



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Nasreen Rashid, Executive Director (Insurance)

*In the matter of*

Pakistan General Insurance Co. Limited

Date of Show Cause Notice: March 30, 2010

Date of Hearing: May 11, 2010

Attended by: Aftab Ahmad Phambra, General Manager- Pakistan General Insurance Co. Ltd.

Date of Order: May 20, 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 Company Limited (hereinafter referred to as ("the Company")) for making default in complying with the provisions of Section 29 of the Insurance Ordinance, 2000 ("the Ordinance") read with sub-Section (1) of Section 11 and Section 157 of the Ordinance.

### **Background Facts**

2. The relevant facts for disposal of this case, briefly stated are, as under:

- a discrepancy was observed while examining the Statutory Deposits of the Company with State Bank of Pakistan .

Date	Paid-Up Capital	Statutory Deposit	Required Deposits	Excess/(Shortfall)
June 30, 2008	200,000,000	3,726,446	20,000,000	(16,273,554)
May 10, 2009	200,000,000	18,726,446	20,000,000	(1,273,554)
December 31, 2009	200,000,000	18,726,446	20,000,000	(1,273,554)
February 11, 2010	200,000,000	20,000,000	20,000,000	-



- Repeated letters were sent to the Company to comply with the said provisions contained in the Ordinance on September 3, 2009, September 14, 2009 and March 17, 2010 whereas in response to these letters stating such non-compliance, the company stated that it fulfilled the Minimum Statutory deposit requirement based on the current market value of the securities held with the State Bank of Pakistan.

3. In pursuance of Section 29 read with sub-Section (1)(b) of Section 11 of the Ordinance, states 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:

(a) the higher of ten million rupees and ten per cent. (10%) of the insurer’s paid-up capital; ”

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(8) 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.

Further to the aforesaid provision, Section 11 of the Ordinance clearly states that:

“(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;”

#### Show Cause Notice

4. It was observed that the company was in default with regard to the aforesaid provisions of the Ordinance and therefore a Show Cause Notice (“SCN”) dated March 30, 2010 under Section 29 read with Section 11(1) and Section 157 of the Ordinance was served to the Chairman & Chief Executive and Directors of the Company, calling upon them to explain as to why appropriate action may not be taken against the Company under the law for the aforesaid contravention.



Company Reply and Hearing Proceedings

5. Vide their letter dated April 10, 2010, the Company, in response to the SCN, requested the SCN to be withdrawn on the basis that the value of securities was upto the mark and the company had fulfilled the requirement mentioned in the Ordinance as per their own assessment. However, the Ordinance requires the securities to be valued on the date of the deposit and by the State Bank of Pakistan. Therefore, a hearing in this matter was scheduled dated May 11, 2010 at 11:00 a.m. and a hearing notice was sent to the Chairman, Chief Executive and Directors of the Company to explain the circumstances which had led to such a non-compliance.

6. The said hearing was attended by Aftab Ahmad Phambra, General Manager of the Company on behalf of the Chairman & Chief Executive and Directors of the Company. He accepted this default which was due to a misunderstanding of the said provision of the Ordinance wherein the market value of securities on the day of deposit was supposed to be used rather than the current market value. He also accepted that the deposit level has to be maintained at all times and recognized the shortfall in the statutory deposit as reported by the State Bank of Pakistan. He assured of compliance in the future and requested the Commission to condone the penalty in this instance.

Consideration of the Submissions

7. 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 sub-Section (1) of Section 11 of the Ordinance has been established.

Conclusion

8. 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 and obligations 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 aforesaid statutory requirement and consequences of the said default, therefore, it could be legitimately inferred that the default was committed knowingly and willfully. Therefore action against the Company may be taken by imposing a fine under Section 157 of the Ordinance which states that:

"(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."

Order

9. In exercise of powers conferred on me under section 157 of the Ordinance, I impose a fine of Rs. 50,000 (Fifty Thousand Only) on the Company.



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Insurance Division

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10. The Company, *M/s. Pakistan General Insurance Company Limited* is hereby directed to deposit the aforesaid fine aggregating to Rs.50,000/- (Rupees fifty 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)