



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

[Karachi]

Before Nasreen Rashid, Executive Director (Insurance)

*In the matter of*

New Jubilee Insurance Limited

Show Cause Notice Issue Date: September 16, 2010  
Date of Hearing: September 30, 2010  
Date of Order: November 12, 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 New Jubilee 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*



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4. The half-yearly accounts of the Company showed the paid-up capital of the Company at Rs. 790,977,000/-, as on 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. 79,097,700/-, 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. 66 million as on June 30, 2010, reporting a shortfall of Rs. 13,097,700/-.
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 22, 2010, responded to the abovementioned Show Cause Notice and requested for a meeting to discuss the queries raised in the SCN.
10. The Company, via its letter dated September 29, 2010 stated and their reply has been reproduced below:

*"New Jubilee has always complied with all the requirements of the Insurance Ordinance, 2000 including the maintenance of minimum statutory deposit with the State Bank of Pakistan. In April, 2010, the Company has issued 20% bonus shares by transferring Rs. 131 million from retained earnings to its paid up capital and we were arranging to increase the statutory deposit by Rs. 14 million with State Bank of Pakistan to meet the shortfall resulting therefrom, when your notice was received. The amount of Rs. 14 millions has now been deposited with the State Bank of Pakistan in the form of PIBs.*

**Hearing of the Case**

11. Therefore, in order to provide an opportunity to the Chief Executive and Directors of the Company or their authorized representatives for appearing in person to explain the circumstances which had lead to non-compliance of the said provision of the Ordinance, a hearing in this matter was scheduled on September 30, 2010 at 2:30 p.m. and a hearing notice was sent to the Chief Executive and Directors of the Company on September 27, 2010.



12. The said hearing was attended by Mr. Tahir Ahmed, Chief Executive Officer and Mr. Atiq A. Mahmudi Executive Director Finance on behalf of the Directors and himself.

13. Mr. Ahmed admitted that the Company had defaulted unintentionally and also conveyed its firm commitment to ensure compliance with the law and also emphasized that it has a clean track record and has always complied with the law. The Company therefore requested the Commission to condone them.

#### Consideration of Company's Submissions

14. 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 slip of mind*" and "*it was not intentional*"

15. Additionally, the Company stated that it had promptly removed the deficit in their Statutory Deposit after the Show Cause Notice was issued.

#### Conclusion

16. I have carefully examined and given due consideration to the submissions of the Company. I am of the view that there has been a default under the relevant provision of the Ordinance. The Company has also admitted this.

17. Before proceeding further, I find it relevant to discuss the duties of the Directors & the Chief Executive. The Directors & the Chief Executive Officer 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.

18. However, the Company did remove the deficit in its Statutory Deposit promptly after receiving the Show Cause Notice. This shows the Company's intention in complying with the law by removing this contravention promptly when it realized that it has committed a contravention. It appears that there was no *mala fide* intent on the part of the Company as evidenced by their prompt action in removing the contravention.

19. Furthermore, the Company has generally been a law abiding company and has been compliant in fulfilling its statutory duties to date.

20. The Company is headed by a qualified and experienced Chief Executive Officer meeting the Fit and Proper criteria, as laid down in the Ordinance. The Company is a professional organization with a qualified human resource.

21. 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

22. The Company is one of the leading insurance companies in Pakistan. It has a total paid-up capital of Rs. 790.977 million as on June 30, 2010, and has Reserves amounting to Rs. 1.575 billion, as on June 30, 2010, along with adequate reinsurance with some of the most renowned international reinsurers in the world.



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23. This contravention does not appear to have affected the rights and interests of the stakeholders

**Order**

24. 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)