



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Nasreen Rashid, Executive Director (Insurance)

In the matter of

Premier Insurance Limited

Date of Show Cause Notice: September 20, 2010

Date of Hearing: October 28, 2010

Attended by: Mr. Fakhir Rahman, C.E.O.
Shazia Bashir, A.G.M Investments
Afroz Quraishi, C.F.O. and Company Secretary

Date of Order: December 13, 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 Premier 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 state 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 state 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.



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(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 half-yearly accounts of the Company showed the paid-up capital of the Company at Rs. 302,821,000, 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. 30,282,100, which is ten per cent (10%) of the Company's paid-up capital.
6. A letter from the State Bank of Pakistan ("the Bank") (Ref No: Bkg. U-10/Sec/29033/Ins-115-2010) dated September 8, 2010 revealed that the Statutory Deposit stood at Rs. 27,647,898.97 as at June 30, 2010, reporting a shortfall of Rs. 2,634,201.03.
7. The applicable penal provision of the Ordinance for the 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 20, 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 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 Written Submissions to the Show Cause Notice

9. The Company, via its letter dated September 23, 2010, responded to the abovementioned Show Cause Notice. Their reply has been summarized below:

"We refer to your Show Cause Notice dated September 20, 2010 under section 29 read with Section 11(1)(b) and Section 157 of the Insurance Ordinance and submit that we were not in non-compliance with the minimum statutory deposit requirements as demonstrated by the Statement of Accounts with the State Bank of Pakistan. The insignificant shortfall of approximately Rs. 248,000 on June 30, 2010 was met and exceeded the very next day by the bonus distribution on July 1, 2010 which brought the total deposit to Rs. 30.9 million against the minimum statutory requirement of Rs. 30.2 million."

Hearing of the Case

10. A hearing notice was sent to the Company to appear before Ms. Nasreen Rashid, Executive Director (Insurance) at 12 P.M on October 28, 2010.
11. The said hearing was attended by Mr. Fakhir Rahman, C.E.O., Ms. Shazia Bashir, A.G.M. Investments and Mr. Afroz Quraishi, C.F.O. and Company Secretary, Premier Insurance Limited.



Consideration of Company's Submissions

12. The Company stated that it had pledged units in Pakistan Income Fund ("the Fund") as its Statutory Deposit. The Fund issues bonus units which are not automatically included in the Statutory Deposit of the Company by the Bank as and when the bonus units are issued. Since the Company had pledged the units of the Fund as Statutory Deposit, it did not have the authority to collect or disburse the bonus units issued against the pledged units. An NOC from the Securities and Exchange Commission of Pakistan ("the Commission") was required by the Company to ensure that the Bank includes the bonus units of the Fund in the Company's Statutory Deposit. Thus, the figures provided by the Bank did not include any bonus units issued recently.

13. The Company had stated in its response to the Show Cause Notice, that it had not committed any non-compliance as it assumed that since it could not withdraw any bonus units of the Fund and the funds were not under its control. Therefore, the bonus amount must have been included in their Statutory Deposit.

14. The Company reiterated that it had no intention of committing such a default and had previously asked the Commission to issue a blanket NOC for the inclusion of all future bonuses in their Statutory Deposit. However, the Company agreed that it had received an NOC from SECP only for the inclusion of the bonus units issued at that time. The NOC was not given for any subsequent bonus units which would be issued in the future.

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 in their letter dated September 23, 2010, accepted that there was an "*insignificant shortfall of approximately Rs. 248,000 on June 30, 2010.*" The remaining shortfall in the Statutory Deposit was due to the bonus units not being pledged in the Company's Statutory Deposit due to the procedural issue of requiring a NOC from the Commission for every bonus unit issuance.

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 has been law abiding and compliant in fulfilling its statutory duties to date.

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. The Company has a total paid-up capital of Rs. 302,821,000 as at June 30, 2010, and has Reserves amounting to Rs. 1,270,025,000, as at June 30, 2010, along with adequate reinsurance with some of the most renowned international reinsurers in the world.

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

21. Given that the bonus units were under the custody of the Bank along with the originally pledged units of the Fund which were part of the Company's Statutory Deposit thus giving the impression to the



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Company that the Bank would have included the bonus units in their Statutory Deposit and also that a blanket NOC was requested by the Company for all current and future bonus issuance of the Fund. Hence it appears that the Company did not commit the default intentionally. Subsequently, a blanket permission has also been granted to the company vide Commission's letter dated November 29, 2010, to have any current or future bonus units included in their Statutory Deposit against Pakistan Income Fund issued by Arif Habib Investments Limited.

Order

22. 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 of the Company and the Company itself is, hereby, warned and advised to exercise due caution in complying with the requirements of the law in the future.

Nasreen Rashid
Executive Director (Insurance)