

ENFORCEABLE UNDERTAKING

Mr S RAVISHANKER NAIDU

THIS ENFORCEABLE UNDERTAKING is made under and for the purposes described in Article 89 of the Regulatory Law 2004.

The commitments in this Enforceable Undertaking are offered to the Dubai Financial Services Authority (DFSA) by **Mr S RAVISHANKER NAIDU**.

Capitalised terms not otherwise defined in this Enforceable Undertaking have the meanings given to them in the GLO Module of the DFSA Rulebook.

INTRODUCTION AND BACKGROUND

1. On 29 July 2010:
 - a. Royal Shield Limited (RSL) was licensed by the DFSA as a PIB Category 4 Authorised Firm to provide the Financial Service of Insurance Intermediation in or from the DIFC; and
 - b. Mr S Ravishanker Naidu (Mr Naidu) was authorised by the DFSA to perform the Licensed Functions of Senior Executive Officer (SEO) and Licensed Director at RSL.
2. RSL provides Insurance Intermediation to Professional Clients and does not deal with Retail Clients.
3. RSL is wholly owned by RSM Holdings Ltd, a holding company incorporated in the Seychelles. On 24 March 2015, Mr Naidu became the ultimate Controller of RSL, and was at all relevant times the SEO of RSL and a member of RSL's Board of Directors.
4. As SEO, Mr Naidu was ultimately responsible for the day-to-day management, supervision and control of the Financial Services activities carried on by RSL in or from the DIFC. Further, as an Authorised Individual, Mr Naidu was at all times required to comply with the DFSA's Principles for Authorised Individuals (in Section 4.4 of the GEN Module) in respect of his Licensed Functions.

DFSA Risk Assessment

5. Between 1 May 2016 and 4 May 2016, the DFSA conducted a periodic risk assessment of RSL (the Risk Assessment). The Risk Assessment included interviews with members of staff, and a review of a sample of transaction files.
6. The Risk Assessment identified a number of concerns regarding Mr Naidu's conduct, which are described more fully in paragraphs 7 to 21 below.

Providing incorrect information to a Client

7. The DFSA identified that Mr Naidu was responsible for failing to arrange re-insurance cover in accordance with a Client's instructions, and allowing incorrect information to be provided to the Client as to the scope and the terms of re-insurance cover that had been arranged. In particular:
 - a. RSL was engaged to arrange re-insurance for a power plant. Insurance cover was required for the amount of US\$54,076,004 (the Total Sum Insured). The insurance premium for the Total Sum Insured was US\$72,000;

- b. Mr Naidu arranged for an insurance company (the Primary Insurer), to issue the insurance policy. The Primary Insurer agreed to place 30.84% of the insurance risk through its own re-insurance treaty, and engaged RSL to arrange re-insurance for the remaining 69.16% of the insurance risk (equivalent to US\$37,398,964 of the Total Sum Insured). Mr Naidu was responsible for arranging the re-insurance;
- c. on 17 December 2015, Mr Naidu directed another employee at RSL to inform the Primary Insurer that re-insurance had been arranged for 69.16% of the insurance risk on the power plant with seven different re-insurance companies;
- d. in fact, Mr Naidu had been experiencing difficulties arranging re-insurance for 69.16% of the insurance risk due to the competitive renewal terms requested by the Client and, as at 17 December 2015, RSL had not arranged re-insurance cover for the power plant;
- e. in January 2016, Mr Naidu continued his efforts to arrange 69.16% re-insurance cover for the Primary Insurer;
- f. in January and February 2016, Mr Naidu arranged some re-insurance cover for the power plant, but this did not accord with the Primary Insurer's instructions. Specifically, the re-insurance arranged was on the basis of a Maximum Possible Loss (MPL) of US\$10,000,000, and not for the Total Sum Insured basis as instructed by the Primary Insurer. The MPL figure was specified in a report by a qualified and independent surveyor who advised what the MPL with respect to a potential claim on the power plant would be; and
- g. Mr Naidu did not take steps, from 17 December 2015 to the date of the Risk Assessment in May 2016, to inform the Primary Insurer of the correct and complete position in relation to the re-insurance coverage.

SEO not resident in the U.A.E.

- 8. As the SEO of RSL, Mr Naidu was required to be resident in the U.A.E, pursuant to Rule 7.5.2 of the GEN Module. However, the DFSA identified that, Mr Naidu was not sufficiently resident in the U.A.E from June 2015, and that his principle place of residence being the Seychelles.
- 9. As the SEO, Mr Naidu was responsible for the day-to-day management, supervision and control of the Financial Services activities carried on by RSL in or from the DIFC. By not being sufficiently resident in the U.A.E, Mr Naidu was not able to monitor and supervise RSL's business activities adequately or effectively to ensure that RSL conducted such activities in accordance with DFSA administered legislation.

Incorrect accounting records

- 10. During the course of the Risk Assessment, Mr Naidu confirmed to the DFSA that RSL's audited financial statements for 2014 were inaccurate because they were based on estimates. In particular, RSL had incorrectly accounted for accounts payable and receivable in that:
 - a. the recorded amount of US\$6,183,000 in accounts receivable included estimated premiums RSL might receive from its medical insurance and involuntary loss of employment insurance business; and
 - b. RSL did not, in fact, then generate the business and earn the associated revenue. Further, although the recording of the anticipated revenue was the reflection of terms provided by re-insurers based on estimates that were provided to RSL by cedants, they were not measured reliably in accordance with applicable accounting standards.

11. RSL has subsequently revised down the amount of accounts receivable and payable in its 2014 accounts by approximately US\$3,300,000 because it did not earn the estimated premiums referred to in paragraph 10a. above.
12. As the SEO, Mr Naidu was responsible for:
 - a. arranging the medical and involuntary loss of employment insurance business;
 - b. estimating the premiums which RSL would earn for this business;
 - c. presenting RSL's Master Premium Register, containing the estimates, to RSL's auditors; and
 - d. ensuring that RSL's financial statements accurately reflected the financial position of the firm.
13. Mr Naidu signed RSL's financial statements for 2014 notwithstanding that the actual premiums received fell short of the estimated premiums.

Inadequate systems and controls

14. Since January 2012, RSL had in place a Procedures Manual which outlined, among other things, the following:
 - a. the processes required to be implemented to ensure RSL had an effective accounts management system;
 - b. the controls required to ensure RSL's operations are carried out in accordance with its policies and procedures, and to ensure that RSL maintains accurate accounting information; and
 - c. an overview of the procedures and processes that RSL should implement in order to handle insurance claims appropriately and ensure that premiums received from re-insurers are properly accounted for.
15. However, at the Risk Assessment, the DFSA identified that RSL failed to implement the processes and procedures outlined in the Procedures Manual. In particular:
 - a. until about August 2015, RSL did not have an appropriate insurance claims reporting system to enable it to record the claims notifications accurately, and notify the re-insurers in a timely manner. Consequently, RSL was not able to reconcile its insurance monies accounts accurately; and
 - b. RSL did not have adequate accounting systems and controls to enable it to record its revenue accurately (see paragraphs 10 to 13 above).
16. In order to address some of the concerns relating to RSL's systems and controls, on 13 June 2016, the DFSA requested RSL's Finance Officer (FO) to:
 - a. review RSL's books and records in an attempt to establish RSL's true financial position;
 - b. review RSL's policies and procedures regarding its insurance business;
 - c. review and reconcile all company accounts containing insurance premium monies received from, paid, and owing to RSL's Clients and re-insurers; and

- d. provide a report to the DFSA setting out the findings of the FO's review (the FO's Report).
17. On 16 July 2016 the DFSA received a copy of the FO's Report which outlined the following concerns with respect to RSL's accounting systems and controls:
- a. it was not possible to determine RSL's historic financial position fully because figures were not available for 2010 to 2013 and not all claims settled prior to 2014 had not been recorded;
 - b. certain policies and procedures for RSL's operations were not documented;
 - c. RSL's accounting controls were inadequate. The FO's Report highlighted the need for RSL's management to implement a proper internal control system for recording, accounting and reporting with respect to its insurance business; and
 - d. RSL did not have policies for key aspects of its business activities. In particular, RSL needed to properly implement policies with respect to:
 - i. setting off insurance premiums against claims;
 - ii. setting off claims against receivables; and
 - iii. reversing endorsements.

Auditor's Adverse Opinion

18. RSL's audited financial statements for 2015 were due to be submitted to the DFSA on 30 April 2016.
19. On 21 June 2016, the DFSA received RSL's audited financial statements for 2015 in which RSL's auditors stated that RSL's financial statements did not give a true and fair view of the financial position of RSL as at 31 December 2015.
20. The basis for the adverse opinion in paragraph 19 above was that:
- a. RSL's account receivables and payables could not be verified;
 - b. RSL's income included amounts which were based on estimates that were not confirmed by re-insurers; and
 - c. in the absence of an insurance monies reconciliation, the auditor was not able to quantify the amount of bank balances due to insurance companies.
21. As the CEO of RSL, Mr Naidu was ultimately responsible for ensuring that:
- a. RSL's audited financial statements for 2015 were submitted to the DFSA on or by 30 April 2016; and
 - b. RSL had in place effective accounting systems and controls which ensured that:
 - i. RSL's account receivables and payables could be verified;
 - ii. RSL's income could be properly confirmed; and
 - iii. insurance monies could be reconciled.

AREAS OF CONCERN AND CONTRAVENTIONS

22. Given the facts and matters outlined above, the DFSA has a number of concerns about Mr Naidu's conduct and considers that he has committed contraventions of DFSA administered legislation.
23. As the SEO of RSL, Mr Naidu was ultimately responsible for the day-to-day management, supervision and control of the Financial Services activities undertaken by RSL. However, the issues identified from the DFSA Risk Assessment demonstrate that he failed to discharge that responsibility properly.
24. Further, as an Authorised Individual, Mr Naidu was bound to comply with the DFSA's Principles for Authorised Individuals set out in Rule 4.4 of the GEN Module (the AI Principles).
25. On the basis of the facts and matters set out in paragraphs 7 to 21 above, the DFSA considers that Mr Naidu's conduct fell short of the standard reasonably to be expected of him as an Authorised Individual performing the Licensed Function of SEO at RSL. In particular, Mr Naidu's:
 - a. involvement in providing incorrect information to a Client as to the scope and terms of the Client's re-insurance arrangements;
 - b. failure to reside sufficiently in the U.A.E. in 2016;
 - c. conduct in relation to RSL's financial statements for 2014; and
 - d. failure to ensure that RSL had adequate systems and controls to undertake its Insurance Intermediation business,demonstrate that Mr Naidu failed to:
 - e. act with due skill, care and diligence in carrying out the Licensed Function of SEO at RSL, contrary to Principle 2 of the AI Principles; and
 - f. take reasonable care to ensure that the business of RSL for which he was responsible was organised so that it can be managed and controlled effectively, contrary to Principle 5 of the AI Principles.
26. Further, with reference to paragraph 7 above, by failing to properly arrange insurance cover in accordance with a Client's instructions and allowing incorrect information to be provided to the Client as to the re-insurance cover that had been arranged, Mr Naidu engaged in conduct that was likely to mislead. As a result, the DFSA considers that Mr Naidu contravened Article 41B(1)(a) of the Regulatory Law 2004 (General prohibition against misconduct).

Acknowledgements

27. The DFSA acknowledges that Mr Naidu has cooperated fully with the DFSA in its enquiries to date.
28. With reference to paragraph 7 above, the DFSA acknowledges that notwithstanding that Mr Naidu provided RSL's Client with incorrect information, the Client continues to seek re-insurance coverage through RSL.
29. The DFSA also acknowledges that, as the Controller of RSL, Mr Naidu has had to inject further capital into RSL in order to maintain the firm's solvency and ensure it meets the DFSA's regulatory capital requirements.

TERMS AND CONDITIONS OF ENFORCEABLE UNDERTAKING

Withdrawal of SEO function

30. Pursuant to Article 58(2)(d) of the Regulatory Law 2004, Mr Naidu undertakes to voluntarily withdraw his authorisation to perform the Licensed Function of SEO at RSL within ninety (90) days of the date of this Enforceable Undertaking. Mr Naidu will remain an Authorised Individual and continue to carry out the function of a Licensed Director and Controller of RSL.
31. Further, Mr Naidu undertakes not to apply to the DFSA for authorisation to perform the Licensed Function of SEO within the DIFC or any other Licensed Function, as an Authorised Person for three (3) years.

Commitment as Licensed Director and Controller of RSL

32. As a Licensed Director and the Controller of RSL, Mr Naidu undertakes to ensure that, within sixty (60) days of the date of this Enforceable Undertaking, RSL submits to the DFSA:
 - a. an application to appoint a replacement SEO; and
 - b. an application to appoint a Licensed Director so that RSL's Board of Directors comprises of at least three Licensed Directors.

Financial Penalty

33. Mr Naidu undertakes to pay a financial penalty to the DFSA in relation to the concerns and contraventions set out in this Enforceable Undertaking. The penalty payable is a total of US\$70,000 payable as follows:
 - a. the amount of US\$10,000 is payable within thirty (30) days of the date of this Enforceable Undertaking; and
 - b. subject to paragraphs 34 and 35 below, the amount of US\$60,000 is suspended indefinitely.
34. If the DFSA, in its sole discretion, reasonably determines that Mr Naidu has failed in any material respect to comply with any or all of the terms or conditions in this Enforceable Undertaking, it must notify Mr Naidu in writing of that determination. In such instance, the penalty in paragraph 33.b. shall cease to be suspended.
35. In the event that the financial penalty under paragraph 33.b. ceases to be suspended and becomes payable, Mr Naidu shall pay the financial penalty of US\$60,000 within 30 days of being provided with the DFSA's written determination in accordance with paragraph 34.

Further Undertakings

36. Mr Naidu undertakes to comply with any reasonable and lawful direction given to him by the DFSA about compliance with his obligations under this Enforceable Undertaking, within a reasonable period prescribed at the sole discretion of the DFSA.
37. Mr Naidu undertakes not to make any public statement that in any way conflicts with the intent, purpose and terms of this Enforceable Undertaking. Mr Naidu undertakes not to dispute the concerns held and contraventions found by the DFSA as recorded in this Enforceable Undertaking.

Remedies for Breach of Enforceable Undertaking

38. Mr Naidu acknowledges the right of the DFSA, at its sole discretion, to reasonably determine that Mr Naidu has failed to satisfy the terms and conditions of this Enforceable Undertaking.
39. In the event the DFSA reasonably determines that Mr Naidu has failed to satisfy the terms and conditions of this Enforceable Undertaking, the DFSA reserves the right to pursue any remedy available to it in law without further notice, including but not limited to those specified in Article 89(4) of the Regulatory Law 2004.

Address for Service of Documents or Process

40. Mr Naidu's address for service in relation to this Enforceable Undertaking is:

Royal Shield Limited
Office 515, Level 5,
Liberty House, DIFC,
PO Box 482045,
Dubai, UAE



Further Acknowledgements

41. The DFSA accepts the undertakings given by Mr Naidu in this Enforceable Undertaking.
42. This Enforceable Undertaking is drafted and agreed to as between the DFSA and Mr Naidu.
43. A person who is not a party to this Enforceable Undertaking has no rights under Part 10 of the Contract Law (DIFC Law No 6 of 2004) or otherwise to enforce any term of this Enforceable Undertaking.
44. Subject to paragraph 45 below, the facts and matters contained in this Enforceable Undertaking are without prejudice to the DFSA and Mr Naidu in that they may not be used, produced or relied upon in any other proceedings, including without limitation any civil, administrative or criminal actions or proceedings that may be brought by any other person.
45. Paragraph 44 above does not prevent the DFSA from seeking any court order in relation to this matter or bringing any action to enforce a term or condition of this Enforceable Undertaking.
46. This Enforceable Undertaking is governed by and shall be construed in accordance with the laws of the DIFC. The parties irrevocably agree that the DIFC Courts shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of, or in connection with this Enforceable Undertaking.
47. This Enforceable Undertaking does not affect the DFSA's power to investigate or take further action against Mr Naidu in relation to any other concerns, or arising from future conduct or findings, other than the facts and concerns set out in this Enforceable Undertaking.
48. The DFSA may issue a media release upon execution of this Enforceable Undertaking referring to its terms and the concerns of the DFSA that led to its execution. Further, the DFSA may publish this Enforceable Undertaking in whole or parts thereof.

49. This Enforceable Undertaking takes effect on the date on which it is executed by the DFSA's authorised delegate.



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Date

Ravishanker Naidu
Senior Executive Officer
Royal Shield Ltd

**Accepted by the Dubai Financial Services Authority under Article 89 of the Regulatory Law 2004
by its authorised delegate:**



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8 May 2017

Date

Christopher D'Cotta
Associate Director
Dubai Financial Services Authority