



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: March 30, 2010
Date of Hearing: June 04, 2010
Attended by: (1) Mr. Ali Munem Shamsi, President
(2) Mr. Hussain Sultan, Controller of Branches
Date of Order: July 06, 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 a continuous 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.

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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
- (b) such amount as may be prescribed by the Commission"

3. The Commission made an inquiry regarding the current status of the paid-up share capital of the Company vide its letter dated February 12, 2010.

4. The Company in its letter of February 16, 2010 made a confirmation that the regulatory requirements pertaining to the paid-up share capital as on December 31, 2009 have been complied with, and the Company has raised its paid-up share capital to Rs. 200 million.

5. The Company provided an unaudited balance sheet as on December 31, 2009 vide its letter of March 15, 2010, whereby it was evident that the paid-up share capital requirement of Rs. 200 million was met by the Company.

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. 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

Show-Cause Notice

7. On March 30, 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

8. The Company, in response to the Show-Cause Notice vide its letter of April 12, 2010, posed allegation on the State Bank of Pakistan for incorrect



valuation of their deposits, resulting in shortfalls in the statutory deposits of the Company. The allegations on the State Bank of Pakistan by the Company are briefly quoted as under:

"That the SBP, in exercising the power vested in it by Section 29(8) of the Ordinance, erroneously evaluated the securities of the Respondent as per their face value instead of the prevailing market value, as provided for Section 29(8)."

"That it is once again reiterated that the matter primarily arose because of the fault of the SBP and it was because of this inordinate delay in resolving the issue that the Respondent was unable to deposit the entire amount of its required minimum statutory deposit."

"The SBP gravely misunderstood the provisions of the Ordinance in valuing the securities as per their face value, which is blatant disregard of the letter and spirit of the relevant provisions of the Ordinance."

"That the Respondent admits that there were shortfalls in its statutory deposits but the same were not due to any fault of its own since the securities deposited with the SBP were never properly valued as per the provisions of Section 29."

9. The reply of the Company revealed that the Company misunderstood the requirements of the Ordinance pertaining to the statutory deposits i.e. the higher of ten million or ten percent of the paid-up share capital. The Company stated that:

"That the SBP vide its letter no: Bkg. U-10/Sec/132/Ins-128-2008 dated January 28, 2008 informed the Respondent that its statutory deposits were valued at a combined total of Rs. 1,402,000/- and that there was a shortfall of Rs. 3,598,000/- from the required statutory deposit of Rs. 5,000,000/-. The Respondent in response informed the SBP that the statutory deposits as per the prevailing market rates amounted to a total of Rs. 6,218,280/- and therefore, met the minimum statutory deposit requirement."

10. However, in order to seek comments from the State Bank of Pakistan over the valuation of securities deposited by the Company, the Commission wrote a letter to the State Bank of Pakistan on April 23, 2010.

11. The State Bank of Pakistan vide its letter of May 13, 2010, claimed that the State Bank of Pakistan has been empowered under Section 29(8) of the Ordinance to make valuations of the securities being deposited by the insurance companies in compliance of Section 29 of the Ordinance, and the decision of the State Bank of Pakistan shall be final. This response of the State Bank of Pakistan is quoted as under:



"The Market value on the day of deposit of securities deposited in pursuance of any of the provisions of this Ordinance with the State Bank of Pakistan shall be determined by the State Bank of Pakistan whose decision shall be final"

12. Therefore, the hearing was scheduled for June 04, 2010 at 11:00 a.m., which was communicated to the Company vide Commission's letter of May 21, 2010.

Proceedings of the Hearing

13. The said hearing (held on June 04, 2010 at 11:00 a.m.) was attended by Mr. Ali Munem Shamsi, President and Mr. Hussain Sultan, Controller of Branches on behalf of the Directors and Chief Executive of the Company.

14. Mr. Ali Munem Shamsi admitted that the State Bank of Pakistan's decision shall always be final in making valuations of the securities being deposited by the insurance companies in pursuance of Section 29 of the Ordinance.

15. Mr. Ali Munem Shamsi also admitted that the Company has been negligent in complying with the statutory requirements pertaining to the maintenance of the statutory deposits with the State Bank of Pakistan. And, he also assured that the same would not happen again in future.

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 arguments 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 is established and the Company has also accepted its default. 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 nominal fine of Rs. 200,000/- (Rupees Two Hundred Thousand Only) due to the fact that the Company has now complied with the aforesaid statutory requirement. However, the Company is hereby issued a stern warning that in case of similar non-compliance in future a stronger action against the Company will be taken.

19. *M/s. Asia Insurance Company Limited* are hereby directed to deposit the aforesaid fine of Rs. 200,000/- (Rupees 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