bar on the Company while adjusting commission payable against the short amount of premiums deposited. However, we assure you that such practice will not be repeated in future...."*

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

8. The hearing in the matter was scheduled on October 28, 2013 at 10:30 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, Directors and agents of the Company.
9. 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, the Company do as per market practice, the policyholder makes underpayment and accordingly the premium stays receivable and short payment is adjusted against the commission to the respective agent. Actually agent does not deduct the premium amount;
  - b. Director Insurance argued that the Company adopting wrong practices and it is ultra-virus in nature , the company should follow laws in later and sprit;
  - c. Mr. Raza admitted the Company is non-compliance of the section 99 (4) of the Ordinance and stated that the Company assured you to follow the requirement of law in letter and spirit and no such practice will adopt in future;
  - d. Mr. Raza also submit the written response during the hearing which again reiterate the Company's earlier response dated August 23, 2013 and also ensure that such practice will not be repeat in future;

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Consideration of Company's Submissions

10. 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 Principal Officer of the Company 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.

11. 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 99 (4) 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.

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

Conclusion

13. 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 99 Sub-Section 4 of the Ordinance is established, and to a greater extent, the Company has also accepted its default. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed on the Company.

14. 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*

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*additional fine which may extend to ten thousand rupees for every day during which the default continues.”*

**Order**

15. 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 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 Company has already discontinue such practice. The facts produced to me during the hearing the Principal Officer also endorsed that no policyholder were hurt and also showed their willing ness to adopt the provision of section 99 sub-section 4 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.

16. 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