JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition no. 3670 of 2023

Jubilee Life Insurance Company Limited
versus
Office of the President (Public) and others

Petitioner by:	Syed Hamid Ali Shah, Naeem Iqbal, Sherdil Khagga, Umer Ishtiaq and Zain ul Abedin, Advocates
Respondents by:	Mr. Mouood Fiaz, Advocate
	Mr. Sultan Lehrasib Khan, AAG
	Omer Azad Malik, Sarfraz Ahmed Qureshi and Hasnain Raza, SPPs-SECP
Date of decision:	**02.06.2025**

Sardar Ejaz Ishaq Khan, J:- The petitioner insurance company assails the impugned order dated 14.09.2023, whereby the Director (Legal-I) of the President's Secretariat authored and signed the President's order, allowing the respondent insured's representation against the Federal Insurance Ombudsman's order dated 04.01.2023, by holding that:

> The learned Ombudsman had thus failed to follow the spirit of the Insurance Ordinance, 2000, without realizing that the premium amount worth Rs.12,007,492/- was kept by the respondent company since July 2016 by earning profit but had declined to refund the full amount. The complainant was entitled to the refund of paid premium amount if not the profit.

2 The Ombudsman had, after a detailed hearing, closed the complaint by concluding as follows:

> [T]he case was examined in the light of written and oral submissions of the parties. The representative was asked during hearing to play the recorded CBC [call back confirmation] in this case which was available with the representative. The recorded CBC was heard by this Forum in the presence of the Complainant. No evidence of mis-selling was found in the CBC. It was observed that the Policy holder levelled allegations of mis-selling more than five years after the issuance of the policies without proof. He had obtained the insurance policies on the basis of Proposal Forms, HBL Direct Debit Standing Orders and other essential signed documents. FLP [Free Look Period] of 14 days was allowed to him but

for read only

> he failed to exercise his right within frame [sic!] and approached the Forum for grievance after more than five years after issuance of the policies. Answering a question, the Complainant accepted that he signed the documents. Hence, no mis-selling was found and the case was found devoid of merit.

3 The respondent insured had taken out 3 policies of insurance from the petitioner insurer. Five years later, before the maturity date, he applied for pre-maturity surrender of his policies. The surrender value, termed as cash value from and after 2 years into the policy term, was lower than the total premia paid by the insurer. The difference was circa Rs. 1.5 million, the insured claiming circa Rs. 12 million and the insurer offering the cash value of the policies at circa Rs. 10.5 million.

4 Underlying the President's impugned order was the erroneous assumption that the insurance contract in question guaranteed the preservation of the invested premia. Instead, it was an 'investment contract', that companies conducting life insurance business offer under the Insurance Ordinance, 2000, whereby a mix of returns and payments contingent on insured risks such as death or injury are assured. An investment contract for the purposes of insurance business is defined in section 2(xxxii) of the Ordinance as follows:

> "investment contract" means a contract of insurance, providing for benefits to be paid on death or on a specified date or dates before death where the benefits paid are calculated by reference to either a running account or units under the contract whether or not the minimum value of that account or those units is guaranteed and providing for the account to be increased during the currency of the contract; (emphasis added)

Life insurance companies such as the petitioner are permitted under the Ordinance to offer investment contracts, which, in cases such as the one at hand, are 'investment-linked', which expression is defined in section 2(xxxiii) as follows:

> "investment-linked" in relation to life insurance means investment contracts, the principal object of which is the provision of benefits calculated by reference to units, the value of which is related to the market value of a specified class or group of assets of the party by whom the benefits are to be provided. (emphasis added)

for read only

The term 'units' is also defined in section 2(lxvi) of the Ordinance as follows:

> "unit", except in section 32, means a notional share in the net value of a specified class or group of assets of a statutory fund of an insurer carrying on life insurance business, the value of which is to be used as a basis for determination of the benefits payable under an investment linked contract.

The reference to 'statutory fund' in the aforesaid definition links with the statutory obligation of each insurer to maintain one or more statutory funds under section 14 of the Ordinance, which in material part reads as follows:

> 14. Statutory and other funds of life insurance companies – …
>
> (2) An insurer that carries on life insurance business consisting of provision of investment-linked benefits shall maintain one or more statutory funds exclusively for that business. …

Sub-sections (3), (4) and (5) of section 14 require separate statutory funds to be maintained by a life insurance company if it also carries on capital redemption business, pension fund business, or accident and health insurance business. That is, for each category of business conducted by a life insurance company, it is required to maintain at least one separate statutory fund.

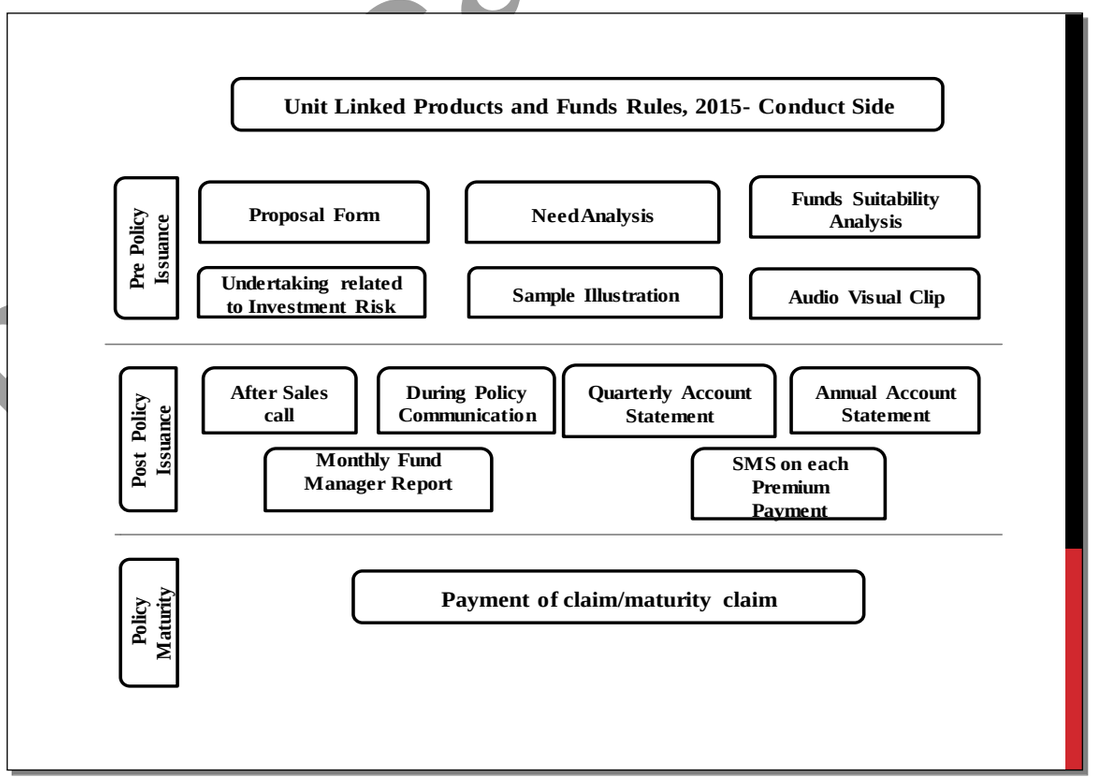
Under section 16 of the Ordinance, each policy of life insurance (that may be blended with an 'investment-linked' 'investment contract') *must be referrable to one or more statutory funds*. That is to say, the premia paid by an insured under an investment-linked contract are not 'kept' by the insurer for itself (as assumed by the learned Director (Legal) of the President's Secretariat), but must be invested in one or more statutory funds earmarked for the given category of business. The price of the units allocated to a given insurance policy then becomes a function of the performance of the statutory fund, which is an objectively verifiable number, and is not determined arbitrarily by the insurance company.

An insured is not bound to hold the policy until maturity. He can surrender it at any time: section 90 of the Ordinance. The value he will get on surrender, termed the 'surrender value', will be the product of the unit price of the relevant fund and the number of units allocated to his policy, less legally permitted deductions. If it is surrendered after two years, the surrender value

for read only

is called 'cash value' by the insurance industry. Any alteration to the surrender value of any policy is subject to prior approval of the Securities and Exchange Commission of Pakistan under section 89(2) of the Ordinance; the insurance company cannot arbitrarily change the surrender or cash value of a policy at its whim. The respondent insured has not claimed that the cash value of his policies – a product of the unit prices of the relevant funds and the total units held by him less legally permitted deductions – was not calculated correctly by the insurance company.

5 It remained the insurer's case, not disproven by the insured, that the cash value of the 3 policies at the time the insured sought to encash them was lower than the total premia invested by him. The insured cried foul, claiming that he was given to understand at the time he purchased the policies that his investment would double in 5 years. That was an allegation of 'mis-selling' by the insurance company. It is apposite at this stage to tabulate the process of marketing and sale of insurance policies, which is neatly depicted in the slide[1] below:



[1] Source: SECP's presentation made in Court.

Each box in the 'Pre-Policy' row of the table above owes its origin to legal obligations of the insurer under the Ordinance, read with Insurance Rules, and SECP's directives. I will not burden the reader by citing all those legal provisions, for they are very many, including the Insurance Rules, 2002, Bancassurance Regulations, 2015, Unit Linked Fund Rules, 2015, and SECP's Directive for Life Insurance and Family Takaful Illustrations, 2016. Learned counsel walked the Court through all the relevant legal provisions while making his submissions and the respondent's counsel did not take issue with the reading of those legal provisions. Hence, we proceed on the basis that the legal regime is not contested. What is contested by the respondent is that he was misled on the investment yield in the years to come.

6 The insurance contract between the parties comprised several documents, including the Standard Policy Terms, an Insurance Proposal Form with illustrative benefits, and a historical performance sheet of the relevant funds annexed to the Proposal Form. The petitioner company was operating different funds, termed Yaqeen Fund, Managed Fund, Capital Growth Fund, and Meesaq Fund. Each fund had its own characteristics, ranging from risk-averse capital preservation investment with low annuity returns to high-risk high-annuity returns, consistent with the adage in the finance industry that the higher the risks, the higher the returns, and vice versa. The range of the expected returns was reflected in the Illustrative Benefits Table in the Proposal Form, which was an integral part of the contract between the insurance company and the insured.

7 The legal framework underpinning the life insurance business offering investment contracts is a fairly detailed one and this perhaps is not the occasion for this Court to delve into any greater detail in that legal framework, for the instant matter may end up before the Insurance Tribunal. Suffice it to say that any knowledgeable person, let alone a Director Legal exercising the very important function of advising the President correctly, would be expected to understand the difference between an investment contract with capital protection guarantee versus an investment contract without such guarantee. The two products are by no means identical, quite contrary to the rather

for read only

diffuse description of the Insurance Ordinance given by the Director Legal by stating that such was the "spirit of the Insurance Ordinance". The respondent's learned counsel has not been able to identify any provision of law or the investment contract guaranteeing the cash value of the policies on pre-mature surrender to equal the aggregate sum of the premia paid till surrender. It is apt to reproduce the following passage from *Anandrao Ramachandra Salunke vs Life Insurance Corporation of India* (AIR 2019 SC 1801, at para 11):

> There are popular misconceptions about the concept of 'surrender value' in the sphere of life insurance. In a policy of fire insurance, a policy holder has no expectation of a surrender value. In contrast, a holder of a policy of life insurance may believe (as the appellant in this case does) that their surrender value will be equal to total amount paid as premium. This expectation is misconceived. Simply put, life insurance operates on the basis of law of averages. Premium is collected from all policyholders in order to create a common fund. Payouts from the fund are received only by those who suffer the peril which is insured. The economic loss suffered by a few is divided amongst many. Premia are fixed by insurer on the basis of expected mortality rates. Hypothetically speaking, if mortality rates of all individuals were to be equal irrespective of age and everyone paid the same premium, the discontinuance of a policy during its term would not entitle the insured to a surrender value since the common fund would be depleted on a regular basis. In reality, the mortality rates increase with age. Actuarial tables provide a guide to the insurer. Hence, when an insurer initially collects premium from individuals of younger age, the amount it collects is higher than the amount it pays out towards claims. The difference between them is the 'reserve'. Thus if a policy holder wishes to discontinue a policy before the end of the term, they will only be entitled to their share of the 'reserve' as a surrender value.

8 It is not disputed that the insurance contract between the parties included the Illustration of Benefits sheet, which posited three scenarios of varying gross rates of return with the maturity value of the policy changing accordingly. As noted above, the unit price is a function of the performance of the market instruments comprising a given statutory fund and, depending on the nature of the fund and the mix of the market instruments comprising such fund, the unit price will of necessity be a fluctuating value from year to year. Therefore, the equitable premise on which the impugned order was

for read only

passed was fundamentally flawed vis-a-vis the true nature of investment-linked contracts.

9 I therefore find that there was no valid legal basis for the President's Secretariat to conclude that the cash value of the policies must have equalled the total sum of the premia paid up until the pre-mature surrender of those policies.

10 The core of the factual dispute between the parties was whether the historical performance of the funds the respondent insured chose was shown and explained to the insured properly. The Ombudsman concluded based on the documents and the submissions of the parties before it that a case of mis-selling was not made out. He reached this conclusion based on several factors, including that (i) all the documents required under the applicable laws were duly signed by the insured, including the Proposal Form and Illustration of Benefits (ii) the Call Back Recording played during the hearing did not disclose mis-selling, and (iii) the insured had a 14 days Free Look Period to withdraw from the policies if the terms were not acceptable, but he did not.

11 However, learned counsel for the respondent insured continues to maintain that the relevant funds' historical performance sheet, required under clause 9 of the SECP's Directive for Life Insurance and Family Takaful Illustrations, 2016, was never shown to the insured to choose his preferred funds. The historical performance sheet on the record does not have a signature row for the customer to sign; it was an annex to the Proposal Form signed by the insured. In reply, learned counsel for the petitioner company referred to page 11 of the Proposal Form signed by the insured, wherein the insured had agreed for his plan to be invested in the "Managed Fund" and in "Capital Growth Fund". It is the insurance company's case that the Capital Growth Fund operated rather drastically between 2016 to 2021, with the stock market index dropping from 55,000 to 35,000 for that period, and that was the reason why the cash value of the insured's policies fell below the total premia that he had paid. These disputed questions of fact are not ones that either this Court, nor for that matter the Federal Insurance Ombudsman, or the President's Secretariat on representation, ought to determine for being factual disputes requiring evidence, as has already been held in several judgments by

for read only

the High Courts, including a judgment of the Islamabad High Court in *The MD/CEO United Insurance Company of Pakistan Limited vs The President of the Islamic Republic of Pakistan and 2 others* (2024 CLD 931), whereby the Court held that:

> The Division Bench Lahore High Court in case reported as M/s Capital Insurance Co. Ltd. v. Securities and Exchange Commission of Pakistan and 4 others (2013 CLD 1075), observed where the dispute between the parties is factual which could only be resolved after recording the evidence, jurisdiction vests with the Insurance Tribunal. Similar views were expressed by Lahore High Court in case titled Atlas Insurance Limited v. Federal Insurance and others (W.P. No.23312 of 2014), wherein it was observed as follows:-
>
> > "Juxtaposing section 121 with section 125, it becomes clear that though the two forums, one of the Insurance Tribunal and the other of the Federal Insurance Ombudsman run parallel to each other, unequivocally they do not run into each other and the jurisdiction of these two forums is quite distinct and apart from each other. In case, there is a dispute regarding the insurance claim, the proper forum for its determination is the Insurance Tribunal which has in the exercise of its civil jurisdiction, all the powers vested in a civil court. It will exercise jurisdiction in respect of a claim filed by a policy holder against an insurance company. This is stated in section 122(a) of the Ordinance. By subsection (3) of section 122, exclusive jurisdiction has been conferred on Insurance Tribunal to exercise and it has been provided that no court other than a Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of a Tribunal extends under the Ordinance. The periphery of powers of an Insurance Ombudsman is quite clearly limited to the determination of a complaint if the allegations of maladministration are clearly made out. The precise scope of the term 'maladministration' has been given in subsection (2) of section 127 and the Insurance Ombudsman cannot travel beyond the power conferred upon it by that subsection. Maladministration would include any decision or act of omission or commission which is contrary to law, rules or is a departure from established practice or procedure. Maladministration also includes a decision which is perverse, arbitrary or unreasonable or oppressive or is based on irrelevant grounds. None of the ingredients which constitute maladministration are found in the instant matter.

12 Therefore, for the aforesaid reasons, the impugned order is set aside. Despite the finding by the Ombudsman that there was no mis-selling on record, which had not been disturbed by the impugned order, the respondent insured remains at liberty to agitate the factual disputes of his sighting of the historical performance sheet and the unit prices of the respective funds for the

period between his purchase of the policies up to surrender before the Insurance Tribunal, subject to all just and legal exceptions, if he is so advised.

(Sardar Ejaz Ishaq Khan)
Judge

Approved for reporting

Asjid

for read only