



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Nasreen Rashid, Executive Director (Insurance)

In the matter of

ACE Insurance Limited

Date of Show Cause Notice: September 16, 2010

Date of Hearing: October 15, 2010

Attended by: Mr. Kamal Ahmed, Company Secretary and Finance Director

Date of Order: November 11, 2010

ORDER

(Under Section 29 read with Sub-Section 1 of Section 11 and Section 157 of the Insurance Ordinance, 2000)

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This Order shall dispose of the proceedings initiated against ACE Insurance Limited ("the Company") for not complying with Section 29 Read With Section 11(1)(b) & Section 157 of the Insurance Ordinance, 2000 ("the Ordinance").

Background Facts

2. The relevant provisions of Section 11(1)(b) 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



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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

4. The Un-audited half-yearly accounts of the Company showed the paid-up capital of the Company as Rs. 224,000,000 as at 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. 22,400,000, 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. 20,099,589 as on June 30, 2010, reflecting a shortfall of Rs. 2,300,411.
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, a Show Cause Notice was issued on September 16, 2010 under Section 29 read with Section 11(1)(b) 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 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)(b) of the Ordinance.

Company's Response to the Show Cause Notice

9. The Company, via its letter dated September 24, 2010, responded to the abovementioned Show Cause Notice. The summary of the reply has been reproduced below:

"We had issued bonus shares amounting to Rs. 24,000,000 from our reserves to ensure the compliance of the Federal Government's decision, communicated vide SECP Circular No. 3 of 2007, which required increase of the Company's paid up capital from Rs. 200,000,000 to Rs. 250,000,000 before the year ending December 31, 2010. The remaining shares amounting to Rs. 26,000,000 would be issued before the year ending December 31, 2010.

We were of the understanding that the Statutory Deposit maintained by us with the SBP was to be increased upon the completion of the aforesaid transaction and accordingly, we had



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intended to credit the same by the estimated increased amount of Rs. 4,900,411 before year end.

We did not anticipate that the part increment in paid up capital would increase the minimum required amount of Statutory Deposit and thus create a deficit of Rs. 2,300,411

Nonetheless, as soon as the deficit came to the our attention, we immediately deposited a sum of Rs. 2,500,000 on September 17,2010 with the SBP

Our intention was not to default as we had intended to deposit the 10% of the paid-up-capital once its increment was finalized on or before December 31, 2010

Therefore, we hereby urge you to condone the inadvertent delay and assure you that we shall be more vigilant in such regard. We respectfully submit that we have at all times discharged our legal obligations and that this particular instance may be treated as a one-off event and accordingly be condoned.

Hearing of the Case

10. Hearing of the said case was conducted at 12:00 p.m. on October 15, 2010 before Ms. Nasreen Rashid, Executive Director (Insurance) which was attended by Mr. Kamal Ahmed, Company Secretary and Finance Director, ACE Insurance Limited. The Company conveyed its firm commitment to ensure compliance with the law and also emphasized that it has a clean track record and has always complied with the law. The Company therefore requested the Commission to condone them.

Consideration of Company's Submissions

11. The Company had stated in its response to the Show Cause Notice, as quoted above, that "*their intention was not to default*" on the compliance of Section 29 of the Ordinance.

12. Additionally, the Company stated that it had promptly filled the deficit in their Statutory Deposit after the Show Cause Notice was issued. As per State Bank letter No. Bkg. U-10/Sec./30292/Ins-161-2010 dated 21st September, 2010 the Company had deposited an amount of Rs. 2,500,000 in cash in request of the Company's letter dated 17th September, 2010.

Conclusion

13. I have carefully examined and given due consideration to the written submissions of the Company 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 has also admitted its default.

14. Before proceeding further, I find it relevant to discuss the duties of the Directors & the Chief Executive. The Directors & the Chief Executive Officer 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 obligations and the Company's legal obligation in the aforesaid matter along with the consequences of the said defaults.

15. However, the Company did remove the deficit in its Statutory Deposit promptly after receiving the Show Cause Notice. This shows the Company's intention in complying with the law by removing the contravention promptly 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 as evidenced by their prompt action in removing the contravention.



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

17. The Company has a well structured management meeting the Fit and Proper criteria, as laid down in the Ordinance. The Company is a professional organization with a qualified human resource.

18. 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

19. This contravention does not appear to have affected the rights and interests of the stakeholders.

Order

20. 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 and, **WARN** and advise the Chief Executive, the Directors of the Company and the Company itself to exercise due caution in the future whilst complying with the requirements of the law.

Nasreen Rashid
Executive Director