



SECP
Insurance Division
Karachi

[Karachi]

Before Muhammad Asif Arif, Commissioner (Insurance)

In the matter of

Saudi Pak Insurance Company Limited

Show Cause Notice Issue Date: April 13, 2013

Date of Hearings: May 7, 2013
September 19, 2013

Attended By: Mr. Abdul Majeed Director
Mr. Zeeshan Abdullah (Legal Counsel-Advocate
High Court)

Date of Order: October 31, 2013

ORDER

(Under Section 32 (2) read with Section 11(1), Section 36, Section 63(1) and Section 156
of the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s Saudi Pak Insurance Company Limited ("the Company") for not complying with Section 32 (2) read with Section 11(1) and Section 36 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:

...

SECURITIES & EXCHANGE
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(c) the provisions of this Ordinance relating to minimum solvency 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

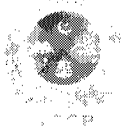
(c) such percentage as may be prescribed by the Commission of the sum of its liability for unexpired risk and its liability for outstanding claims, net of reinsurance subject to a maximum deduction for reinsurance in each case of fifty per cent of the gross figure:

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



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- (b) in the case of an insurance company registered at the commencement date-
- (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 relevant provisions of Section 32 (2) (r) of the Ordinance state that:

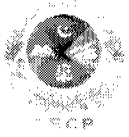
"For the purposes of this Part, subject to sub-section (1), the following are not admissible assets:

...

(r) shares of companies (not being listed companies), to the extent that they exceed, in the aggregate, such percentage as may be prescribed by the Commission of the insurer's total investments or, in the case of a life insurer, such percentage as may be prescribed by the Commission of the total investments of the relevant statutory fund or shareholders' fund;

..."

6. Rule 10 of the Securities and Exchange Commission (Insurance) Rules, 2002 (the "Rules"), as applicable on December 31, 2011, stated that:



"10. Admissibility of assets.- (1) For the purposes of sub-section (2) of section 32 of the Ordinance, the prescribed percentages for an insurance company which was registered as at the commencement date of the Ordinance, the amount prescribed in the repealed Act shall be applicable until the 31st December, 2002, and thereafter for such companies, and for a company registered after the commencement date, the percentages specified in column (3) of the table below shall apply for the clauses of the said subsection specified in column (1) of that table in respect of the assets described in column (2) thereof.

...

Clause	Description of Assets	Percentage
(1)	(2)	(3)
(r)	Shares of companies (not being listed companies) in the aggregate.	Ten per cent in the case of non-life insurer and two and half per cent in case of life insurer.

..."

7. The Company has invested in unlisted equities amounting to Rs. 45 million, the amount of these unlisted equities taken as admissible in the Statement Assets for Solvency Purpose for the year ended December 31, 2011 to the extent of 80% by wrongly applying clause 32 (2) (s) of the aforesaid Rule and was taken Rs. 36 million. And as per the provisions of Section 32(6) of the Ordinance read with Rule 10 of the Rules, as applicable on December 31, 2011, the total amount of investments should be calculated as follows:

Total Investments	
Current and Other Accounts	16,977,051
Deposits Maturing within 12 Months	45,431,000
Held to Maturity Investments	36,883,984
Investments in Listed Equities (Net off impairment)	458,061
Investments in Unlisted Equities	45,000,000
Total Investments	<u>144,750,096</u>

8. As per the provisions of Section 32(2)(r) of the Ordinance read with Rule 10 of the Rules, as applicable on December 31, 2011, the amount of admissible unlisted equities can reach a maximum amount calculated at 10 percent of the total investments, which are evaluated as per the provisions of Section 32(6) of the Ordinance. Thus, as per the said provisions of the law, the Company had taken an additional amount of Rs. 21,524,990/- as admissible. The calculation is as follows:



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Additional Amount Taken As Admissible	
Shares of Unlisted Companies taken as Admissible By the Company	36,000,000
Shares of Unlisted Companies in Aggregate (10%)	14,475,010
Additional Amount Taken as Admissible	<u>21,524,990</u>

9. As per the Statement of Assets for Solvency Purpose (Form GJ) as on December 31, 2011, the total admissible assets were Rs. 309,163,682/- and as per the Statement of Assets and Liabilities (Form GA) as on December 31, 2011, the total liabilities were Rs. 246,328,850/-. Thus, the net admissible assets would be Rs. 62,834,832/-. The minimum solvency requirement as prescribed under the Rules (as at December 31, 2011) was Rs. 50,000,000/-. Therefore, the Company stood out to be solvent by an amount of Rs. 12,834,832/-. The calculation is as follows:

Reported Solvency Position As on December 31, 2011	
Admissible Assets as per Form GJ	309,163,682
Total Liabilities as per Form GA	246,328,850
Net Admissible Assets (Excess Assets over Liabilities)	<u>62,834,832</u>
Minimum Solvency Requirement	<u>50,000,000</u>
Excess / (Short) Net Assets Over Minimum Solvency Requirement	<u>12,834,832</u>

10. If the impact of the aforesaid additional amount taken as admissible is taken out from the admissible assets as reported in the Statement of Assets for Solvency Purpose (Form GJ), the admissible assets turn out to be at Rs. 287,638,692/-, and if the solvency position is re-evaluated then the Company falls insolvent by an amount of Rs. 8,690,158/-. The detailed calculation is as follows:

Actual Solvency Position As on December 31, 2011	
Admissible Assets as per Form GJ	309,163,682
Less: Additional Amount of Admissible Assets	<u>(21,524,990)</u>
Actual Admissible Assets	287,638,692
Total Liabilities as per Form GA	246,328,850
Net Admissible Assets (Excess Assets over Liabilities)	<u>41,309,842</u>
Minimum Solvency Requirement	<u>50,000,000</u>
Excess / (Short) Net Assets Over Minimum Solvency Requirement	<u>(8,690,158)</u>



11. In view of the foregoing paras, it appeared that the Company has violated the provisions of Section 32(2)(r) of the Ordinance, which implicated that the provisions of Section 11(1)(c) read with Section 36 of the Ordinance have also been contravened.

Show Cause Notice

12. Accordingly, the Show Cause Notice was issued on April 13, 2013 under Section 32 (2) read with Section 11(1), Section 36, 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 32 read with Section 36 and Section 11(1) of the Ordinance.

Company's Response to the Show Cause Notice

13. The Company vides its letter no. HOL/SPI/2013/1289 dated April 29, 2013, submitted reply to the Show Cause Notice on behalf of the Company, and the Chief Executive and Directors of the Company, whereby they had had stated that:

"...the letter No. INS/SD/SPICL/2012/14212 dated August 03, 2012 of your esteemed institution forwarded by Mr. Obaid-ur-Rehman, Deputy Director, wherein pin pointed the objection of non-compliance of rule of "Admissibility of Unlisted". While we replied through letter SPI/HOL/SPICL/2012/3484 dated 24 August, 2012, which rule of Securities and Exchange Commission (Insurance) Rules, 2002 has been complied in preparation of Annual Account, 2011, whose extract is appended below:

In respect of admissibility of unlisted equities, please note that according to clause 1 (s) of rule 10 of Securities and Exchange Commission (Insurance) Rules, 2002 in case of non life insurer eighty percent (80%) of immoveable property and shares in aggregate can be taken as admissible assets. Therefore, eighty percent of unlisted securities (45,000,000 * 80%) are taken as admissible asset.

Upon quoting of the compliance of the above insurance rule the commission has not raised further query or objection, so we are consider it correct and prepared the Regulatory Returns, 2012 complying with said rules.

We are astonished at the receipt of your show cause notice # ID/ENF/SPICL/2013/16228 dated Karachi April 13, 2013 under the captioned insurance rule and marked as "non-compliance" of Section 32 (2) (r) of the Ordinance. Furthermore, with regard to the item no.9 of show cause notice the Company's Net Assets Over Minimum Solvency Requirement is Rs. 8,690,158/- our company for the



year 2011 for which the Company has been mark as default by the commission under the Section 156 of the Ordinance.

Your goodself is hereby being entreated that non-compliance is only conducted due to ambiguity of the rules of the above justification should be assumed as hearing. We assure you for compliance of insurance rule in future and request you to grant respite of two year. Moreover, the commission is hereby further beseech to withdraw the show cause notice and issue standing instruction comprising of, to the concerns to waive the penalty....."

Hearings of the Case & Subsequent Developments

14. The hearing in the matter was initially scheduled for May 7, 2013, which was communicated to the Company via hearing notice dated April 29, 2013. However, on the day of hearing the respondents submitted the Power of Attorney and simultaneously request to adjourned the hearing for another day and time as they had just engaged a lawyer and who is not fully prepared to present the case. On written and verbal request the hearing was adjourned.

15. Thereafter, another hearing opportunity was given to the Company, its Directors and the Chief Executive Officer of the Company, and hearing notice dated September 12, 2013 was issued to them, whereby the hearing in the matter was scheduled for September 19, 2013 at 2:00 p.m.

16. The said hearing was attended by Mr. Abdul Majeed, Director and their legal representative Mr. Zeeshan Abdullah on behalf of the Company, the Chief Executive and the Directors of the Company.

17. Brief proceedings of the hearing of September 19, 2013 are as follows:

- a. The case was briefed by the Deputy Director with the instruction of the Commissioner Insurance, the Legal Counsel responded and restated their earlier reply that has already been submitted to this office in August 2012 in response to their queries and justified the 80% admissibility as per Rule 32 (2) (s) of SEC (Insurance) Rules 2002. And try to justify that the Company thought that the case falls under rule this sub-rule.
- b. The Company's representative also admitted that they took sub-rule (s). But they did not say it is correct.
- c. The Company's representative also presented a case law CLD 2010 - 379 and referred that the Company took remedial measure soon after this notice and purchased Pakistan Investment Bonds and Treasury Bills net amounting to Rs. 31.1 million.



- d. On making an inquiry regarding the non-compliance the Company's representative replied that the committed default is not knowingly. The Commissioner Insurance inquired about does "knowingly" applied in the ignorance of the law, and asked the Company's representative to present a case law on it if any, the Company's representative replied they did not have right now and also admitted that ignorance of law has no excuse, and pray for taking lenient view in this regard.
- e. The Commissioner Insurance asked to the Company's representative to provide an undertaking from the board of directors that the Company should comply with the Solvency requirements by December 31, 2013.

18. The Company vides its letters no. HOL/SPI/2013/3464 dated September 21, 2013 and CO/SPICL/123/2013 dated October 2, 2013 appraised the Commission about the resolution passed by the Board of Directors and assured that the Company would be fully compliant with the requirements of solvency by December 31, 2013.

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 and representative, 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 the default as well and assured that the Company will follow the mandatory requirements of law in letter and spirit.

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 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 32 (2) read with Section 11(1) and 36 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 and misinterpreted by the Directors of the Company, and that the Company was required to act proactively for maintaining the minimum solvency



requirement as stipulated in the law, therefore, it could be legitimately inferred that the default was committed.

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 32 sub-section 2 (r) read with Section 11(1)(c) and 36 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.

22. 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."

23. 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 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

24. In exercise of the power conferred on me under Section 63 (1) and 156 of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, condone and warned the Company due to fact:

- a. THAT the Company's management has adopted and undertake via a resolution that the minimum solvency requirement as laid down in the laws shall be fulfilled by December 31, 2013 and has assured adherence of the applicable laws rules in this regards at all times in future; and



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- b. THAT the Company has misunderstood the applicability of the relevant rules in calculation of the minimum solvency for the year December 31, 2011 due to which shortfall occurred and have assured that it will follow the requirements of laws in letter and spirit.; and
- c. THAT the Company already took remedial measures to meet the shortfall by purchasing the PIBs and the T-Bills carrying an aggregate amount of Rs. 31.1 million.

25. 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.

Muhammad Asif Arif
Commissioner