
Show Cause Notice dated 18th January, 2012. decided on 12th July, 2012

Date of hearing: 16th February. 2012

Securities and Exchange Commission of Pakistan

Before Shahid Nasim, Executive Director

CAPITAL INSURANCE COMPANY LIMITED, Muhammad Ishaq Butt, Director Capital Insurance

[Insurance Ordinance (XXXIX of 2000)]--Sections 11. 28 & 156-Failure to comply with provisions relating to 'minimum paid up share capital' and 'requirements as to capital'--Company had prima facie contravened provisions of Ss. 28 & 11(1)(a) of Insurance Ordinance. 2000 relating to the minimum paid up capital requirement--Directors and Chief Executive of the company, in addition to the day to day running of the company and the management of its business, also had some fiduciary duties i.e., duties held in trust and some wider obligations imposed by statute on them and the company--Directors and the Chief Executive of the company were supposed to be well aware of their legal obligation; and the company's legal obligation in the said matter along with the consequences of the said default--Company had not complied with the statutory requirements pertinent to the minimum paid up share capital--Company was amongst the oldest and profit making insurance companies in Pakistan--Contravention, in question did not appear to have affected the rights and interests of any of its stakeholders strictly during the period of non-compliance--Securities and Exchange Commission, in exercise of powers conferred on it under S.156 of the Insurance Ordinance. 2000, imposed a penalty of Rs.100,000 for such default/continuous default of provisions of Ss.11(1)(a) & 28 of the Insurance Ordinance, 2000--Chief Executive, the Directors and the company itself was warned and advised to exercise due caution in future while complying with the requirements of the law.

ORDER

Under section 28 read with section 11(1)(a) and section 156 of the Insurance Ordinance. 2000 SHAHID NASIM, EXECUTIVE DIRECTOR.--This Order shall dispose of the proceedings Initiated against Messrs Capital Insurance Company Limited ('the Company') for not complying with section 28 read with section 11(1)(a) 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 of all times ensure that:

(a) the provisions of this Ordinance relating to minimum paid-up share capital requirements are complied with; "

3. The relevant provisions of section 28 of the Ordinance states that:--

'28. Requirements as to capital.--(1) An insurer registered under this Ordinance to carry on insurance business shall have a paid-up capital of not less than the required minimum amount.

(2) For the purposes of this section, the required minimum amount is:

(a) one hundred and fifty million rupees, or such higher amount as may be prescribed by the Federal Government for an insurer carrying on life insurance business; and

(b) eighty million rupees or such higher amount as may be prescribed by the Federal Government, for an insurer carrying on non-life insurance business:

4. The Ministry of Commerce vide S.R.O. Notification 291(1)/2007, dated March 26, 2007, prescribed the minimum amount of-paid-up capital requirement for the insurers registered under the Ordinance. For the non-life insurers, the prescribed minimum amount- of the paid-up capital was Rs.300 million as at December 31. 2011.-

5. The unaudited financial statements for the three quarters ended September 30, 2011 reveal that the paid-up capital of the Company as on September 30, 2011 was Rs. 262,705,750. Therefore, the Commission vide its letter No. XD/ENF/Capital/2011/11096 dated November 21, 2011 advised the Company to provide its future plan as to how compliance with section 28 of the Ordinance shall be made before December 31, 2011.
6. The Company vide its letter No. C1CL/2011/377 dated November 25, 2011, which was in response to the Commission's letter of November 21, 2011, stated that the Company is fully aware of its obligation to comply with the legal statutes being enforced by the authorities, The Company further stated that the Company intends to offer right issue to the existing shareholders for the rest of the amount i.e. Rs. 37.29 million to meet the paid-up capital requirement of Rs. 300 million before close of the year 2011.
7. However., the Company via its letter No. C1CL/2011/136 dated December 28; 2011 requested the Commission to grant an extension of one year to the Company for the increase in its paid-up capital based on the fact that the right shares offered by the Company were not subscribed by the existing shareholders of the Company up to the last date of right acceptance i.e. December 28, 2011.
8. The Commission vide its letter No. ID/ ENF/ Capital Ins/2011/11862 dated January 9, 2012 refused to grant extension to the Company for the increase in paid-up capital based on the fact that the Commission has no power to grant any relaxation/exemption in this regard.
9. - Therefore, the Company has prima facie contravened the provisions of section 28 read with section 11(1)(a) of the Ordinance, relating to the minimum paid-up capital requirement as on December 31, 2011.

Show Cause Notice

10. Accordingly, the Show Cause Notice was issued on January 18, 2012 under section 28 read with section 11(1)(a) read with section 156 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 156 of the Ordinance, should not be imposed upon them and/or upon the Company for not complying with provisions of section 28 read with section 11(1)(a) of the Ordinance.

Company's Response to the Show Cause Notice

11. The Company, via its letter No.C1CL/2012/24 dated January 28, 2012, stated that the Company is not underwriting any new insurance business since January 1, 2012 for the reason that despite all its bona fide efforts, the Company has not been able to meet the paid-up capital requirement. The Company further stated that due to the reasons given in their letter dated December 28, 2011. The Company is not at faith.
12. The hearing in the matter was scheduled for February 16, 2012, which was communicated to the Company via hearing notice dated February 3, 2012.
13. The said hearing was attended by Mr. Muhammad Ishaq Butt, the Director of the Company. Brief proceedings of the hearing are as follows:--
- (a) Mr. Muhammad Ishaq Butt (the 'Company's representative) presented the Power of Attorney to act on behalf of the Chief Executive Officer and all the Directors of the Company in order to* dispose of the proceedings of the matter.
- (b) Mr. Muhammad Ishaq Butt stated that they have already submitted their reply to the Show-Cause Notice vide their letter of January 28, 2012. As a gesture of goodwill, he stated that the Company has already stopped underwriting any new business since January 1, 2012.
- (c) The Company's representative further stated that the Company has not been able to meet the minimum paid-up capital requirement, as the Company's existing shareholders did not subscribe to the offer for right issue and therefore, the Company is planning to pursue with its merger with another insurer.
- (d) The Company's representative also mentioned that the Company is looking forward to wind up as their last option i.e., in case they fail to fulfill the requirement of the Ordinance relating to the minimum paid-up share capital.
- (e) The Company's representative requested for an extension/relaxation in the requirement for minimum paid-up share capital up till June 30, 2012.
- (f) Executive Director - Insurance clarified to the Company's representative that the, Commission cannot discriminate amongst

the insurers and hence, they may not be able to relax the requirement of paid-up capital.

Consideration of Company's Submissions

The Company vide their letter No. CICL/ 2012/20 dated February 22, 2012 sought a two weeks time for filing their plan to raise the paid-up capital, stating that the Company has already stopped underwriting new business since January 1, 2012, and that the Company has, on its own motion, informed the Commission that they have failed to meet the minimum paid-up capital requirement.

15. However, the Company vide their letter No.CICL/2012/20 dated March 8, 2012 submitted their plan/option as to how they have planned to raise their paid-up capital to Rs.300 million. These options were to offer unsubscribed right shares to an investor and to consider the the prospects of merger with any other insurer.

16. The options given by the Company vide their letter of March 8, 2012 show the Company's seriousness towards the resolution of the matter However, the Company had an ample time to plan the issuance of additional shares in order to meet the statutory obligation of minimum paid-up share capital when the Commission wrote to the Company on November 21, 2011. Nevertheless, it would be pertinent to consider that the non-subscription of right shares is beyond the control of the Company itself.

17. The Commission wrote letter No. ID/ENF/Capital/2012/ 13689 dated June 6, 2012 to the Company, whereby the Company was advised to apprise about the status of enhancement of the paid up capital, as required under section 28 of the Ordinance.

18. The Company, vide their letter No. C1CL/2012/186/dated June 21, 2012 informed the Commission that the Company is still in the process of finding an investor or an opportunity of merger with another company, which revealed that the Company has still not complied with the minimum paid up capital requirements as required under section 28 of the Ordinance.

Conclusion

19. I have carefully examined and given due consideration to the written and verbal submissions of the Company, and have also referred to the 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 this as well, even prior to the issuance of the Show Cause Notice dated January 18, 2012.

20. Before proceeding any further, I find it relevant to discuss the duties of the Directors and the Chief Executive. The Directors and the Chief Executive of the 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 default.

21. As a matter of fact the Company has yet not complied with the statutory requirement pertinent to the minimum paid-up share capital.

22. The Company is amongst the oldest and profit-making insurance companies in Pakistan.

23. This contravention does not appear to have affected the rights and- interests of any of its stakeholders strictly during the period of non-compliance.

Order

24. In view of the foregoing material information, I, in exercise of powers conferred on me under section 156 the Ordinance, impose a penalty of Rs.100,000 for making such default/continuous default of the provisions of section 28 read with section 11(1) (a) of the Ordinance. The Chief Executive, the Directors and the Company itself is, hereby, warned and advised to exercise due caution in the future whilst complying with the requirements of the law.

Order accordingly