



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Nasreen Rashid, Executive Director (Insurance)

In the matter of

Atlas Insurance Limited

Show Cause Notice Issue Date: September 16, 2010
Date of Hearing: September 30, 2010
Attended By: (1). Arshad P. Rana, Chief Executive
(2). Taimur Mirza, Associate – M/s Mohsin Tayebaly & Co.
Date of Order: November 29, 2010

ORDER

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

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This Order shall dispose of the proceedings initiated against M/s Atlas Insurance Limited (“the Company”) for not complying with Section 29 Read With Section 11(1) & Section 157 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:

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

3. The relevant provisions of Section 29 of the Ordinance states that:

“29. Deposits.-(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”



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4. The half-yearly accounts of the Company show the total paid-up capital of the Company to be at Rs.369,115,020/-, as on June 30, 2010.
5. According to Section 29 and Section 11(1)(b) of the Ordinance, the Company is supposed to have maintained a Statutory Deposit of Rs.36,911,502/-, which is ten per cent (10%) of the Company's paid-up capital.
6. A letter from the State Bank of Pakistan (Ref No: Bkg. U-10/Sec/29033/Ins-115-2010) dated September 8, 2010 revealed that the Statutory Deposit stood at Rs.35,287,772/- as on June 30, 2010, with a shortfall of Rs.1,623,730/-.
7. The applicable penal provision of the Ordinance for contravention of Section 29 is stated in Section 157, which states 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."

Show Cause Notice

8. Accordingly, the Show Cause Notice was issued on September 16, 2010 under Section 29 read with Section 11(1) 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 in Section 157(1) of the Ordinance, should not be imposed upon them and/or upon the Company for not complying with provisions of Section 29 read with Section 11(1) of the Ordinance.

Company's Response to the Show Cause Notice

9. The Company, via its letter dated September 22, 2010, requested to be called for a hearing, giving them an opportunity to plead their stance.
10. However, the Company's Legal Counsel, M/s Mohsin Tayebaly & Co., Corporate Legal Consultants, responded to the abovementioned Show Cause Notice vide their letter of September 27, 2010. The relevant part of the reply is reproduced below:

"That the contents of paragraph 3 of the Notice are only admitted to the extent that the paid-up capital of the Company as on June 30, 2010 is Rs.369,115,020/- and that the statutory deposit of the Company should be Rs.36,911,502/- otherwise the same are denied. It is stated that the Company has issued Bonus shares on May 26, 2010 for Rs.33,555,910/- and accordingly the paid-up capital was increased from Rs.335,559,110/- to Rs.369,115,020/-.

As at June 30, 2010, an amount of Rs.1,295,460/- had accrued as interest on the Pakistan Investment Bonds earlier deposited with the State Bank of Pakistan by the Company as part of its statutory deposit. This amount of Rs.1,295,460/- was payable to the Company by the State Bank, however, the same had not been paid as at June 30, 2010. Therefore the said amount of Rs.1,295,460/- formed part of the statutory deposit of the Company kept with the State Bank.



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Further, NIT Units of the Company having the market value of Rs.784,840/- were also with the State Bank as on June 30, 2010.

The amount of accrued interest on Pakistan Investment Bonds of Rs.1,295,460/- plus the amount of Rs.784,840/- being the market value of the NIT Units of the Company make the statutory deposit of the Company maintained with the State Bank as at June 30, 2010 to be Rs.37,079,300/- which was over and above the statutory deposit requirement of Rs.36,911,502/- required under Section 29 of the Insurance Ordinance, 2000.

In any event, the company purchased Pakistan Investment Bonds of Rs.2,000,000/- on July 28, 2010 and at present the Company is maintaining a deposit which is over and above the statutory deposit required under Section 29 of the Insurance Ordinance, 2000.

In view of the above, there is no shortfall of Rs.1,623,730/- and the Company has at all times complied with Section 29 of the Insurance Ordinance, 2000.

The contents of paragraph 4 of the Notice are denied...

In view of what has been stated herein above, we hereby call upon the Commission to withdraw the Notice issued against the Company and give the finding that the Company is not in contravention of Section 29 read with Section 11(1)(b) of the Insurance Ordinance, 2000...

Without prejudice to what has been stated herein above, it is also stated that it is the insurer that is required to comply with provisions of Section 29 of the Insurance Ordinance, 2000 and in the event an insurer fails to comply with Section 29 of the Insurance, 2000 it is the insurer who is liable to be punished with a fine under Section 157(1) of the Insurance Ordinance, 2000.

In view of the above, the Commission is hereby called upon to withdraw the Notice issued against the Directors of the Company as the Notice cannot be issued against the Directors asking them to show cause for the alleged breach of Section 29 of the Insurance Ordinance, 2000 (which allegation is denied) when neither the Directors of the Company are required to comply with the provisions of Section 29 nor can a fine be levied upon the Directors under Section 157(1) of the Insurance Ordinance, 2000."

Hearing of the Case

11. As requested by the Company in their letter dated September 22, 2010, the hearing in the matter was scheduled for September 30, 2010, which was communicated to the Company via hearing notice dated September 23, 2010.

12. The said hearing was attended by Mr. Arshad P. Rana, Chief Executive and Mr. Taimur Mirza, Associate, M/s Mohsin Tayebaly & Co. Brief proceedings of the hearing are as follows:

- a. Executive Director – Insurance asked the Company's Representatives to commence their argument in favor of the Company.
- b. Mr. Taimur Mirza stated that they have already submitted their reply to the Show-Cause Notice vide their letter of September 27, 2010. However, relevant part of this reply has been reproduced in the foregoing para of the Order.



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- c. Joint Director – Insurance stated that in the case of statutory deposits, the market value of the securities is picked up as on the day of deposit rather than the market value of the same on any other day.

Moreover, the accrued investment income can not be taken as part of the deposits, as per Section 29 of the Ordinance. Besides all, the decision of the State Bank is final as far as the valuation of the securities being deposited is concerned.

- d. Executive Director – Insurance mentioned that many insurance companies' businesses were ceased due to non-maintenance of the required minimum level of statutory deposits, the paid-up capital and other contraventions of the Ordinance
- e. Mr. Taimur further requested that their intention of being compliant and prudent at all times should be taken into account while deciding upon the case, as our intentions was not to contravene the provisions of the law.

Consideration of Company's Submissions

13. The Company has contravened the provisions of Section 29 read with Section 11(1)(b) of the Insurance Ordinance, 2000 for the very first time, as per our record, and *prima facie*, the Company appears to be otherwise compliant with regard to the applicable laws under the purview of the Commission.

14. Additionally, the Company has proven its intention of being compliant & prudent at all times by depositing an additional amount of Pakistan Investment Bonds of Rs.2,000,000/-, with SBP's book value of Rs.1,947,047/- on July 28, 2010 (approximately two months after the paid-up share capital was increased).

Conclusion

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

16. 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.

17. However, the Company did remove the deficit in its Statutory Deposit before receiving the aforesaid Show Cause Notice. This shows the Company's intent in complying with the law by removing the contravention promptly when it realized that it had committed a contravention. It appears that there was no *mala fide* intent on the part of the Company as evidenced by their action of promptly removing the contravention.

18. Furthermore, the Company has generally been a law abiding company and has been compliant in fulfilling its statutory duties to date.



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19. The Company is a professional organization and the Chief Executive of the Company meets the Fit and Proper criteria, as laid down in the Ordinance.
20. The Statutory Deposit's primary purpose is to protect the policyholders and to financially compensate them in case the Company is unable to do that. It is therefore pertinent to note that the Company has a good market reputation and track record with respect to claims payment
21. The Company is amongst the oldest and profit-making insurance companies in Pakistan.
22. This contravention does not appear to have affected the rights and interests of any of its stakeholders strictly during the period of non-compliance.

Order

23. In view of the foregoing material information, I, in exercise of powers conferred on me under Section 157 the Ordinance, will take a lenient view and instead of imposing a fine, hereby, condone the contravention by the Company. The Chief Executive, the Directors and the Company itself is, hereby, warned and advised to exercise due caution in the future whilst complying with the requirements of the law.

Nasreen Rashid
Executive Director