



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Nasreen Rashid, Executive Director (Insurance)

In the matter of

Silver Star Insurance Company Limited

Date of Show Cause Notice: September 16, 2010

Date of Hearing: October 18, 2010

Attended by: Mr. Aamir Iqbal Basharat, Advocate Supreme Court on behalf of M/s Silver Star Insurance Company Limited.

Date of Order: January 20, 2011

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 Silver Star Insurance Company 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

4th Floor, State Life Building No. 2, Wallace Road, off I.I. Chundrigar Road, Karachi.
Tel: 021-32414204, 021-32410651 Fax: 021-32423248 Website: www.secp.gov.pk



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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

4. The half-yearly accounts of the Company showed the paid-up capital of the Company as Rs. 253,125,000 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. 25,312,500 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. 21,098,807 as at June 30, 2010, reflecting a shortfall of Rs. 4,213,693.
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. It, *prima facie*, appeared that the Company was in contravention with the provisions of the Ordinance with regard to Section 29. Accordingly, a 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 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 30, 2010, responded to the abovementioned Show Cause Notice. Their reply has been summarized below:

The company has not contravened any provision of the Insurance Ordinance, 2000 since it had already deposited the said the amount in approved securities. Neither Section 29 nor Section 11(1) of the Insurance Ordinance or rule 9 of the Securities and Exchange Commission (Insurance) Rules 2002, prescribe any time limit for the statutory deposit which was deposited by us in reasonable time.

The company enhanced its paid-up capital by issuing bonus shares amounting to Rs. 42,187,500 in compliance with Circular No. 3 of 2007. Unfortunately the history of statutory deposits intimated to you 



through letters from the State Bank of Pakistan showed a shortfall of a period earlier to 30th June, 2010. The process of purchasing PIB's was initiated by us on 21-07-2010 whereas; the same was completed on August 23, 2010. Both the dates are much prior to the issuance of the Show Cause Notice. Furthermore there is no time frame given under any of the provisions of the Insurance Ordinance, 2000. It is noteworthy that for statutory deposits regarding the enhanced paid-up capital, there is absolutely no provision in the entire Ordinance. (Section 29 was reproduced) As Section 29 clearly corroborates our version that there is no limitation for the statutory deposits with the State Bank of Pakistan, therefore the statutory deposit in the shape of approved securities was within reasonable time. Hence the Show Cause Notice may be withdrawn. Keeping in view the previous affectionate practice of your institution, we still tender an unconditional apology for not depositing the statutory deposit, although it was deposited within reasonable time. In the light of the above, it is humbly submitted that the Show Cause Notice may kindly be withdrawn.

Hearing of the Case

10. Hearing of the said case was conducted at 11:00 a.m on October 18, 2010 before Ms. Nasreen Rashid, Executive Director (Insurance) which was attended by Mr. Aamir Iqbal Basharat, Advocate Supreme Court on behalf of M/s Silver Star Insurance Company Limited. The Company emphasized that the procedure of buying PIB's was initiated on July 22, 2010 and the process was completed on August 25, 2010. The Company said that it had the intention to eliminate the shortfall by depositing the amount in the Statutory Deposit Account and hence, it had complied with the sections of the Ordinance. Secondly, the Company said that since no time frame was specified in the Ordinance for depositing the amount of Statutory Deposit, hence there was no contravention. The Company also accepted that the remaining Rs. 100,000 was deposited with the State Bank of Pakistan after the SCN was issued.

Consideration of Company's Submissions

11. Section 11(1) of the Insurance Ordinance states that the provisions of the Ordinance have to be met **at all times**. Although the letters presented to the Commission from the Company do reflect that the Company had started the purchase of PIB's, the same shortfall could not be made good within time and this non-compliance occurred and is established. It is also noteworthy that the Company initially deposited an amount of Rs. 4,136,735 with the SBP on August 25, 2010, instead of its total shortfall of Rs. 4,213,693 which still reflected a further shortfall of Rs. 76,958. The same was then replenished on September 27, 2010, on the request of the Company made to the SBP via its letter No. HO/AC/7153/2010.

Conclusion

12. 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.

13. 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.

14. It appears that the Company needs to attach due importance to regulatory compliance. Provisions of the law are definitive and clear. The reasoning given by the lawyer on behalf of the Company and the Company itself is not cogent.

15. Furthermore, the Company had started the process of purchasing PIB's on July 21, 2010 which was much later than June 2, 2010; the date on which the shares were allotted to the shareholders and when



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the paid-up capital increased. The mere intention of depositing the shortfall does not vindicate the Company from the fact that a shortfall did exist and non-compliance with the law was made.

Order

16. In view of the foregoing facts and figures, I, in exercise of powers conferred on me under Section 157 the Ordinance, direct the Company, *M/s. Silver Star Insurance Company Limited* to deposit the aforesaid fine aggregating to Rs. 200,000/- (Two 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 (Insurance)