



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Nasreen Rashid, Executive Director (Insurance)

In the matter of

EFU General Insurance Limited

Show Cause Notice Issue Date: September 16, 2010
Written Reply Date: September 20, 2010 & October 1, 2010
Date of Order: November 8, 2010

ORDER

(Under Section 29 Read With Section 11(1) & Section 157 of the Insurance Ordinance, 2000)

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This Order shall dispose of the proceedings initiated against EFU General 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 states 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 states 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.

(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. 1.25 billion, as on June 30, 2010



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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. 125 million, 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. 115 million as on June 30, 2010, reporting a shortfall of Rs. 10 million.
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. 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 20, 2010, responded to the abovementioned Show Cause Notice. Their reply has been reproduced below:

"We refer to your above show cause notice dated September 16, 2010 regarding the short fall of Rs. 10,000,000, in terms of section 29 of the Insurance Ordinance, 2000, in our security deposit placed with the State Bank of Pakistan due to increase in our paid up share capital by Rs. 100,000,000 on issue of fully paid Bonus shares to the shareholders."

"We very much regret that the compliance to section 29 was inadvertently missed out by us due to rush of work and that it was not intentional. Immediately on receipt of your notice we promptly deposited the shortfall in security deposit of Rs. 10,000,000 into State Bank of Pakistan in the form of Pakistan Investment Bonds."

"We would also like to mention that our Company has always been very particular in complying with the requirements of Companies Ordinance, Insurance Ordinance, provisions of Corporate Governance etc and have been regularly contributing to the Government exchequer by paying all the taxes, Insurance levies and dues on time."

"As this being our first time we may request you to kindly condone us for the delay in the matter for which we will be highly grateful to you."

10. The Company, via its letter dated October 01, 2010, stated:



"Further to our letter dated September 20, 2010 in response to your show cause notice dated September 16, 2010 regarding delay in depositing security deposit as required under section 29 of the Insurance Ordinance, 2000, we have to state that our aforesaid letter is our only submission in the matter put before your good self for your worthy decision.

We, therefore, do not intend to appear in person and take your precious time."

Hearing of the Case

11. As stated in paragraph 10 above, at the behest of the Company, no hearing was conducted.

Consideration of Company's Submissions

12. The Company had stated in its response to the Show Cause Notice, as quoted above, that it had "inadvertently missed out" on the compliance of Section 29 of the Ordinance "due to rush of work" and "and that it was not intentional"
13. Additionally, the Company stated that it had promptly removed the deficit in their Statutory Deposit after the Show Cause Notice was issued.

Conclusion

14. 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 as well.
15. 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.
16. However, the Company did remove the deficit in its Statutory Deposit promptly after receiving the Show Cause Notice. This shows the Company's intent in complying with the law by removing any contravention promptly as and when it realized that it has committed a contravention. It appears that there was no *mala fide* intent on the part of the Company in the contravention as evidenced by their promptly removing the contravention.
17. Furthermore, the Company has generally been a law abiding company and has been compliant in fulfilling its statutory duties to date.
18. The Company has a well structured management meeting the Fit and Proper criteria, as laid down in the Ordinance. The Company is a professional organization with a qualified human resource.
19. 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
20. The Company is one of the oldest and largest companies in Pakistan. It has a total paid-up capital of Rs. 1.25 billion as on June 30, 2010, which is the one of the highest amongst the private sector



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non-life insurance companies in Pakistan, and has Reserves amounting to Rs. 8 billion, as on June 30, 2010, along with adequate reinsurance with some of the most renowned international reinsurers in the world.

21. This contravention does not appear to affect the rights and interests of the stakeholders

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 and, WARN and advise the Chief Executive, the Directors of the Company and the Company itself, to exercise due caution in the future whilst complying with the requirements of the law.

Nasreen Rashid
Executive Director (Insurance)