



SECP
Insurance Division
Karachi

[Karachi]

Before Muhammad Asif Arif, Commissioner (Insurance)

In the matter of

The Pakistan General Insurance Company Limited

Show Cause Notice Issue Date: May 14, 2013

Date of Hearing: November 11, 2013

Attended By: Mr. Ch. Zahoor Ahmed
Chief Executive Officer

Date of Order: December 30, 2013

ORDER

(Under Section 29 Read with Section 11 (1), Section 63 (1) and Section 157 of the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s Pakistan General Insurance Company Limited (herein referred to as "the Company") for not complying with the provisions of Section 29 of the Insurance Ordinance, 2000 ("the Ordinance").

Background Facts

2. M/s Pakistan General Insurance Company Limited ("the Company") is a public limited company, incorporated under the Companies Ordinance, 1984 ("the Ordinance"), and its shares are quoted on all three Stock Exchanges of the Country.

3. The relevant provisions of Sub-Section 1 (b) of Section 11 of the Ordinance states that:

"An insurer registered under this Ordinance shall at all times ensure that:

...

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(b) the provisions of this Ordinance relating to minimum statutory deposits have been complied with;
..."

4. The provisions of Section 29 of the Ordinance states that:

"1. Every insurer shall, in respect of the insurance business carried on by him in Pakistan, deposit and keep deposited with the State Bank of Pakistan, in one of the offices in Pakistan of the State Bank of Pakistan for and on behalf of the Federal Government the required minimum amount specified in sub-section (2), either in cash or in approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in approved securities so estimated.

2. For the purposes of this section the required minimum amount is, either:

- (a) the higher of ten million rupees and ten per cent. (10%) of the insurer's paid-up capital; or
(b) such amount as may be prescribed by the Commission"

5. As per the Statements of Assets and Liabilities of the Company as on December 31, 2011 and December 31, 2012, it is revealed that the Company has a paid-up share capital of Rs.300,000,000/-. However, as per the status provided by the State Bank of Pakistan, the statutory deposit of the Company as at December 31, 2011 stood at Rs.29,109,964/-, and it was remained at the same level even at December 31, 2012, which means that the Company has not made any arrangements to maintain their statutory deposit level as per the provisions of Section 29 and Section 11 of the Ordinance.

6. The Company had raised its paid up share capital from Rs. 275,000,000/- to Rs. 300,000,000/- on October 10, 2011, while at the same time not making mandatory statutory deposits requirement as aforesaid . In view of the above-mentioned facts, it appears that the Company has contravened the provisions of Section 29 read with section 11 of the Ordinance.

The breakup of the statutory deposits of the Company is as follows:

Cash/Security Deposited with SBP	Amounts in Rs.
Cash	61,358
10-Years Pakistan Investment Bonds	<u>29,048,606</u>
Total Statutory Deposits	<u>29,109,964</u>



7. Shortfall in the statutory deposits of the Company remained at Rs. 890,036/- from October 10, 2011 till the issuance of show cause notice.

The description of the shortfall as on May 14, 2013 are as follows:

Description	Amounts in Rs.
Paid Up Share Capital	300,000,000
Required Statutory Deposits (10%)	30,000,000
Actual Statutory Deposits	<u>29,109,964</u>
Excess/ (Shortfall)	<u>(890,036)</u>

8. The Company, vide the Commission's letter no. ID/ENF/PGI/2012/14006 dated July 6, 2012, was warned and advised to meet the shortfall of the same amount under intimation to the Commission, which has not been taken seriously by the Company.

9. In view of the above, it appears that the Company has persisted this non-compliance for a period of 583 days i.e. from October 10, 2011 till the date May 14, 2013, despite the Commission's aforesaid warning.

10. In view of the above, it appears that the Company has deliberately contravened the provisions of Section 29 read with Section 11(1) (b) of the Ordinance, for which the Commission may take action(s) as provided under Section 63(1) and Section 157(1) of the Ordinance.

Show Cause Notice

11. Accordingly, the Show Cause Notice was issued on May 14, 2013 under Section 29 read with Section 11 (1), Section 63 (1) and Section 157 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 157 of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with provisions of Section 29 and Section 11 (1) (b) of the Ordinance.

Company's Response to the Show Cause Notice

12. In response to the said Show Cause Notice, the Company, vide their letter of June 10, 2013 stated that:



"..... The Company had taken into account the par value of investments with State Bank of Pakistan which is in excess of Rs. 30 million. The reason for recording the same as per above practice leads from that the Company is receiving the interest on Rs. 30 million (except for deposit in cash) and thus the Company is of the view that there being no shortfall in the statutory deposit to be held with State Bank of Pakistan. However, it is noted and is ensured that the shortfall as calculated by your good office shall be deposited with the State Bank of Pakistan by this month end.

Therefore, it is prayed that lenient action be taken and this notice may please be dropped...."

Further vide SBP letter copy to the Commission dated July 4, 2013 revealed that the Company had deposited 10 years Pakistan Investment Bonds (PIB) market valued on the day of deposit i.e. July 4, 2013 was Rs. 5,211,668/. And total deposits with SBP amounting to R. 34,321,632/- as on July 4, 2013.

13. The reply of the Company reveals that the Company has been on default and also steps were taken for removing the default.

Hearing of the Case & Subsequent Developments

14. The hearing in the matter was scheduled on November 11, 2013 at 3:00 P.M., accordingly, the said hearing was attended by Mr. Ch. Zahoor Ahmed, Chief Executive Officer of the Company, (he will be referred to as the "Company's representative" hereinafter).

15. Brief proceedings of the hearing of November 11, 2013 are as follows:

- a. The said hearing was attended by Mr. Ch. Zahoor Ahmed, Chief Executive Officer on behalf of the Directors and himself.
- b. The Company's representative was asked to present the stance of the Company, to which the Company's representative admitted that the Company had been on default and argued that the company has fulfill the shortfall of statutory deposit by depositing/pledging securities in form of Pakistan Investment Bonds amounting R. 5,211,668/- in July 2013 and also confirmed by State Bank of Pakistan vide its letter dated July 4, 2013;
- c. The Company' representative also submit the written argument, which reiterated their stance that in their view the par value of investments with SBP equal the amounts required to be held as statutory deposit, as per the



Company's practice leads to record that the Company is receiving interest on their deposits of investments of Rs. 30 million and thus the Company was in the view that there was no shortfall in statutory deposits as required by the laws;

- d. The Company's representative requested the Commission to take a lenient view and condone the Company for the delay in the matter for which we will be highly grateful to you.

Consideration of Company's Submissions

16. I have carefully examined and given due consideration to the submissions of the Company. I am of the view that there has been a default under the relevant provision of the Ordinance. The Company has also admitted to this as well.

17. However, 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 Company and its 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 Section 11, Section 29 of the Ordinance, as aforesaid, therefore, it could be legitimately inferred that the default was committed.

Conclusion

18. 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 11 (1) (b) and Section 29 of the Ordinance is established. Therefore, the penalty as provided under Section 63 (1) and Section 157 of the Ordinance can be imposed onto the Company and/or its Directors.

19. Section 63 Sub-Section 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."

AND, the provisions of Sub-section 1 of Section 157 of the Ordinance provide that:

"Penalty for transacting insurance business in contravention of sections 5, 6 and 29. – (1) Any insurer or any person acting on behalf of an insurer, who carries on any class of insurance business in contravention of any of the provisions of sections 5, 6 and 29, or does any one or more of the acts constituting the business of insurance in relation to any insurance business carried on in contravention of any of the said sections shall be punishable with fine which may extend to two million rupees."

Order

20. In exercise of the power conferred on me under Section 63 and 157 of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, warned and condoned the Company due to the fact presented to me that the Company did misinterpret the provision of the section 29 wrongly which resulted in shortfall in the statutory deposits, however, the Company took immediate steps and removed the deficit in its Statutory Deposit after receiving the Show Cause Notice. This shows the Company's intent in complying with the law by removing any contravention as and when it realized that it has committed a contravention. It appears that there was no mala fide intent on the part of the Company in the contravention as evidenced by their promptly removing the contravention. I also hereby issued a **stern warning** that in case of similar non-compliance in future a stronger action against the Company will be taken.

21. 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 Insurance