



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

The Pakistan General Insurance Company Limited

Show Cause Notice Issue Date: March 31, 2014

Date of Hearing: July 1, 2014

Attended By: 1. Mr. Rahat Aziz
2. Mr. M. Barkatullah

Date of Order: August 20, 2014

ORDER

(Under Rule 6 Read With Rule 11 of the Companies (Issue of Capital) Rules, 1996)

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This Order shall dispose of the proceedings initiated against the Directors (including the Chief Executive) and the Company Secretary of M/s The Pakistan General Insurance Company Limited ("the Company") for not complying with the requirements of Rule 6 of the Companies (Issue of Capital) Rules, 1996 (the "Rules").

Background Facts

2. The provisions of Rule 6 of the Rules state that:

"Issue of bonus shares by listed companies.--- A listed company may issue bonus shares subject to the following conditions, namely:--

- (i) *The decision of the directors to issue bonus shares shall be communicated to the Authority and the respective stock exchange on the day of the decision and the intimation letter shall be accompanied by the auditor's certificate as specified in clause (iii);*

Hei

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- (ii) *the free reserves of the company calculated in the manner as specified in rule 5 shall be sufficient to issue the bonus shares after retaining in the reserves twenty-five per cent of the capital as it will be increased by the proposed bonus shares;*
- (iii) *a certificate from the auditors shall be obtained to the effect that the free reserves and surpluses retained after the issue of the bonus shares will not be less than twenty-five per cent of the increased capital; and*
- (iv) *all contingent liabilities disclosed in the audited accounts and any such liability which may have been created subsequent to the audited accounts shall be deducted while calculating minimum residual reserves of twenty five per cent."*

3. The Company had communicated to the Commission, the decision of its Directors to issue 25 percent bonus shares on the day of decision i.e. April 4, 2013. However, the intimation letter was not accompanied by the auditor's certificate as required by Rule 6(i) read with Rule 6(iii) of the Rules, although the Company has mentioned in the notes to the Notice of the Annual General Meeting that the Auditor has certified the free reserves of the Company.

4. The Company, vide its letter no. SECP/2013/78692 dated October 1, 2013, while placing adherence to what they have been observing in the notices of the other companies, had stated that it is not a general secretarial practice to attach the free reserves certificate from the Auditors with the Notice.

5. In the light of the above-quoted Rule 6 of the Rules, the communication of the decision of the Board of Directors should have been sent to the Commission along with the certificate of free reserves from the Auditors, on the day on which such decision was taken by the Board.

6. Accordingly, in view of the foregoing paras hereof, it appeared to the Commission that the Company has contravened the provisions of Rule 6(i) read with Rule 6(iii) of the Rules, for which the Commission may take action as provided under Rule 11 of the Rules.

Show Cause Notice

7. Therefore, the Show Cause Notice was issued on March 31, 2014 under Rule 6 read with Rule 11 of the Rules to the Company's then so-called Directors and the Company Secretary, calling upon them to show cause as to why the penalty, as provided under Rule 11 of the Rules, should not be imposed upon the Company's then so-called Directors (including the then so-called Chief Executive) and the Company Secretary for not complying with provisions of Rule 6 of the Rules.



Company's Response to the Show Cause Notice

8. The Company, vide their letter no. SECP/2014/78962 dated April 29, 2014, stated that the certificate of free reserves of the Company from their statutory auditor was not attached with the notice of the Annual General Meeting of the Company, as the same is not in general secretarial practice, however, the same had been filed with the Commission at the time of filing of Form 3. Lastly, the Company prayed before the Commission to take a lenient view in the instant matter as late filing of the free reserves certificate from the auditor of the Company was inadvertent.

9. A copy of the said certificate of free reserves, issued by the Company's auditor, along with Form 3 was also provided by the Company with its letter of April 29, 2014.

Hearings of the Case & Subsequent Developments

10. The Commission had scheduled the hearing in the matter for July 1, 2014 at 10:30 a.m., which was communicated to the addressees of the aforesaid Show Cause Notice via the Commission's hearing notice no. ID/Enf/PGI/2014/20064 dated June 16, 2014.

11. Accordingly, the said hearing, which was held on July 1, 2014 at 10:30 a.m., was attended by Mr. Rahat Aziz and Mr. M. Barkatullah of M/s S. A. Associates, who were authorized through an Authority Letter to act on behalf of the addressees of the aforesaid Show Cause Notice (who will be referred to as the "Company's representatives" hereinafter).

12. Briefly, the Company's representatives reiterated the contents of the Company's letter no. SECP/2014/78962 dated April 29, 2014. Thereupon, the Company's representatives were clarified that the aforementioned auditor's certificate on free reserves was required to be submitted to the Commission on the day of the decision of the Board of Directors of the Company.

Consideration of Company's Submissions

13. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the Company's representatives), and have also referred to the provisions of the Rules. I am of the view that there has been an established default of Rule 6 of the Rules, in the light of the foregoing paras hereof.

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14. 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 addressees of the Show Cause Notice have failed to perform their duties with due care and prudence. Therefore, it could be legitimately inferred that the default was committed.

15. However, it has been given to understand / believe that the addressees of the Show Cause Notice have unintentionally contravened the provisions of Rule 6 of the Rules, and that it was merely an oversight on their part.

16. Moreover, the contravention has apparently not affected the interests of the Company's shareholders.

Conclusion

17. 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 Rule 6 of the Rules is established. Therefore, the penalty as provided under Rule 11 of the Rules can be imposed onto the addressees of the Show Cause Notice.

18. Rule 11 states that:

"Penalty.-Whoever fails or refuses to comply with, or contravenes any provision of these rules, or knowingly and wilfully authorises or permits such failure, refusal or contravention, shall, in addition to any other liability under the Ordinance, be also punishable with fine not exceeding two thousand rupees, and in case of continuing failure, refusal or contravention, to a further fine not exceeding one hundred rupees for every day after the first during which such contravention continues."

Order

19. In exercise of the power conferred on me under Rule 11 of the Rules, instead of imposing the penalty onto the addressees of the Show Cause Notice, take a lenient view, and thus, condone them due to facts as mentioned in para 15 and para 16 hereof.

M/S



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

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Also, the Company's Directors (including the Chief Executive) and the Company Secretary are hereby issued **stern warning** that in case of similar non-compliance in future a stronger action will be taken.

20. 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.

Tariq Hussain
Director (Insurance)