



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Tariq Hussain, Director (Insurance)

*In the matter of*

Pakistan General Insurance Company Limited

Date of Show Cause Notice: November 29, 2010

Written Submission: December 13, 2010.

Date of Order: January 20, 2011

## ORDER

UNDER SECTION 159(7) READ WITH CIRCULAR NO. 1 OF 2008, SECTION 158(3)  
AND SECTION 159(8) OF THE COMPANIES ORDINANCE, 1984

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This Order shall dispose of the proceedings initiated against Pakistan General Insurance Company Limited ("the Company") for not complying with Section 159(7) read with Section 158(3) and Section 159(8) of the Companies Ordinance, 1984 ("the Ordinance").

### Background Facts

2. The relevant provisions of Section 159(7) of the Ordinance state that:

*"159. Calling of extraordinary general meeting-(7) Notice of an extraordinary general meeting shall be sent to the members at least twenty-one days before the date of the meeting, and in the case of a listed company shall also be published in the manner provided for in sub-section (3) of section 158.*

3. The relevant provisions of Section 158(3) of the Ordinance state that:

*"The notice of an annual general meeting shall be sent to the shareholders at least twenty-one days before the date fixed for the meeting and, in the case of a listed company, such notice, in addition to its being dispatched in the normal course, shall also*



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*be published at least in one issue each of a daily newspaper in English language and a daily newspaper<sup>4</sup> in Urdu language having circulation in the Province in which the stock exchange on which the company is listed is situated."*

4. The Company had submitted copies of newspaper clippings of the Notice of EOGM on November 15, 2010, to the Commission.
5. The said EOGM was scheduled on November 29, 2010 for which the notice was published in the Urdu Newspaper "Tafteesh Lahore" on November 10, 2010 and printed in English language rather than Urdu which is an apparent violation of Circular 1 of 2008, issued on January 7, 2008
6. The relevant portions of Circular 1 of 2008, issued on January 7, 2008, have been reproduced below:

*"Attention is invited to the following provisions of the Companies Ordinance, 1984 and the Rules made there under that inter-alia, requires companies to publish the notices, prospectuses, etc at least in one English language and one Urdu language daily newspaper having circulation in the province in which, in case of a listed company the stock exchange on which the company is listed and in case of other company where the registered office of the company, is situated:*

*Section 158 (3); Notice of Annual General meeting;*

2. *It has been observed that in most cases the material in English language is published in Urdu newspapers, which does not serve the purpose of publication thereof, in both languages. It is pertinent to mention here that publication of said material in Urdu newspaper is required to be published in Urdu language which is meant for encouraging dissemination of information in local language, for the better comprehensibility of various stakeholders, investors and general public at large."*
7. The notice published on November 10, 2010, 19-days before the EOGM also deprived the public from being given a 21-day notice before the meeting was supposed to be held.
8. The afore-mentioned non-compliances attract penal action under Section 159(8) of the Ordinance which states that:

*"(8) Every officer of the company who knowingly or willfully fails to comply with any of the provisions of this section shall be liable,-*

*(a) if the default relates to a listed company, to a fine not less than ten thousand rupees and not exceeding twenty thousand rupees and in the case of a continuing default to a further fine which may extend to two thousand rupees for every day after the first during which the default continues*

*Ali:*



**Show Cause Notice**

9. It, *prima facie*, appeared that the company was in contravention with the provisions of the Ordinance with regard to Section 158 and 159 of the Ordinance. Accordingly, a Show Cause Notice was issued on November 29, 2010 under Section 159(7) read with circular No. 1 of 2008, Section 158(3) and section 159(8) of the Companies Ordinance, 1984 to the Chief Executive and Directors of the Company, calling upon them to show cause as to why the penalty, as provided in Section 159 of the Ordinance, should not be imposed upon them and/or upon the Company for not complying with the afore-mentioned provisions.

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

10. The Company, via its letter dated December 13, 2010, responded to the above-mentioned Show Cause Notice. Their reply has been reproduced below:

*"This refers to the captioned show cause notice dated November 29, 2010.*

*With reference to No 6, we would submit that both the Notices were given to the same advertising agency for publication. He missed the date and got delayed one day for Urdu newspaper.*

*With reference to No.7 we will submit that we gave this notice of EOGM to the same Advertising Agency for publication one in Urdu for Urdu newspaper and one in English for English Newspaper. They mistakenly published the English version in both the newspapers. (Letter of the advertising Agency is attached in this regard). Due to the short of time we could not try to get it published again.*

*We really are sorry for inconvenience and nothing to say more but crave your honor to condone us. We shall be gratefull."*

11. The Company, subsequently via its letter dated January 13, 2011, requested the Commission to issue its Order in the matter without availing the opportunity to be heard. The Company maintained that it held a special meeting of the Board of Directors on January 8, 2011, wherein it was resolved that the lapses and/or omissions with regard to the requirements of the SECP shall be taken care of and shall not be repeated in future. The Directors also decided to sort out the remedy to past non-compliances and claimed to be vigilant with the Regulator, failing to which the executives/employees responsible would be strictly dealt with.

**Consideration of Company's Submissions**

12. It is clearly established that the Company has committed default with regard to the provisions of the Ordinance. The Company has, not only accepted to its default but also passed a Special Resolution at its Board of Directors' meeting to consider the remedy for the alarming frequency of defaults that the Company was incurring repeatedly.

**Conclusion**

13. I have carefully examined and given due consideration to the written submissions of the Company and have also referred to several provisions of the Ordinance. I am of the view that

*Am:*



there has been a default under the relevant provision of the Ordinance. The Company has also admitted to this.

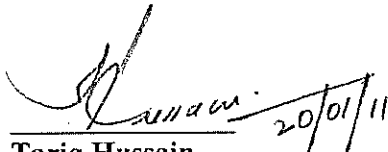
14. Before proceeding further, I find it relevant to discuss the duties of the Directors & the Chief Executive. The Directors & the Chief Executive of a company, in addition to the day to day running of the company and the management of its business, also have some 'fiduciary' duties i.e. duties held 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 defaults.

15. It appears that there was no *mala fide* intent on the part of the Company with regard to the non-compliance of the afore-mentioned provisions. This non-compliance also did not cause harm to its stakeholders.

16. Furthermore, the Company and its Board of Directors have given their assurance that they will improve its internal structure in such a way that the executives/employees responsible for any such non-compliances in future shall be strictly dealt with.

Order

17. In view of the foregoing facts, I, in exercise of powers conferred on me under Section 159(8) of the Ordinance, instead of imposing a fine, condone *M/s. Pakistan General Insurance Company Limited* and issue a **WARNING** to the Company to be vigilant with regard to the provisions of the Ordinance in future.

  
Tariq Hussain  
Director (Insurance)