



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Shaheen Insurance Company Limited

Show Cause Notice Issue July 6, 2012

Date:

Date of Hearings:

September 24, 2012

September 28, 2012

November 16, 2012

Attended By:

M/s Surridge & Beecheno, Advocates through:

1. Mr. Ali Thaheem Murtaza
2. Mr. Khurram Rashid

Date of Order:

December 17, 2012

ORDER

(Under Section 36 read with Section 11(1)(c), Section 63(1) and Section 156 of
the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s Shaheen Insurance Company Limited ("the Company") for not complying with Section 36 read with Section 11(1)(c) of the Insurance Ordinance, 2000 ("the Ordinance").

Background Facts

2. The relevant provision of Section 11(1) of the Ordinance states that:

"11. Conditions imposed on registered insurers.-(1) An insurer registered under this Ordinance shall at all times ensure that:

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- (c) the provisions of this Ordinance relating to minimum paid-up share capital requirements are complied with;
..."

3. The relevant provisions of Section 36 of the Ordinance state that:

"Insurers of non-life insurance business to have assets in excess of minimum solvency requirement.- (1) An insurer registered under this Ordinance to carry on non-life insurance business shall at all times have admissible assets in Pakistan in excess of its liabilities in Pakistan of an amount greater than or equal to the minimum solvency requirement.

(2) An insurer incorporated in Pakistan and registered under this Ordinance to carry on non-life insurance shall at all times have admissible assets in excess of its liabilities of an amount greater than or equal to the minimum solvency requirement.

(3) For the purposes of this section, the minimum solvency requirement is the greatest of:

(a) such required minimum amount as may be prescribed by the Commission;

(b) such percentage as may be prescribed by the Commission of its earned premium revenue in the preceding twelve months, net of reinsurance expense subject to a maximum deduction for reinsurance of fifty per cent of the gross figure; and

(c) such percentage as may be prescribed by the Commission of the sum of its liability for unexpired risk and its liability for outstanding claims, net of reinsurance subject to a maximum deduction for reinsurance in each case of fifty per cent of the gross figure:

Provided that in the case of an insurer incorporated in a jurisdiction outside Pakistan the amounts set out in clauses (b) and (c) of this sub-section shall be calculated with reference to the earned premium revenue, unexpired risk liability and outstanding claims liability and related reinsurance balances of that insurer in respect of its insurance business in Pakistan only."

4. Rule 13 of the Securities and Exchange Commission (Insurance) Rules, 2002 (the "Rules"), as applicable on December 31, 2011, stated that:

"Solvency of non-life insurer.- (1) For the purposes of clause (a) of subsection (3) of section 36 of the Ordinance, the following shall be the prescribed amount, namely:-

(a) In the case of an insurance company registered after the commencement date, fifty million rupees; and

(b) in the case of an insurance company registered at the commencement date-



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- (i) the amount applicable under the repealed Act, until the 31st December, 2002;
- (ii) fifteen million rupees until the 31st December, 2003;
- (iii) twenty-five million rupees until the 31st December, 2004; and
- (iv) fifty million rupees until the 31st December, 2005, and thereafter.

(2) For the purposes of clause (b) of sub-section (3) of section 36 of the Ordinance, the following shall be the prescribed percentage, namely:-

- (a) In the case of an insurance company registered after the commencement date, twenty per cent; and
- (b) in the case of an insurance company registered at the commencement date-
 - (i) ten per cent until the 31st December, 2002;
 - (ii) fifteen per cent until the 31st December, 2004; and
 - (iii) thereafter the percentage as set out in clause (a) of this sub-rule.

(3) For the purposes of clause (c) of sub-section (3) of section 36 of the Ordinance, the following shall be the prescribed percentage, namely:-

- (a) In the case of an insurance company registered after the commencement date, twenty per cent; and
- (b) in the case of an insurance company registered at the commencement date-
 - (i) ten per cent until the 31st December, 2002;
 - (ii) fifteen per cent until the 31st December, 2004; and
 - (iii) thereafter the percentage as set out in clause (a) of this sub-rule."

5. The solvency position of the Company as at December 31, 2011 revealed that the Company was insolvent by an amount of Rs.49,328,754/-. A more detailed view of the solvency calculation is given as follows:

	Amount in PKR
Amount as per Method A	50,000,000
Amount as per Method B	96,592,686
Amount as per Method C	69,907,222
Solvency Requirement i.e. Greatest of All Methods	96,592,686
Admissible Assets as on December 31, 2011	614,320,532
Total Liabilities as on December 31, 2011	567,056,600
Excess Admissible Assets over Liabilities	47,263,932
Insolvency by	<u>(49,328,754)</u>

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6. In view of the foregoing paras, it appeared that the Company has contravened the provisions of Section 36 read with Section 11(1)(c) of the Ordinance.

Show Cause Notice

7. Accordingly, the Show Cause Notice was issued on July 6, 2012 under Section 36 read with Section 11(1)(c), Section 63(1) and Section 156 of the Ordinance to the Chief Executive and Directors of the Company, calling upon them to show cause as to why the penalty, as provided under Section 63(1) and Section 156 of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with provisions of Section 36 read with Section 11(1)(c) of the Ordinance.

Company's Response to the Show Cause Notice

8. M/s Surridge & Beecheno ("the Legal Counsel") vide their letter no. S-3504/KHR/AT dated July 23, 2012, submitted reply to the Show Cause Notice on behalf of the Company, and the Chief Executive and Directors of the Company, whereby they had accepted that the Company has been unable to fulfill the minimum solvency requirement as on December 31, 2011. They had stated that:

"...It is accepted at the outset that Shaheen was unable to fulfil the minimum solvency requirement at the time Shaheen had submitted the returns on 31st December 2011, but that the same was not wilful.

You will recall that hearings were held last year on 22nd March 2011 and this year on 13th March 2012 on similar notices served upon Shaheen in respect of its paid-up capital. At the hearings, it was submitted that no violation of law had taken place as Shaheen did not wilfully evade its obligations.

Shaheen took immediate positive steps towards compliance with the paid-up capital requirement particularly after one of its shareholder, Hollard Insurance Limited decided to disinvest.

You will recall that we had submitted the following documents, as required to you:

1. Karachi Stock Exchange – Schedule of Right Issue;
2. JS Bank's letter – Results of Right Issue dated 9th May 2012; and
3. Shaheen Insurance letter of underwriter – Request for underwriting amount.

The reason Shaheen was unable to fulfil the minimum solvency requirement for the year ending on 31st December 2011 was due to the chain of unintentional events linked to the minimum paid-up capital requirement. This delay caused the solvency margin's

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shortfall. However, subsequent to the year that ended on 31st December 2011, Shaheen has covered the shortfall by issuing new capital on 31st May 2012.

The facts are all in your knowledge. In the interests of justice and for the sake of brevity, reference is made to the replies earlier filed by us on behalf of Shaheen. As you know, Shaheen has gracefully accepted the penalty of Rs. 100,000 for an alleged violation not of Shaheen's own making. It is humbly submitted that the case of leniency and waiver of any potential penalties cannot be any stronger. Keeping in mind all the adversities and problems faced by Shaheen, its determination to satisfy legal requirements are to be commended, not penalised.

Therefore, in view of the forgoing and the background know to your good self, it is humbly submitted that a lenient view is taken in this matter particularly in view of the preamble to the SECP Act 1997, declaring that SECP has been established for the "beneficial regulation of the capital markets, superintendence and control of corporate entities and for matters connected therewith and incidental thereto". It would serve the interests of justice best if a benign understanding is displayed and Shaheen is appreciated for all the efforts it has put in to meet the requisitions in the circumstances..." (Underlined to put emphasis)

Hearings of the Case & Subsequent Developments

9. Although neither the Company nor did its Legal Counsel state in writing to be called for a hearing in the matter, the hearing in the matter was initially scheduled for August 30, 2012, which was communicated to the Company via hearing notice dated July 30, 2012. However, due to certain unavoidable circumstances, the said hearing was postponed and another hearing notice dated August 24, 2012 was issued to the Company, its Directors and the Chief Executive Officer of the Company, whereby the hearing in the matter was scheduled for September 12, 2012. But, no one appeared to represent the Company, its Directors and the Chief Executive Officer of the Company on the given date and time i.e. September 12, 2012.

10. Thereafter, another hearing opportunity was given to the Company, its Directors and the Chief Executive Officer of the Company, and hearing notice no. ID/ENF/Shahen/2012/14457 dated September 12, 2012 was issued to them, whereby the hearing in the matter was scheduled for September 24, 2012 at 12:30 p.m.

11. The said hearing was attended by Mr. Ali Thaheem of M/s Surridge Beecheno on behalf of the Company, the Chief Executive and the Directors of the Company.

12. Brief proceedings of the hearing of September 24, 2012 are as follows:

- a. The Legal Counsel presented eight "Power of Attorneys" in favor of Mr. Khurram Rashid, Mr. Adeel Abid and Mr. Ali Thaheem signed by each

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Director and Chief Executive Officer of the Company, to act on their behalf in respect of the matter.

- b. On making an inquiry regarding the non-appearance of the Company's representative on the hearing which was scheduled for September 12, 2012, the Legal Counsel of the Company stated that they had not received the hearing notices for hearings on September 12, 2012 and this hearing i.e. on September 24, 2012, as the Company had not informed the Legal Counsel about the hearing. He then informed that he was here because he had made an inquiry from the Commission regarding the case.
- c. The Legal Counsel then requested for an adjournment of the hearing, which was entertained there and then, and he was informed that hearing in the matter will be scheduled for September 28, 2012.

13. As agreed during the hearing of September 24, 2012, another hearing notice no. ID/ENF/Shahen/2012/14537 dated September 24, 2012 was issued to the Company, its Directors and the Chief Executive Officer of the Company, whereby the hearing in the matter was re-scheduled for September 28, 2012 at 11:00 a.m.

14. Brief proceedings of the hearing of September 28, 2012 are as follows:

- a. The hearing was attended by Mr. Ali Tahaem of M/s Surridge Beecheno on behalf of the Company, the Chief Executive and the Directors of the Company.
- b. The Legal Counsel mentioned that they are hopeful that the recently increased paid up share capital of the Company would overcome / meet the shortfall in the solvency position of the Company. However, the Legal Counsel mentioned that the Company's management believes that the Company is solvent; however, the assurance is without any documentary evidence or proof.
- c. The Legal Counsel was asked to provide solvency statement by an independent auditor stating that the Company is solvent as on September 27, 2012. Thereupon, the Legal Counsel assured to provide the requisite statement in due course.

15. The Legal Counsel, vide their letter no. S-3504/KHR/AT dated October 3, 2012, had requested the Commission to consider a natural cutoff date of September 30, 2012 instead of September 27, 2012, which will be very difficult for the Company to make out its financial statements and the solvency statement as required by the Commission.



16. The Commission, vide hearing notice no. ID/ENF/Shahen/2012/14819 dated November 2, 2012, was issued to the Company, its Directors and the Chief Executive Officer of the Company, whereby the hearing in the matter was scheduled for November 16, 2012 at 10:30 a.m.

17. Brief proceedings of the hearing of November 16, 2012 are as follows:

- a. The said hearing was attended by Mr. Khurram Rashid of M/s SurrIDGE Beecheno on behalf of the Company, the Chief Executive and the Directors of the Company.
- b. The Legal Counsel was asked as to why the Company had not submitted its solvency position, as required during the hearing of September 28, 2012.
- c. The Legal Counsel presented letter no. S-3504/KHR/UA dated November 16, 2012 and requested the Commission to give a time of two weeks i.e. up to November 30, 2012 to comply with the requirement of the Commission.
- d. The contents of the letter no. S-3504/KHR/UA dated November 16, 2012 stated that:

"...At the last hearing, we were asked to submit the current solvency position of the Shahen Insurance Limited ("our Client") which we hereby do. Attached please the statement of assets for solvency purposes.

Our Client hired M/s Anjum Asim Shahid Rahman, Chartered Accountants ("Auditors") to carry out a review of the financial statements of our Client for the period ended 30th September 2012. After the aforementioned review of the financial statements has been carried out, the Auditors will provide a certificate confirming the accuracy of enclosed statement of solvency of our Client as at 30th September 2012. Our Client has been assured by the Auditors that the certificate on the enclosed statement of solvency will be provided for submission to the SECP by 30th November, 2012 at the latest, if not earlier.

The enclosed statement of solvency shows a shortfall of PKR 82.6 million in required admissible assets but the same is not willful. A careful examination of enclosed statement of solvency and its comparison with the Balance Sheet of our Client for the period as at 30th September, 2012 shows that the Asset Class Premium due but unpaid has admissible assets of PKR 164.667 million out of the total balance of PKR 406.398 million, thereby resulting in inadmissible assets of PKR 241.731 million. Out of this inadmissible balance PKR 101 million pertains to one client group of our Client with which settlement is in the finalization stage and it is believed that by the 30th November, 2012, this PKR



101 million will be fully recovered. This transaction alone will be enough to cover the current deficit of PKR 82.6 million.

...
It is therefore requested to kindly allow our Client to submit a certified statement of solvency as soon it is received from the Auditors by 30th November, 2012 at the latest, if not earlier. If the SECP wishes, our Client is also willing to provide an undertaking to submit a revised statement of solvency as at 30th November, 2012 duly certified by the auditors by the end of 31st December, 2012. (Underlined to put emphasis)

- e. The Legal Counsel was then clarified that the Company was non-compliant as on December 31, 2011, but the Commission took a lenient view and gave several opportunities and ample time to the Company to comply with the mandatory requirement relating to the minimum solvency. However, the Company has still failed to comply with that requirement of the law.
- f. It was also clarified to the Legal Counsel that the Commission has to be judicious and that it has to treat all regulatees equally. So, if the Company has not been able to comply with the mandatory requirement even after a timeframe of almost 11 months then this shows the Company's seriousness towards the applicable laws, and hence, the Commission has no reason to take a lenient view.
- g. The Legal Counsel again requested that two weeks' time be allowed to enable the Company to provide the requisite statement of assets for solvency purpose.
- h. The Commission, therefore, allowed the Company to submit the required statement within two weeks, positively.

18. The Legal Counsel, vide their letter no. S-3504/KHR/UA dated December 5, 2012, have provided the Audit Report on the Statement of Assets for Solvency Purposes and the agreement of settlement between the Company and M/s First Capital Securities Corporation Limited in respect of the recovery of the outstanding amount of Rs. 188.747 million which was due to the Company.

Consideration of Company's Submissions

19. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the Company's Legal Counsel, M/s Surrudge & Beecheno, Advocates), 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 Company's Legal Counsel has also admitted this as well.



20. 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 the Section 36 read with Section 11(1)(c) of the Ordinance i.e. the Directors of the Company were required to maintain adequate solvency so as to comply with the minimum solvency requirement as on December 31, 2011 and even thereafter, which was grossly overlooked by the Directors of the Company, and that the Company was required to act proactively for the recovery of its outstanding balances, therefore, it could be legitimately inferred that the default was committed knowingly and willfully.

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

Conclusion

22. 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 36 read with Section 11(1)(c) of the Ordinance is established, and to a greater extent, the Company has also accepted its default. Therefore, the penalty as provided under Section 63(1) and Section 156 of the Ordinance can be imposed on the Company.

23. Section 63(1) of the Ordinance states that:

"Power of Commission to issue direction to cease entering into new contracts of insurance.- (1) The Commission may issue a direction to cease entering into new contracts of insurance if it believes on reasonable grounds that an insurer registered under this Ordinance has failed, or is about to fail, to comply with the conditions of registration set out in section 11."

24. And, 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



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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

25. In exercise of the power conferred on me under Section 156 of the Ordinance, instead of imposing the maximum penalty, I impose a fine of Rs. 300,000/- (Rupees Three Hundred Thousand Only) onto the Company and Rs. 100,000/- (Rupees One Hundred Thousand Only) on each of the following eight Directors of the Company (including the Chief Executive Officer), due to the fact that the Company and its Directors had failed to ensure compliance with the provisions of Section 11(1)(c) read with Section 36 of the Ordinance, by not meeting the minimum requirement relating to solvency as on December 31, 2011:

S No.	Name of Directors & Company	Amount of Penalty Imposed
1	Mr. M. Ikramullah Bhatti - Chairman	Rs. 100,000/-
2	Mr. Asif Suleman - Chief Executive Officer	Rs. 100,000/-
3	Mr. Zafar Iqbal Mir - Director	Rs. 100,000/-
4	Mr. Tanweer Muhammad Sheikh - Director	Rs. 100,000/-
5	Mr. Imran Hafeez- Director	Rs. 100,000/-
6	Mr. Hammad Ahmed Butt - Director	Rs. 100,000/-
7	Mr. Shahid Hameed - Director	Rs. 100,000/-
8	Mr. Syed Hamza Gilani- Director	Rs. 100,000/-
9	M/s Shaheen Insurance Company Limited	Rs. 300,000/-
	TOTAL PENALTY	Rs. 1,100,000/-

26. *M/s. Shaheen Insurance Company Limited* and each of the abovementioned Directors of the Company are hereby directed to deposit the aforesaid fine of Rs. 300,000/- (Rupees Three Hundred Thousand Only) and Rs. 100,000/- (Rupees One Hundred Thousand Only), respectively, totaling to an amount of Rs. 1,100,000/- (Rupees One Million Only) 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 receipt of this Order and furnish receipted vouchers issued in the name of Commission for information and record.

27. The Company and its Directors are also directed to take immediate steps to meet the shortfall in their solvency requirements, and that the Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2012 should evidence that the Company has complied with the mandatory requirements of Section 11(1)(c) and Section 36 of the Ordinance relating to the minimum solvency.



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28. This Order is issued without prejudice to any other action that the Commission may initiate against the Company in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Tariq Hussain
Director