



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Nasreen Rashid, Executive Director (Insurance)

In the matter of

Pakistan General Insurance Company Limited

Date of Show Cause Notice: September 14, 2010

Date of Hearing: October 5, 2010

Attended by: Mr. Haroon Memon, SEVP, Pakistan General Insurance Company Limited.

Date of Order: November 24, 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 Pakistan General 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*



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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. 250,000,000 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. 25,000,000 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. 20,000,000 as at June 30, 2010, reflecting a shortfall of Rs. 5,000,000.
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. 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 reproduced below:

"Please refer to above show cause notice issued to the directors of The Pakistan General Insurance Company Limited ("the Company") dated September 14, 2010.

We want to draw your attention to the fact that we have asked Habib Bank Limited thru our letter no. PO/GEN/2010/ZA/786 dated June 15, 2010 for the purchase of Pakistan Investment Bonds (PIB's) and forward the same to State Bank of Pakistan. On said requisition, we were informed by Habib Bank Limited PIB's auction is scheduled on July 22, 2010 thru its letter dated June 16, 2010. State Bank of



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Pakistan has rejected the bid for issue of PIB's from Habib Bank Limited and surrendered them to State Bank of Pakistan on the even date (Copies of referenced letters are attached for your ease of reference.)

In view of the above it is evident that the above non-compliance is not on the part of the company whereas it was a procedural delay and it is therefore prayed that no action should be taken in this regard as we had already been fined amounting to Rs. 50,000 for having a minimum statutory deposit below the statutory requirement against which we believe that fair value of the same was more than the required limit.

We hope that above is sufficient for your purposes and proceedings may please be dropped."

Hearing of the Case

10. Hearing of the said case was conducted at 11:30 a.m on October 5, 2010 before Ms. Nasreen Rashid, Executive Director (Insurance) which was attended by Mr. Haroon Memon, SEVP, Pakistan General Insurance Company Limited. Whilst the company accepted that the shortfall in statutory deposit had occurred due to their negligence, it is pertinent to note that the same non-compliance had occurred twice within a period of one year. However, it requested that penalty may not be imposed on them.

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 has recurred within a span of one year. It is also worth mentioning that the company has still not complied with its statutory deposit requirement as per the latest (September 30, 2010) figures from the State Bank of Pakistan vide its letter No. Bkg. U-10/Sec./32820/Ins-115-2010 reflecting a shortfall of Rs. 311,776.

Conclusion

13. 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 to this.

14. 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.

15. It appears that there was *mala fide* intent on the part of the Company with regard to the non-compliance of the afore-mentioned provisions as the contravention has still not been removed.

16. Furthermore, a penalty of Rs. 50,000 had earlier been imposed on the Company; vide the Commission's Order dated May 20, 2010, for the same non-compliance.

Order

17. 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. Pakistan General 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



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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)