



SECP  
Insurance Division  
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

*In the matter of*

Shaheen Insurance Company Limited

Show Cause Notice Issue Date: May 2, 2013

Date of Hearings: October 28, 2013

Attended By: Mr. Farhan Janjuah  
Chief Financial Officer & Company Secretary  
Mr. Sohail N. Kidwai  
Chief Operating Officer  
Mr. Aijaz Ali Khan  
Head of Operation  
Mr. Imran Hussain  
Legal Advisor

Date of Order: January 7, 2014

**ORDER**

(Under Section 99 (4) read with Section 156 of the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s Shaheen Insurance Company Limited (herein referred to as "the Company") for not complying with the provisions of Section 99 Sub-Section 4 of the Insurance Ordinance, 2000 ("the Ordinance").

**Background Facts**

2. M/s Shaheen Insurance Company Limited ("the Company") is a public limited company, incorporated under the Companies Ordinance, 1984 ("the Company Ordinance"), and its shares are quoted on all the Stock Exchanges of the Country.

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SECURITIES & EXCHANGE  
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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Insurance Division

Continuation Sheet 1

3. The relevant provision of Section 99 Sub-Section 4 of the Ordinance states that:

*"...it shall be unlawful for an agent to deduct from premium paid by and received from a policy holder any sums on account of commission due to the agent..."*

4. November 27, 2012, the Commissioner (Insurance) ordered an onsite inspection of the Company, in exercise of the powers conferred under Section 59A of the Insurance Ordinance, 2000. However the Company, vide its letter dated December 6, 2012, requested the Commission to extend the date of commencement of onsite inspection, which was acceded to by the competent authority vide letter dated December 7, 2012, and hence, onsite inspection commenced on December 17, 2012 instead of December 10, 2012 as mentioned in inspection order dated November 27, 2012.

5. During the course of the onsite inspection of the Company, the inspection team observed that the commission was adjusted against short receipts of premium, i.e. the premium was received net of commission.

6. The amount of adjusted commission during the year 2011 was Rs. 4.7 million, and during the half-year ended June 2012 this amount was Rs. 0.8 million. A couple of adjustments have been shown in the table below:

Name of Agent	Voucher number	Voucher Date	Cash received (Dr)	Accounts receivable (Cr)	Commission Adjusted (Dr)
Kashif Hussain	0300088	24-Mar-2011	22,946	34,221	11,275
Aijaz Tufail	1200021	27-Dec-2011	73,549	73,594	45
Kashif Hussain	0300020	10-Mar-2011	75,035	113,510	38,475
Mustaq Ahmad Khawaja	0400009	2-Apr-2011	69,036	79,090	10,054

7. In view of the abovementioned facts, it appeared that the Company and its agent have failed to ensure compliance with the provisions of Section 99 (4) of the Ordinance, for which the penal action as provided under Section 156 of the Ordinance

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may be taken against the Company, its Directors and above named agents of the Company.

### Show Cause Notice

8. Accordingly, the Show Cause Notice was issued on May 2, 2013 under Section 99 (4) read with Section 156 of the Ordinance to the Chief Executive and Directors and Agents of the Company, calling upon them to show cause as to why the penalty, as provided under Section 156 of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with provisions of Section 99 Sub-Section 4 of the Ordinance.

### Company's Response to the Show Cause Notice

9. In response to the said Show Cause Notice, the Company, vide their letter of May 15, 2013 requested to allow two week time for submission of the written reply of the said notice, which was allowed via letter dated May 20, 2013. In response, the Company, vide their letter of July 19, 2013, stated that:

*".....in this respect we have to submit that as pointed out by the Inspection Team we, to comply with the provision of Section 99 (4) of the Insurance Ordinance, 2000 we have taken necessary action and by issuing a Circular to our Branches have asked them to stop the practice of receiving short payment. We strictly monitor that the Branches in this regard and in due course of time this practice will completely diminished hopefully...."*

10. In view of the foregoing, the default under sub-section (4) of section 99 of the Ordinance is established and the directors of the Company have made themselves liable for a fine under section 156 of the Ordinance. The reply of the Company reveals that the Company has also taken the necessary steps to remove the default.

### Hearings of the Case & Subsequent Developments

11. The hearing in the matter was scheduled on October 28, 2013 at 3:30 P.M., accordingly, the said hearing was attended by Mr. Farhan Janjuah, Chief Financial Officer & Company Secretary, Mr. Sohel N. Kidwai, Chief Operating Officer, Mr. Aijaz Ali Khan, Head of Operation and Mr. Imran Hussain, Legal Advisor (they will be referred to as the "Company's representative" hereinafter).

12. Brief proceedings of the hearing of October 28, 2013 are as follows:

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- a. The case was briefed by the Deputy Director with the instruction of the Director Insurance, the Company's Representative replied, the Company did as per market practice, the policyholder makes underpayment and accordingly the premium stays receivable and short payment is adjusted against the commission to the respective agent. Actually agent does not deduct the premium amount;
- b. Director Insurance argued that the Company adopting wrong practice and it is ultra-virus in nature, the Company should follow laws in letter and spirit;
- c. The Company's representative admitted the Company is non-compliance of the section 99 (4) of the Ordinance and stated that the Company assured you to follow the requirement of law in letter and spirit and no such practice will adopt in future;
- d. The Company's representative also stated that as we already informed the Commission via our letter dated July 19, 2013 that after this notice the Company took immediate steps to remove this practice and issued a Circular to our Branches for strict compliance of section 99 (4) of the Ordinance, and also ensure that such practice will not be repeat in future;

#### Consideration of Company's Submissions

13. 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 an established default under the relevant provision of the Ordinance. The Company's representative have also admitted this as well and showed the commitment of the Company to fulfill the requirement and will not repeat the wrong practice in future.

14. 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 with due care. In the instant case, however, the Directors have over looked and 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 the aforesaid statutory requirement of the Section 99 (4) of the Ordinance i.e. the Directors of the Company were required to follow the laws in letter

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and spirit at any cost, therefore, it could be legitimately inferred that the default was committed.

15. The Company, being a listed concern, should have a better and proactive approach towards compliance of the applicable laws.

### Conclusion

16. 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 99 Sub-Section 4 of the Ordinance is established, and to a greater extent, the Company has also accepted its default. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed on the Company.

17. Section 156 of the Ordinance states that:

*“Penalty for default in complying with, or acting in contravention of this Ordinance.- Except as otherwise provided in this Ordinance, any insurer who makes default in complying with or acts in contravention of any requirement of this Ordinance, and, where the insurer is a company, any director, or other officer of the company, who is knowingly a party to the default, shall be punishable with fine which may extend to one million rupees and, in the case of a continuing default, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.”*

### Order

18. In exercise of the power conferred on me under Section 156 of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, condone the Company due to fact that the Company was follow the wrong market practice and ensure that such practice will not repeat in future and at the time of hearing of the show cause notice the Company has already discontinue such practice. The facts produced to me during the hearing the Principal Officer also endorsed that no policyholder were hurt and also showed their willing ness to adopt the provision of section 99 sub section 4 in letter and spirit.

Also, the Company is hereby issued a **stern warning** that in case of similar non-compliance in future a stronger action against the Company will be taken.

19. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the Chief

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
*Insurance Division*

*Continuation Sheet 5*

Executive Officer of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

**Tariq Hussain**  
Director