



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Ms. Nasreen Rashid, Executive Director (Insurance)

*In the matter of*

M/s Asia Insurance Company Limited

Date of Show-Cause Notice: October 29, 2010  
Date of Company's Reply: November 22, 2010  
Date of Order: December 31, 2010

## ORDER

(Under Section 29 Read with Section 11(1) and Section 157 of  
The Insurance Ordinance, 2000)

This Order shall dispose of the proceedings initiated against M/s Asia Insurance Company Limited (hereinafter referred to as ("the Company")) for making default in complying with the requirements of Section 29 of the Insurance Ordinance, 2000 ("the Ordinance").

### Background Facts

The relevant facts for the disposal of this case are briefly stated as under:

1. Section 11(1)(b) of the Ordinance, states that:

*"An insurer registered under this Ordinance shall at all times ensure that:  
the provisions of this Ordinance relating to minimum statutory deposits have been  
complied with;"*

2. AND the provisions of Section 29 of the Ordinance state that:

*"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:



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Insurance Division

Continuation Sheet - 2 -

- (a). the higher of ten million rupees and ten per cent. (10%) of the insurer's paid-up capital; or  
(b). such amount as may be prescribed by the Commission"

3. The Company filed the Statement of Assets & Liabilities as on September 30, 2010 in pursuance of Section 46(2) read with Section 51(2) of the Ordinance, wherein the paid up share capital of the Company was raised to Rs. 250,000,000/-.

4. The Company failed to increase the level of statutory deposits that are kept with the State Bank of Pakistan to Rs. 25,000,000/- on or before the increase in their paid up capital i.e. September 30, 2010.

5. The letter dated October 26, 2010 from the State Bank of Pakistan revealed that the Company has deposited additional 10-Years P.I.B's of Rs. 4,820,851/- as statutory deposits on October 21, 2010, making up a total of Rs. 24,886,330/-, again leaving a shortfall of Rs. 113,670/-.

6. However, the Company had not been consistent in maintaining their statutory deposits with the State Bank of Pakistan as required under Section 29 of the Ordinance, which was evident from the history provided by the State Bank of Pakistan regarding the deposits of the Company.

7. Also, this is the second time during the year that the Company has made such a contravention of the Ordinance.

8. As per the State Bank of Pakistan, the status of the statutory deposits of the Company had been as follows:

Date	Paid-Up Capital	Statutory Deposit	Required Deposits	Excess/(Shortfall)
December 31, 2008	160,000,000	1,402,000	16,000,000	(14,598,000)
December 31, 2009	200,000,000	16,925,010	20,000,000	(3,074,990)
January 28, 2010	200,000,000	17,411,660	20,000,000	(2,588,340)
March 10, 2010	200,000,000	21,467,479	20,000,000	1,467,479
<b>Show Cause Notice under Section 29 &amp; Section 11(1) of the Ordinance was Issued on March 30, 2010</b>				
June 30, 2010	200,000,000	20,065,479	20,000,000	65,479
September 30, 2010	250,000,000	20,065,479	25,000,000	(4,934,521)
October 21, 2010	250,000,000	24,886,330	25,000,000	(113,670)
<b>Show Cause Notice under Section 29 &amp; Section 11(1) of the Ordinance was Issued on October 29, 2010</b>				
November 3, 2010	250,000,000	25,001,330	25,000,000	1,330

Show-Cause Notice

9. On October 29, 2010, a Show-Cause Notice under Section 29 read with Section 11(1) and Section 157 of the Ordinance was served to the Directors and Chief Executive of the Company, whereby the Company was asked to clarify their position as to why the penalty under Section 157 of the Ordinance may not be imposed on them for not maintaining the required levels of statutory deposits at all times, thereby making contraventions of the provisions of Section 29 and Section 11(1)(b) of the Ordinance.



Company's Reply

10. The Company submitted their reply to the Show-Cause Notice through their letter of November 22, 2010. The relevant parts of the Company's reply are briefly quoted as under:

*"At the outset, it is pointed out that the Company and its directors have not contravened any of the provisions of the Ordinance and have always adhered to the same. In this regard, it is pointed out that the alleged violation of the provisions of the Ordinance relates primarily to the evaluation of the deposit in compliance with section 29 of the Ordinance.*

*By way of background, it is submitted that the Company purchased Pakistan Investment Bonds (PIB's) on September 17, 2010 with face value of Rs. 5.30 million and market value of approximately Rs. 5.040 million, as shown by the document of purchase of PIB's attached for your reference. The Company requested Faisal Bank Limited, through its letter no. Asia/SBP-KR/Securities dated October 18, 2010 to transfer the PIB's with market value of Rs. 5.040 million to SBP on account of statutory deposit under the Ordinance. Thereafter, SBP through its letter no. Bkg. U-10/Sec/33853/Ins-128-2010 dated October 26, 2010 received on October 30, 2010, communicated to the Company that the market value of securities deposited with SBP is Rs. 4.821 as against the required securities amounting Rs. 5.00 million. Immediately, upon receipt of said letter from SBP regarding shortfall, the Company deposited demand draft no. 0533762 dated November 01, 2010 amounting Rs. 115,000/- to comply with the provisions of the Ordinance, which amount has now been credited with SBP as statutory deposit of the Company. Accordingly, the Company is in compliance with the relevant provision of law.*

*It is further pointed out that the Company or its directors never intended to contravene any of the provisions of the Ordinance intentionally and delay, if any, in depositing the required securities for the purposes of statutory deposit was on account of the fact that the accounts of the Company for the period ended September 30, 2010 were being prepared and the management of the Company was busy in preparation of the same under the provisions of relevant laws."*

11. The reply of the Company revealed that although the Company had purchased PIB's with face value of Rs. 5.30 million on September 17, 2010, but requested Faisal Bank Limited to transfer the PIB's to SBP in respect of statutory deposit on October 18, 2010 i.e. 18 days after the increase in the paid up share capital. Hence, it can be ascertained that the delay was willful on part of the Company.

12. Thereafter, the hearing was scheduled for December 10, 2010, which was communicated to the Company vide Commission's letter of December 2, 2010. However, the Company vide its letter dated December 7, 2010 requested the Commission that:

*"...the call for hearing of the Show Cause Notice may kindly be waived off and no penalty may be imposed on the company and/or directors..."*

13. Therefore, in order to seek a more clarified intent of the Company regarding the hearing in the matter, vide Commission's letter dated December 9, 2010, the Company was asked to give its consent in writing, incase they desire that the Order in the matter may be passed only on the basis of the Company's written reply to the Show Cause Notice and that no hearing in the matter be conducted.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Insurance Division

Continuation Sheet - 4 -

14. In response to the Commission's letter dated December 9, 2010, the Company gave their consent that the Order in the matter may be passed only on the basis of the Company's written reply to the Show Cause Notice and that no hearing in the matter be conducted.

15. As per the Company's consent, no hearing in the matter was conducted, and therefore, this Order is merely on the basis of the Company's written submissions.

Consideration of the Submission

16. 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 Directors have failed to perform their duties with due care and prudence. As the Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of the Section 29 read with Section 11(1) of the Ordinance, therefore, it could be legitimately inferred that the default was committed knowingly and willfully.

Conclusion

17. After carefully examining the written arguments of the Company and studying the facts and findings of the case as mentioned in the above paras of this Order, the default of Section 29 read with Section 11(1) of the Ordinance for 32 consecutive days is established, as the Company met the mandatory requirement of statutory deposit on November 3, 2010, which is evident from SBP's letter dated November 8, 2010. Therefore, the penalty as provided under Section 157 of the Ordinance can be imposed on the Company, which states that:

*"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."*

Order

18. In exercise of the power conferred on me under Section 157 of the Ordinance, I have decided to impose a fine on the Company due to the following reasons:

- a) The Company has had a history of non-compliances related to the provisions of the Ordinance on Statutory Deposits. This reflects poorly on the quality and mind-set of the top management of the Company.
- b) A penalty of Rs. 200,000 was previously imposed on the Company for the same contravention vide Order of the Commission dated July 06, 2010.

In view of the above, I am doubling the amount of the previous fine and imposing a fine of Rs. 400,000 (Rupees Four Hundred Thousand Only) on the Company. Furthermore, the Company is



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
*Insurance Division*

Continuation Sheet - 5 -

hereby issued a stern warning that in case of similar non-compliance in future, maximum penalty allowed under Section 157 of the Ordinance may be imposed on the Company.

19. *M/s. Asia Insurance Company Limited* are hereby directed to deposit the aforesaid fine of Rs. 400,000/- (Rupees Four Hundred Thousand Only) in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty (30) days from the receipt of this Order and furnish receipted vouchers issued in the name of Commission for information and record.

**Nasreen Rashid**  
Executive Director