

Before Hasnat Ahmad, Director (Insurance)

In the matter of

Unique Insurance Brokers (Pvt.) Limited

Show Cause Notice Issue Date: October 26, 2016
Date of Hearing: November 21, 2016
Attended By: Mr. Muhammad Faisal Khan, CFO, Unique Insurance Brokers (Pvt.) Limited.
Date of Order: December 7, 2016

ORDER

Under Section 227 Read with Section 229 of the Companies Ordinance, 1984
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This Order shall dispose of the proceedings initiated against M/s. Unique Insurance Brokers (Pvt.) Limited (the "Company"), its Chief Executive Officer and its Directors, for alleged contravention of Section 227 read with Section 229 of the Companies Ordinance, 1984 (the "Ordinance"). The Company and its Chief Executive Officer and Directors shall be referred to as the "Respondents" hereinafter.

A. Background

2. The Company is registered as an Insurance Broker under the Insurance Ordinance, 2000.

3. The relevant provisions of Section 227 of the Ordinance require each company to transfer all moneys or securities which are deposited by its employees in pursuance of their contracts of service with that company, within fifteen days from the date of such deposit in a special account to be opened in a scheduled bank, and that no portion of such amount may be utilized by that company except in the case of breach of employment contract on part of the employee as provided in that contract and after notice to the employee concerned. For the purpose of ready reference, Sub-section (1) and (3) of Section 227 of the Ordinance are reproduced below:

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"Employees' provident funds and securities.- (1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit in a special account to be opened by the company for the purpose in a scheduled bank or in the National Saving Schemes, and no portion thereof shall be utilized by the company except for the breach of the contract of service on the part of the employee as provided in the contract and after notice to the employee concerned.

...

(3) Where a trust has been created by a company with respect to any provident fund referred to in sub-section (2), the company shall be bound to collect the contributions of the employees concerned and pay such contributions as well as its own contributions, if any, to the trustees within fifteen days from the date of collection, and thereupon, the obligations laid on the company by that sub-section shall devolve on the trustees and shall be discharged by them instead of the company."

4. During the examination of annual audited accounts for the year ended December 31, 2015 of the Company, it was observed that an amount of Rs. 2.942 million had been deducted as security from employees' salary. In this regard, the Company was asked vide letter dated September 5, 2016 to provide a copy of bank statement evidencing compliance with Section 227 of the Ordinance.

5. In response, the Company vide letter dated September 29, 2016, stated that:

"The security deposit amounting to Rs.2.92 million is kept as surety as per the employment Contract which is interest free. We have introduced Investment of Security amount with Insurance Company in the individual name of employee, which the employees are willing to avail. Further we are in process of opening a separate bank account in this regard and the Compliance of Section 227 of Companies Ordinance 1984 will be made before this financial year."

6. In the abovementioned reply, the Company admitted that they it was not maintaining a separate bank account for depositing the security amounts on account of employees' employment contract, which were required to be deposited in the special bank account within fifteen days from the date of deposit. The spirit and purpose of the Ordinance in respect of maintaining a separate bank account is to safeguard the moneys deposited by the employees in this respect and to foster the transparency and traceability of the payments / deposits being made. In view of the foregoing paras, it appeared that the Company contravened the provisions of Section 227 of the Ordinance by not keeping a separate bank account, for which penal action as provided under Section 229 of the Ordinance may be taken.

7. Hence, Show Cause Notice bearing number ID/Enf/Unique/2016/7189 dated October 26, 2016 was issued to the Respondents, thereby calling upon them to show cause as to why punitive action may not be taken against them in terms of

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Section 229 of the Ordinance for not complying with the provisions of Section 227 of the Ordinance.

8. In response to the said Show Cause Notice, the Company, vide letter dated November 3, 2016, stated that:

"...the Company has designated the Bank Account No. with Bank Al Habib Limited, Branch, Karachi, for the purpose of depositing the security deposit amount of the employees. As on October 14, 2016 the Company transferred the total amount of Security Deposit balance as at September 30, 2016 of all the employees to this account;

We also do hereby confirm that this amount was never used by the Company for its operations and we do hereby undertake that in future also the amount of Security Deposit shall remain deposited in this separate and shall not be used by the Company in any manner what so ever for its operations except for final settlement of departing employees...."

9. In view of the above, it appeared to the Commission that the Company violated the provisions of Section 227 of the Ordinance, as the amount was not transferred into the separate bank account within fifteen days.

B. Hearings

10. The Commission, vide its notice no. ID/Enf/Unique/2016/7390 dated November 8, 2016, scheduled the hearing for November 21, 2016 at 03:00 p.m. Subsequently, the Company vide letter dated November 11, 2016 requested that the hearing be held via video link facility of the Commission. Accordingly, the said hearing was attended by Mr. Muhammad Faisal Khan, CFO of the Company, via video link facility of the Commission connecting Karachi Office and the Head Office, for and on behalf of the Respondents.

11. During the hearing of November 21, 2016, the Respondents stated that a separate bank account has been designated since 30th September and the employees' deposits have been transferred to the said account. The Respondents further stated that the Company as a policy deducts security deposit at the time of their appointment and its nature is different from the funds required under the labour laws. The Respondents were advised to submit bank statement of the designated account from 1st January to date.

12. The Respondents vide letter dated December 3, 2016 provided the following documents to the Commission:

- i. Bank statement of Account No. with Bank Al Habib Branch from January 1, 2016 to November 30, 2016;

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- ii. A bank deposit slip for Rs. 66,300/- security deposit deducted from employees for the month of October 2016; and
- iii. Request letter to Bank Al Habib Limited ... Branch to transfer transaction for PIB profit & IPS charges to Company's account with Bank Al Habib Limited Branch.

C. Issues

13. The Company has admitted vide letter dated September 29, 2016 that it was not maintaining a separate bank account for moneys deducted from its employees in pursuance of their contracts of service, which were required to be deposited into a special bank account within fifteen days from the date of deposit /deduction as per Section 227 of the Ordinance.

D. Summary of arguments and conclusion in respect of each issue

14. The Respondents did not have a separate account as evident from their response dated September 29, 2016. Furthermore, the deposits were required to be transferred within fifteen days after receiving from the employees. The Respondents are now maintaining a separate bank account for the employees' deposits.

15. Therefore, in view of the above and as stated earlier, violation of Section 227 of the Ordinance is clearly established, for which the Respondents may be penalized in terms of Section 229 of the Ordinance, which states that:

"Penalty for contravention of section 226, 227 or 228.- Whoever contravenes or authorises or permits the contravention of any of the provisions of section 226 or section 227 or section 228 shall be punished with a fine which may extend to five thousand rupees and shall also be liable to pay the loss suffered by the depositor of security or the employee on account of such contravention."

E. Overall conclusion:

16. I have carefully examined and given due consideration to the written and verbal submissions of the Respondents, and have also referred to the provisions of the Ordinance and other legal references, I am of the view that the default of Section 227 of the Ordinance is established.

F. Penalties and directions

17. In exercise of the powers conferred on me under Section 229 of the Ordinance read with S.R.O. 122(I)/2016 dated February 12, 2016, I, instead of

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imposing the maximum fine as provided under the said provision, impose a fine of Rs. 3,000/- (Rupees Three Thousand Only) on the Company, due to the default of Section 227 of the Ordinance, as mentioned hereinabove. Further, the Company and its management are also directed to observe strict compliance of the provisions of the Ordinance, Rules and Regulations in future.

18. Hence, the Company is hereby directed to deposit the applicable fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty (30) days from the date of this Order and furnish receipted vouchers issued in the name of the Commission for information and record.

19. 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.

Hasnat Ahmad
Director

