



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Company Law Division
(Corporatization & Compliance Department)

No.CLD/RD-602 (27)/2011

Islamabad, the April 27, 2012

Before

Executive Director (C & CD)

In the matter of

Unaico Pakistan (Pvt.) Ltd.

Sanction under section 309 (b) the Companies Ordinance, 1984

Present:

- 1- Mr. Dan Andersson, CEO
- 2- Mr. Graham Kent, Assistant to CEO
- 3- Syed Mahboob Shah, GM
- 4- Col. (R) Waheed-Ur-Rehman, Corporate Director
- 5- M. Ishtiaq Iqbal, F. Consultant
- 6- Musharraf Mahmood Qazi, Advocate
- 7- Mirza Nabeel Tahir, Advocate

All at Sr. No. (1) to (7) on behalf of the Company and its officers.

Date of Hearing:

09.02.2012 & 10.02.2012
19.04.2012 (nemo appeared on 19.04.2012)

Place of Hearing:

Islamabad

ORDER

M/s. Unaico Pakistan (Pvt.) Limited (the "Company") was incorporated on 07.03.2011 having its registered office at 11-D, Saudi Pak Tower, Jinnah Avenue, Blue Area, Islamabad. The authorized capital of the Company is Rs. 10,000,000 divided into 100,000 shares of Rs. 100/- each and its paid up capital is Rs. 1,000,000 divided into 10,000 shares of Rs. 100 each. Business activities of the Company as mentioned in its Memorandum of Association are as follows:

- (i) *To carry on the business of IT/IS consultancy, software development, software maintenance, system integration, web design, web development, web hosting, network designing and IT enabling services which include*

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but not limited to call centers, internet services, medical transcription, remote monitoring, graphic designing, accounting services, HR services, telemedicine centers, data entry operation subject to the approval of the concerned authorities, if any.

- (ii) To carry on the business of trading, buy, sell, exports, imports, marking, commission, agent, selling agent, distributors, stockiest, merchants, wholesalers, retailers, manufactures, general order supplier and dealer in general merchandise, services, articles and goods of all descriptions whatsoever, from and to all parts of the world.*
- (iii) To setup office, branch office, recruiting center, training center, recruit and maintain necessary work force and organization structure to help the recruiting agent functions as well as to organize events and training to build the business and develop and trained the independent distributors.*
- (iv) To adopt such means of making known these products and services of the company or goods and articles dealt in by the company as may seem expedient such as by advertising, circulars, catalogues, show cards, posters, road shows and free sample and exhibitions and granting rewards, prize and donation and also by such other mean of making known nationally and internationally as may seem expedient including advertisement through internet and website.*
- (v) To carry on the business of call centers, "business process out sourcing" and giving consultancy of "Business process out sourcing" and to act as Consultants for any person, Company, Corporation, International Organization, National and International, Non Governmental Organizations (NGOs), Research organizations and Firms or Authority operating in Pakistan or abroad and generally to transact or carry on all kind of agencies business, (except managing agency business).*
- (vi) To carry on the business of manufacturers, buyers, sellers, importers, exporters, dealers, stockiest, supplier, wholesaler, retailer, assemblers and distributors of all kind of electrical goods including but not limited to electric switches and switch gears, plugs, circuit breakers, eclectic sockets, connector, relays, distribution boards, electric panels, lightning conductors, electric safety barriers, contents, lamps, lighting goods, bare and rubber insulating wires, electrical power distribution and supply cables, flexible cords, fuse wires, copper, weld and aluminum wires.*

2. The Commission received various queries/complaints from general public mainly through email messages including emails dated 23.03.2011, 17.03.2011, 25.04.2011 and

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18.07.2011 wherein it was highlighted that the Company is involved in the business of Multi-Level Marketing (MLM)/Pyramid Schemes. On receiving the aforementioned emails, the Company Registration Office, Islamabad (the "CRO") conducted a preliminary inquiry to probe the matter and to see if the Company was actually involved in the business of MLM/Pyramid Schemes. The inquiry about affairs of the Company, revealed that it is involved in *ultra virus* activities like MLM/Pyramid Schemes by adopting the following *modus operandi*:

"People are induced to become member but only through reference of an existing member and all the membership process is on line. Business can be assessed only when a person become member after payment of Euro 500 as membership fee. All the business of the Company is carried out online in association with it sister concern, "M/s Sitetalk".

The nature of business being carried out by the Company is like MLM and Pyramid scheme. Once becoming a member, members are motivated to expand membership so as to broaden the network by introducing more members. There are reportedly more than ten million members all over the country.

Any one can enter in this web based social community but only through reference. Three basic requirements are mandatory by new entrants i.e. Name, Date of Birth and e-mail address. All the system is web based and no printed material is available with the members. Training is arranged by the Company for which membership is mandatory. When any one becomes member and has attended the training seminar, he is offered bronze, silver and gold membership/packages for business @ 500, 2500 and 5000 Euros respectively. All the detail of business is provided according to package purchased and for introducing every new member, the Company pay one Euro to the referrer. For payment the Company issues an ATM card which is supported by the VISA and can be used at any ATM I link machine."

3. The registrar concerned, at the CRO, in order to ascertain the factual position, called information/explanation from the Company under section 261 of the Companies Ordinance 1984 (the "Ordinance") and has observed that contrary to the business scheme as enunciated in its Memorandum of Association, the Company has started registration of members as well as persuading them to invite other people to join and to earn money. The Company is engaged in MLM activities in Pakistan through "UNIACO Hong Kong"

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and "Sitetalk.com", which is inconsistent with its objects. The company is, therefore, engaged in activities not permitted by its Memorandum of Association.

4. The registrar concerned has also observed that certificate for availability of name was obtained fraudulently by furnishing false statement that "UNIACO" is an abbreviation of the names of promoters of the then proposed company. Actually the name carries names of its parent company. Moreover, there is no visible business of the Company in Pakistan but its bank statement is reflecting transactions in millions.

5. In view of the aforesaid grounds, the registrar concerned, in public interest, sought "prior sanction" under proviso to clause (b) of section 309 of the Ordinance, for filing the winding up petition before the Islamabad High Court at Islamabad by specifically stating that activities of the Company attract the provisions contained in sub clauses (i), (ii) & (iv) of clause (f) of section 305 of the Ordinance.

6. In order to meet the ends of justice and before granting sanction, the Company was served with a notice dated 16.01.2012, thereby, providing with an opportunity of making a representation and of being heard in terms of proviso to clause (b) of section 309 of the Ordinance.

7. The Company, in response, filed its written reply vide its letter dated 09-02-2011, demonstrated "Business Model Presentation" (the "Presentation") during the hearing and argued the case on the lines as expressed in the written reply and the presentation. Copy of the said "Business Model Presentation" was subsequently submitted vide e-mail dated 13-02-2012. The item-wise analysis of the allegations and the corresponding clarification given by the Company is discussed, as under:

(a) **Membership Through Reference:**

The Company denied the allegations by stating that,

"members can join directly without being referred by going to (website) www.unaico.com".

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The presentation, no doubt, talks about free activation of "Unaico Membership" The website, "www.unaico.com", quoted by the Company, however, speak about different scenario and emphasizes for the, "referrer" in the following words:

"your referrer is the person that helps you through the initial stages of building your own Unaico business.

You currently do not have a referrer. Please contact the person who referred you to this website for more information on this".

The website further indicates that free access is to the extent of opening the website, whereas further processes and compensation/benefit packages are dependent upon reference/sponsor so as to accomplish the status of "Business Members or Active Member". Instead of clarifying the facts in their true prospective, the Company, by denying the allegation, attempted to malign the terms "Member" and "Business Members" or "Active Member".

(b) **Membership Fee.**

The Company denied the allegations by stating that,

"Membership is free and by working people can access the business without spending any money on memberships or products".

Application Form placed at the website, titled, "Join Us" categorically presents the following options for "Package Selection", being one of the basic requirement for submission of application form.

Site Talk – Price:	Euro	0.00
Basic Package – Price:	Euro	149.00
Bronze Advantage Package – Price:	Euro	500.00
Gold Advantage Package – Price:	Euro	2,000.00

The submitted presentation also speaks about these packages with same prices. Under the circumstance, denial of facts on the part of the Company carries no waitage as both the presentation given by the Company and its website is supportive of the allegation.

(c) **MLM/Pyramid, Nature of Business.**

The Company while giving its comments about nature of business denied involvement in MLM/Pyramid schemes and rather, described the same as a "direct selling", a new concept, not easily defined in existing terms and stated that:

"MLM is an internationally recognized form of selling goods and services, which requires distributors to purchase and sell products. This is not part of our business.

Pyramid scheme typically describes a short term and sometimes illegal circulation of money and/or fraud. We strongly deny that Unaico Pakistan is in any way such a scheme.

While there may be certain parallel dynamics with direct selling, the fundamental business objective is to build a social community. The business model draws on direct selling dynamics in terms of incentives and recognition, but is a new concept and as such not easily defined in existing business terms".

The contents of the quoted website were found to be expressively describing the system adopted by the Company as MLM in the following words:

"SECTION 1 — INTRODUCTION

Basis of Cooperation

The company Unaico Ltd (hereafter Unaico or the company) sells to ultimate customers via Sitetalk-Mall by way of distance selling various products and services. The specific Unaico distribution system is characterized by the fact that independent sales representatives (hereafter active Members) recruit participants/customers for the online network community Sitetalk for inter alia the purchase of products and services. In this connection the system is based on the Unaico compensation plan. This plan regulates the tasks of the active Members according to their functional position in the organization which is structured according to the principles of the so-called Multi-Level-Marketing system."

Besides, on perusal of the submitted presentation it was observed that it (Presentation) contains a separate sheet titled, "BUSINESS PROGRAM", "START YOUR NETWORK TODAY", This page sheet contain both the diagram and a descriptive message, "In order to receive commission on the activity of your friends and their friends, you need to activate your free Unaico membership, than you will earn commission on everything that happens in your organization (see compensation plan)." The diagram pasted in support of this message indicates the bubbles spreading in multiple directions in circular shape (indication of global spread to masses) and gradually decreasing in size. Both the text message and the diagram highlight the mechanism of MLM/Pyramid nature of business.

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(d) Object Clauses:

The Company quoted two different set of object clauses 1, 2, 4, 10, 11, 12, 14, & 27 and 1, 3, 4, 5, 19, 20 & 28 vide its two separate letters first dated 04.10.2011, addressed to the registrar concerned and another dated 09.02.2012, addressed to the undersigned, thereby attempting to provide a cover of authorization to its activities.

Object clauses, quoted by the Company were analyzed so as to ascertain contention of the Company in this regard. The findings in respect of each quoted clause are as under:

Clause 1:

It is supposed to be a main determinant factor for sectoral classification of business of a company. Object clause (1) speaks about business of IT/IS consultancy and is found to be least concerned with activities of the Unaico as stated.

Clause 2:

This relates to trading activity *inter alia* through "wholesalers/retailer" mechanism. This mechanism is contradictory to the mechanism of "direct sales", as strongly argued and adopted by the Unaico.

Clause 3:

This clause authorizes Unaico to setup office, branch office, recruiting center, training center, recruit and maintain necessary work force and organization structure to help the recruiting agent functions as well as to organize events and training to build the business and develop and train the independent distributors.

Activities concerning, "recruiting centre and training centre" as specified in this clause are aimed at helping the recruiting agent functions. These stated training and recruitment functions were analyzed in the light of activities being carried out by the Company and it is observed that the Company itself is absolutely not involved in recruitment functions training is rather one of the main function being carried out by the Company and is being provided to the members in two separate categories, firstly in the shape of broadly organized events like one held at Marriott Hotel, Islamabad on 17-07-2011 and secondly in the shape of purchasable training products available as online courses. Both of these categories are least concerned with helping the recruiting agent functions and instead are being carried out as an independent function and, as such, are not supportive to contention of the Company.

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Clauses 4 & 5:

Both the clauses are general in nature and do not reflect the stated business activities and are included in objects of the Unaico as support service activities.

Clauses 10 to 12 & 14:

All of these three clauses speak about business of manufacture and sale of medicines. The activities described in these clauses do not indicate any relation with activities, practically being carried out by Unaico.

Clauses 19, 20, 27 & 28:

These clauses describe the business of construction of buildings, purchase of land, joint ventures and agency arrangements etc. and are absolutely irrelevant to business practically being carried out by the Company.

8. None of the quoted object clause was found to be relevant to activities as alleged by the registrar concerned i.e. registration of members as well as persuading them to invite other people to join and to earn money besides, the Company's engagement in MLM activities/Pyramid Schemes in Pakistan through "UNIACO Hong Kong" and "Sitetalk.com". The question about irrelevant status of the quoted clauses was specifically asked during the hearing and none of the representative of the Company could satisfy the undersigned in this regard. Similarly the Company could not answer about two more sensitive issues firstly obtaining of certificate for availability of name by furnishing false statement that "UNIACO" was an abbreviation of the names of promoters of the Company and secondly in the absence of visible business of the Company in Pakistan, reflection of transactions in millions in the bank statements.

9. In addition to the above, the Company was found to be involved in conducting training programs titled "Oxford Program (Secret Code)". Oxford is a renowned University whereas representatives of the Company, present in the hearing stated that the Company does not have any affiliation or accreditation arrangements with the University. Act of conducting the courses in the name of globally renowned university tantamount to cheating and can, in no way be termed as prudent business practice.

10. I have gone through all relevant record, documentary evidence and reply filed by the Company and various reports filed by the CRO, I have also taken into consideration the presentation given by the Company during the hearing and observed that business of

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the Company is not based on the sale of products in a normal fashion but in fact is being carried out in an objectionable MLM/Pyramid style. I have given anxious consideration to the points pleaded by representatives of the Company that the Company is not involved in MLM or fraudulent business. My finding about the business activities of the Company are given hereinafter.

11. The Company is registered with the Commission as a private limited company and as such comes within its regulatory regime. Under the Securities and Exchange Commission of Pakistan Act, 1997 (the SECP Act) the role of the regulator is not restricted to the corporate record of the companies but can also check the activities of the Company in a larger context to investigate if the Company is doing any business which is detrimental to the interest of public at large. The preamble of the SECP Act empowers the Commission for the beneficial regulation of the capital market, superintendence and control of corporate entities. Pursuant to its mandate as given by the SECP Act, the Commission has been keeping a close eye on the business of companies who are involved in the MLM/Pyramid Schemes so that interest of general public could be safeguarded. In this regard the Commission had issued an Instruction No. 06 of 2005 for the companies who are involved in MLM business. The Commission has also issued a number of public warnings in the newspapers by advising the public at large to remain vigilant in dealing with companies which are involved in illegal MLM/Pyramid schemes business.

12. It is noticed that only under promise or expectation of getting huge commission (easy or quick money), the public are lured to invest more money in such of the schemes. It is only an imaginary profit. Every one cannot sell all the products to some others. If a person is unable to get purchaser or consultant at one point of time, a large number of people would be left at that stage, unable to find a purchaser or a distributor.

13. I have also analyzed the case in the context that there exists no law in Pakistan to regulate the business of MLM methodology, it is incumbent upon the regulators like SECP to keep the surveillance against such companies so that their business activities could be controlled. Mere fact that there is no law directly prohibiting the MLM business does not make an act of MLM legal, if it be otherwise illegal.

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14. I am of the view that leaving these companies free from any scrutiny would render the large number of persons cheated. Therefore there is a need to take preventive action so that people involved in such business should be accounted for and interest of public be safeguarded and protected.

15. It may be noted that the Company was issued show cause notice primarily under sub clauses (i), (ii) & (iv) of clause (f) of section 305 of the Ordinance as the activities of the Company were found to be in contravention to the aforementioned provisions. I, as a precautionary measure, kept on watching the activities of the Company, during the process of hearings and finally provided another opportunity of hearing on 19.04.2012 with a direction to the Company to provide latest bank statements. No one appeared on this date and on the other hand the complaints are still coming in. The relevant portion of the said provision is reproduced hereunder for ease of reference:

305. Circumstances in which company may be wound up by Court.- A company may be wound up by the Court-

(f) If the company is-

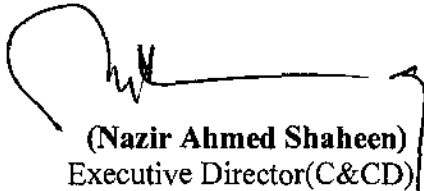
- (i) conceived or brought forth for, or is or has been carrying on, unlawful or fraudulent activities;
- (ii) carrying on business not authorized by the memorandum;
- (iii) run and managed by persons who fail to maintain proper and true accounts, or commit fraud, misfeasance or malfeasance in relation to the Company....

16. I have closely observed the business activity of the Company and noticed that the activities of the company broadly falls within the definition of 'fraudulent activities' as described in section 305 (f) (i). The word 'fraud' as defined in the Black's Law Dictionary Fifth Edition is as follows:

"Fraud" "A false representation of a matter of fact, whether words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceive and is intended to deceive another so that he shall act upon it to his legal injury"....."A generic term, embracing all multifarious means which human ingenuity can devise, and when are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated".

Handwritten signature/initials

17. Under the circumstances and the facts noted above, I am of the opinion, that it would be appropriate to initiate winding up proceedings against M/s Unaico Pakistan (Private) Limited. I, therefore, in public interest and in exercise of the powers conferred by proviso (b) of Section 309 of the Ordinance, hereby, authorise the Additional Registrar, CRO, Islamabad to file a winding up petition before the Hon'ble Islamabad High Court for winding up of M/s Unaico Pakistan (Private) Limited.


(Nazir Ahmed Shaheen)
Executive Director(C&CD)

Announced at Islamabad: April 27, 2012

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