



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

[Islamabad]

Before Tahir Mahmood, Executive Director (Enforcement)

*In the matter of*

M/s. Progressive Insurance Company Limited

Number and date of show cause notice	No. EMD/233/701/2008-1948-54 dated January 27, 2009
Date of hearing	April 1, 2009
Present	No one appeared on behalf of M/s. Progressive Insurance Company Limited
Date of Order	April 30, 2009

## ORDER

(under Section 86 and Section 492 of the Companies Ordinance, 1984 read with Rule 8 of Companies (Issue of Capital) Rules, 1996)

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This order shall dispose of the proceedings initiated against the Chief Executive and directors of M/s. Progressive Insurance Company Limited (hereinafter referred to as "the Company") for making default in complying with provisions of Section 86 of the Companies Ordinance, 1984 ("the Ordinance") and also those of Rule 8 of Companies (Issue of Capital) Rules, 1996. Further, this Order shall also dispose of the proceedings initiated against them under Section 492 of the Ordinance on account of making incorrect statements in annual accounts of the Company.

2. The relevant facts for disposal of this case, briefly stated, are that in pursuance of Sub-Section (1) of Section 86 of the Ordinance, the Company while issuing further shares for increase of its capital was required to offer such shares to its members in proportion to existing shares held by each member by giving them notice specifying the number of shares to which the member is entitled and limiting a time within which the offer if not accepted will be deemed to be declined. The provisions of Section 86 of the Ordinance further necessitate that the offer shall be accompanied by a circular in the prescribed form containing material information about the affairs of the Company, latest statement of the accounts and setting forth the necessity for issue of capital.

3. During the proceedings of inspection of the Company held under Section 231 of the Ordinance (from Dec. 29 to Dec. 31, 2008), the copy of circular under Section 86(3) specified the date of acceptance of the offer as **January 10, 2005**. However, as per Form 3 filed by the Company with registrar in this behalf, the allotment of 3.5 million shares (i.e. whole amount of 70% right issue) was made through "other than by way of right issue" to Mr. Sabur Rehman on **December 29, 2004**. As a matter of fact, the Company was not authorized to issue the shares other than by way of right before the expiry of date of acceptance of the offer for right issue made to existing members of the Company.

4. The scrutiny of record pertaining to issue of shares further revealed that that 3.5 million shares were allotted to Mr. Sabur Rehman, for consideration otherwise than in cash on December 29,

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2004. The Company provided a copy of auditor's certificate dated December 28, 2004 which stated that 3.5 million shares were allotted to Mr. Sabur Rehman, in his capacity of underwriter of the right issue, against 800 acres land valued at Rs. 40 million by the *Mukhtarkar of Kharo Chand*. However, Rule 8 of the Companies (Issue of Capital) Rules, 1996 ("Rules") provides that a company may issue shares for consideration otherwise than in cash subject to the condition that the value of assets shall be determined by a consulting engineer registered with Pakistan Engineering Council and borne on the panel of at least two financial institutions as a valuer. The Company had, therefore, not fulfilled the condition set out under Rule 8 of the Rules as valuation of the land was not determined by registered consulting engineer. Summarizing the whole transaction, the Company prima facie raised further capital of Rs.35 million without issue of right shares and for consideration other than in cash, committing thereby defaults of the provisions of Section 86 as well as those of Rule 8 of the Rules.

5. As per the annual accounts of the Company for the year ended December 31, 2004, the Company increased its share capital by Rs.35 million by issuing 3.5 million ordinary shares of Rs.10 each against consideration other than in cash (property) but the cash flow statement for the aforesaid year disclosed receipt of Rs.35 million as proceeds against issue of share capital. The cash flow statement further disclosed an amount of Rs.35 million paid for purchase of land. Moreover, shares of Rs.35 million were being disclosed in the annual audited accounts of the Company for years 2004 to 2007 as "fully paid in cash" which is not a factual statement. Therefore, it appears that the Company prima facie deliberately concealed the fact of issuance of further share capital through "other than by way of issue of right issue" and "against consideration otherwise than in cash".

6. Show Cause Notice dated January 27, 2009 under Section 86 and Section 492 of the Ordinance read with Rule 8 of Companies (Issue of Capital) Rules, 1996 was issued to the Chief Executive and directors of the Company, calling upon them to explain in writing as to why appropriate action may not be taken against them under the law for the aforesaid contraventions. However, the Company vide its letter dated January 30, 2009 requested for grant of an extension of 30 days in time to submit reply to show cause notice after seeking expert opinion and directions on the issue.

7. 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 led to non-compliances with said provisions of the Ordinance, a number of hearings in this matter were scheduled on dated 11<sup>th</sup> March 2009 and 19<sup>th</sup> March 2009 but every time it was adjourned on the Company's request.

8. The final hearing of the case was fixed for April 1, 2009 and hearing notices were sent to the Chief Executive and directors of the Company wherein it was mentioned that this was final hearing opportunity and if no one appears therein on behalf of the Company, the matter would be decided ex-parte on the merits of the case. However, none of the directors or their authorized representative appeared in the final hearing of the case.

9. It has been observed that directors of the Company have not only missed out three consecutive opportunities of appearing in hearings of the case but they also failed to submit written reply to answer the queries raised in show cause notice. However, the Company kept on seeking further extension in time to defer show cause proceedings for indefinite period.



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10. The Company should have deputed an authorized representative to participate in proceedings of the hearings of the case rather than seeking adjournment for 3 consecutive times for appearance of Mr. Sabur Rehman (the Major Shareholder) who was not present in the country. Progressive Insurance Company Limited, being a public listed company, is expected to exhibit more responsible and compliant corporate behaviour but facts of the case show that its Chief Executive and directors did not comply with the provision of Section 86 of the Ordinance as well as those of Rule 8 of the Rules while raising the share capital of the Company. Further, incorrect and misleading statement was made in the annual audited accounts of the Company for years 2004 to 2007 by mentioning that shares of Rs.35 million are "fully paid in cash".

11. Based on annual accounts, statutory returns and other documents supplied by the Company during the aforesaid inspection under Section 231 of the Ordinance and in view of facts of this case, the defaults under Section 86, Section 492 of the Ordinance and Rule 8 of the Rules are established for which the Chief Executive and directors of the Company have made themselves liable for fine under Section 498, 492 of the Ordinance and Rule 11 of the Rules respectively. Therefore, I, in exercise of powers conferred under Section 498 of the Ordinance, impose a fine of Rs. 100,000/- each (Rupees Hundred thousand only) on the Chief Executive and directors of the Company individually. A further fine of Rs. 50,000/- (Rupees fifty thousand only) is imposed on each director including the Chief Executive for making default of Section 492 of the Ordinance. For contravention of Rule 8 the Rules, a fine of Rs. 1,000/- (Rupees one thousand only) is imposed on each director and the Chief Executive of the Company.

Aggregate amount of fine payable by the Chief Executive and each director of the Company is as under:-

S. No.	Name	Fine (Rs.)
1.	Mr. Kazi Kamal Ahmed, Chief Executive Officer	151,000
2.	Mr. Zaheer ul Haque, Chairman	151,000
3.	Mr. Minhaj ul Haque Siddiqui, Director	151,000
4.	Mr. Rashid Munir Ahmed, Director	151,000
5.	Mr. Waqar Ahmed, Director	151,000
6.	Mr. Saleem Ahmed, Director	151,000
7.	Mr. Naseem Ahmed, Director	151,000
	<b>Total</b>	<b>1,057,000</b>

12. The Chief Executive and directors of M/s. Progressive Insurance Company Limited are hereby directed to deposit the aforesaid fines aggregating to Rs.1,057,000/- (Rupees one million and fifty seven 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, failing which proceedings under the Land Revenue Act, 1967 shall be initiated against the Chief Executive and directors of the Company, which may result in the attachment and sale of movable and immovable property. It may please be noted that the said fines are imposed on the Chief Executive and directors in their personal capacity and they are required to pay the said amounts from their personal resources.

(Tahir Mahmood)

Executive Director (Enforcement)