



SECP  
Insurance Division  
Karachi

[Karachi]

Before Muhammad Asif Arif, Commissioner (Insurance)

*In the matter of*

**Continental Insurance Company Limited**

Show Cause Notice Issue Date: February 14, 2013

Date of Hearing: April 29, 2013

Attended By: Mr. S. M. Suhail  
Partner  
S. M. Suhail & Co., Chartered Accountants

Date of Order: June 27, 2013

**ORDER**

(Under Section 11(1), Section 28 and Section 39 Read with Section 63(1), Section 63(3),  
Section 156 and Section 158 of the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s Continental Insurance Company Limited ("the Company") for not complying with Section 11(1), Section 28 and Section 39 of the Insurance Ordinance, 2000 ("the Ordinance").

**Background Facts**

2. The relevant provisions 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:*

*(a) the provisions of this Ordinance relating to minimum paid-up share capital requirements are complied with;  
..."*

3. The relevant provisions of Section 28 of the Ordinance states that:

SECURITIES & EXCHANGE  
COMMISSION OF PAKISTAN

Insurance Division, State Life Building-2  
4th Floor, Wallace Road, Karachi. Pakistan

Tel: +92-21-32461053, +92-21-32465469 Fax: +92-21-32423248 Web: www.secp.gov.pk



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Insurance Division

Continuation Sheet 1

**“28. Requirements as to capital.-**(1) *An insurer registered under this Ordinance to carry on insurance business shall have a paid-up capital of not less than the required minimum amount.*

(2) *For the purposes of this section, the required minimum amount is:*

(a) *one hundred and fifty million rupees, or such higher amount as may be prescribed by the Federal Government, for an insurer carrying on life insurance business; and*

(b) *eighty million rupees, or such higher amount as may be prescribed by the Federal Government, for an insurer carrying on non-life insurance business;”*

4. The Ministry of Commerce vide S.R.O. Notification 291(I)/2007, dated March 26, 2007, prescribed the minimum amount of paid-up capital requirement for the insurers registered under the Ordinance. As per the said Notification, a non-life insurer was required to raise its paid up share capital in the manner as given hereunder:

As At	Required Paid Up Capital
December 31, 2007	120,000,000
December 31, 2008	160,000,000
December 31, 2009	200,000,000
December 31, 2010	250,000,000
December 31, 2011	300,000,000

5. Section 39 of the Ordinance states that:

*“Assets of insurer how to be kept.- None of the assets in Pakistan of any insurer shall, except in the case of deposits made with the State Bank of Pakistan under section 29, or in the case of assets, other than deposits, with a scheduled bank acting as a custodian, be kept otherwise than in the corporate name and under the direct control of the insurer and, in the case of assets of a statutory fund of a life insurer, in the name of the statutory fund.”*

6. The Company has reported, in the balance sheet as on December 31, 2011, that the paid up share capital of the Company is Rs. 300,000,000/- as against a paid up capital of Rs.250,000,000/- as on December 31, 2010, which appears to be in line with the prescribed requirement relating to the paid up share capital.

7. The Company’s Board of Directors had passed a resolution in their meeting which was held on October 28, 2011, to issue right shares to the members of the Company through a special resolution to be passed in the Extra Ordinary General Meeting, which was scheduled to be held on December 20, 2011.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Insurance Division

Continuation Sheet 2

8. The minutes of the meeting of the Board of Directors, which was held on December 31, 2011 reveal that the right offer made via Extra Ordinary General Meeting (EOGM) of December 20, 2011 was not subscribed by anyone except Mr. Naveed Ahmed Siddiqui and Ms. Deeba Siddiqui, within the given timeframe.

9. In pursuance of Section 86(7) of the Companies Ordinance, 1984, the Board of the Company unanimously agreed to allot shares in cash and otherwise than in cash to Mr. Naveed Ahmed Siddiqui and Ms. Deeba Siddiqui amounting to Rs. 25,500,000/- and Rs. 24,500,000/-, respectively.

10. In this regard, a commercial plot bearing Plot no. FL-4-C, Block 1, located at Deh Drigh Road, Survey No. 27, Rehmanabad Housing Project, Drigh Road Cantt., Karachi, measuring 1152 sq yards, was purchased by the Company through its Director, Mr. Sharik Saeed Affandi, for a total consideration price of Rs. 2,000,000/-. Additionally, total payment of Rs. 1,200,000/- was paid to the vendor through pay orders no. 02717002, 02717004 and 02717003. Furthermore, it was stipulated in the sale agreement that the balance of Rs. 800,000/- will be paid to the vendor at the time of execution of sale deed in favor of the vendee or its nominee. The said sale agreement was executed on December 27, 2011.

11. Valuation in respect of the said property was carried out on December 30, 2011 by M/s Sardar Enterprises, a Pakistan Banks Association approved valuator, on account of the Company. And, as per the valuation report dated December 31, 2011, the market value of the said property was Rs. 46,080,000/-.

12. Again on December 31, 2011, an affidavit, signed by Mr. Sharik Saeed Affandi on behalf of the Company, stated that the same property purchased by the Company vide agreement dated December 27, 2011 was stated to be acquired by the Company against allotment of 4,500,000 ordinary shares and 2,250,000 ordinary shares of Rs. 10/- each, in favor of Mr. Naveed Ahmed Siddiqui and Ms. Deeba Siddiqui, respectively. It was further stated that the remaining amount of Rs. 1,080,000/- is to be paid after the transfer of the property in the name of the Company and that the property shall be applied for transfer in the name of the Company in a few days.

13. The commercial plot bearing Plot no. FL-4-C, Block 1, located at Deh Drigh Road, Survey No. 27, Rehmanabad Housing Project, Drigh Road Cantt., Karachi, measuring 1152 sq yards, was purchased by the Company for Rs. 2,000,000/-, and then the same property was sold out to the Company against allotment of shares to Directors at Rs. 46,080,000/- in order to meet the minimum requirement relating to paid up share capital.

14. In view of the above, it appeared that the Company's paid up share capital was raised through fictitious transaction(s) and that the aforementioned plot was not transferred in the name of the Company as at the balance sheet date i.e. December 31,



2011. This meant that the Company has essentially contravened the provisions of Section 11(1) read with Section 28 of the Ordinance and also the provisions of Section 39 of the Ordinance, and the Company has grossly misstated that amount of the paid up share capital as on December 31, 2011, for which action under Section 63(1), Section 156 and Section 158 of the Ordinance can be taken against the Company and/or its Directors & Chief Executive Officer.

### Show Cause Notice

15. Accordingly, the Show Cause Notice was issued on February 14, 2013 under Section 11(1), Section 28 and Section 39 read with Section 63(1), Section 63(3), Section 156 and Section 158 of the Ordinance to the Chief Executive and Directors of the Company, calling upon them to show cause as to why the directive / penalties, as provided in Section 63(1), Section 156 and Section 158 of the Ordinance, should not be imposed upon them and/or upon the Company for not complying with provisions of Section 28, Section 11(1) and Section 39 of the Ordinance.

### Company's Response to the Show Cause Notice

16. M/s S. M. Suhail & Co., Chartered Accountants vide their letter no. SMS-C-1962013 dated March 15, 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 stated that:

*"...2. In this connection we are writing to inform you that the paid up capital of the Company had to increase by Rs. 50. Million by December 31, 2011. For this purpose Circular u/s 86 of the Companies Ordinance 1984 was issued. For this purpose offered to purchase the shares as the amount was huge, and not having liquid funds, and bad law and order condition was there in the city. The numbers of Members are nominal, as the Company is not a public listed Company. Consequently, as provided u/s 86 of the Companies Ordinance 1984 the Director accepted the offer from Members to allot the shares otherwise than in cash.*

*3. In such a situation there was no need to acquire the property by the Company itself as it could not fulfill the capital requirements. Therefore the property was acquired by Members from vendor Mr. Kamran Afzal and he nominated for issuance of Shares in favor of Mr. Naveed Siddiqui and Mrs. Deeba Siddiqui; and they assigned this task to Mr. Sharik Saeed Affandi being the Member of the Company. The Sale Agreement was prepared for a nominal amount as a routine practice (as discussed below in detail), in accordance with the valuation table prescribed by the Provincial Government.*



4. It is pertinent to mention here and being an open secret that Sale Deed of properties are prepared by all the purchasers with the focus to minimize the transfer fee to be paid to the Sindh Government Treasury. Accordingly to monitor this issue the Sindh Board of Revenue has prescribed and issued valuation tables from time to time reflecting applicable minimum rate of transfer fee per square yard, with type and locations of all the properties of Karachi. These tables are also used for collection of CVT.
5. Consequently, reliance for correct value of the property is not placed generally on that sale agreement by any user, the funding institutions, banks and other departments; that is why the mechanism of valuation by professional valuers had introduced.
6. To conclude the issue of valuation it has prescribed under Rule 8 of the Companies Issue of Capital Rules 1996 whereby it has provided that value determined by the Professional Valuers who are enlisted at the Pakistan Banks Association, shall be accepted, and to be considered authentic.
7. In such a situation, the sale agreement of the land was prepared in accordance with the table prescribed for collection of the transfer fee and that do not reflect the proper market value. Thereafter, the property was valued by the official valuator to ascertain the market price for issuance of shares. The same was also submitted before the SECP along with other required documents.
8. It is also worth while to mention here that the Company is not a listed one. It is a family owned Company engaged in only one type of business of surety bond, therefore there is no risk of general stake holders.
9. Regarding allotment of shares without transfer of property we state that the land was purchased before December 31, 2011 and transfer thereof was finalized on February 08, 2012. Since the possession of the land was taken by the Company and the risk and reward was also transferred, the Company allotted shares to the Members as it was the core consideration of the owner.
10. Please note that there are three categories of time line for transfer of property with the Registrar of Properties. The first one is ordinary and it takes up to six months. The other one is normal and it takes two months time and the last one is the urgent and it takes one month time to transfer the property in name of buyer. Further all it depends on the law and order situation of the City, strike and holidays and availability of the Registrar of Properties, as most of the time, transfer postings and other political issues are there in the department.
11. However, on adopting the urgent process by the Company the property had transferred in name of the Company on February 08, 2012 and title document was issued and a copy thereof was also submitted with SECP. This is also evident that it was acquired before December 31, 2011, and rest of the time was spent on standard



*transfer process time. Therefore, it is established that it is a routine procedure, and there is no violation or misstatement at Company's end..." (Underlined to put emphasis)*

17. The above quoted reply of the Company through M/s S. M. Suhail & Co., Chartered Accountants, depicts that the Company had made a misleading sale agreement with an intention to minimize the outflow of funds on account of transfer fee.

18. On one hand, the Company had made a sale agreement to minimize the transfer fee, and on the other hand, the Company had entered into another arrangement whereby the shares of substantially higher amount were allotted to Mr. Naveed Ahmed Siddiqui and Ms. Deebea Siddiqui in order to fulfill the statutory requirement relating to the minimum paid up share capital as on December 31, 2011.

19. The Company had not only misstated the factual position before the two public offices, but had also underpaid the amount of actually applicable transfer fee to the National / Provincial Exchequer.

#### Hearing of the Case

20. Although the Company or M/s S. M. Suhail & Co. did not state in writing to be called for a hearing in the matter, the Commission, on its own motion, provided an opportunity of hearing to the Company, and hearing in the matter was scheduled for April 29, 2013 at 3:00 p.m., which was communicated to the Company via hearing notice no. ID/ENF/Continental/2013/16296 dated April 8, 2013.

21. The said hearing was attended by Mr. S. M. Suhail of M/s S. M. Suhail & Co., Chartered Accountants, to act on behalf of the Company, the Chief Executive and the Directors of the Company. Mr. S. M. Suhail of M/s S. M. Suhail & Co., Chartered Accountants will be referred to as the "Company's representative" hereinafter.

22. Brief proceedings of the hearing of April 29, 2013 are as follows:

- a. Prior to the start of hearing, the Company's representative handed over the power of attorney, which was signed by the Company's Chief Executive Officer, to enable him to act on behalf of the Company;
- b. The Company's representative was asked to present the stance of the Company on the allegations raised through the Show Cause Notice, to which the Company's representative stated that the Company had to raise its paid up share capital to Rs. 300 million by December 31, 2011, and since the Company's right offer was not subscribed in full, the Company had to raise its paid up capital through issuance of shares in consideration for the real estate property;



- c. The Company's representative further mentioned that the sale agreement was executed through one of the Directors of the Company, and pursuance of which the Director had paid an amount of Rs. 2 million through his personal account maintained in the Standard Chartered Bank via pay order;
- d. The Company's representative was asked to provide documentary evidences of making such payment through the personal account of the Director, to which the Company's representative agreed to provide the evidences;
- e. The Company's representative was then asked to disclose if the property has been transferred in the name of the Company, or not. The Company's representative stated that the property has now been transferred in the name of the Company;
- f. The Company's representative was then asked to provide the title documents of the property in the name of the Company, which was agreed by the Company's representative.

#### Consideration of Company's Submissions

23. Subsequent to the hearing, as aforesaid, the Company's representative, vide his letter no. SMS-C-2902013 dated May 3, 2013, had provided the title documents of the property wherein the vendor, Mr. Kamran Fazal has agreed to sell his property, i.e. Commercial Plot No. FL-4-C, Block 1, Drigh Cantonment, Survey No. 27, Rehmanabad Housing Project, Drigh Road, Karachi, measuring 1152 sq. yds to the Company duly represented by Mr. Sharik Saeed Afandi.

#### Conclusion

24. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the Company's Legal Counsel), and have also referred to the provisions of the Ordinance. I am of the view that there has been a default under the relevant provision of the Ordinance. The Company's Legal Counsel has also admitted this as well.

25. Before proceeding any further, I find it relevant to discuss the duties of the Directors & the Chief Executive. The Directors & the Chief Executive of the Company, 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 obligations imposed by statute on them and on the Company. The Directors and the Chief Executive of the Company are supposed to be well aware of their legal



obligation and the Company's legal obligation in the aforesaid matter along with the consequences of the said default.

**Order**

26. In Exercise of the power conferred on me under Section 156 & 158 of the Ordinance, instead of imposing penalty onto the Company and /or its Directors, I take a lenient view, and thus, condone the Company due to the fact that the Company had completed necessary requirements and the property against the shares of Company's issued has been transferred into the name of the Company and title of property also transferred into the Company name.

However, the Company is hereby issued a stern warning that in case of similar non-compliance in future a strong action against the Company will be taken.

27. This Order is issued without prejudice to any other action that the Commission may initiate against the Company, its Directors and/or its management in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

**Muhammad Asif Arif**  
Commissioner - Insurance