



INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director/HoD (Enforcement)

In the matter of

M/s. Asia Insurance Company Limited

Show Cause Notice No. and Issue Date: ID/Enf/Asia/2019/138 dated March 8, 2019

Date of Hearing: March 22, 2019

Attended By: Mr. Ihtsham-ul-Haq Qureshi
Chief Executive Officer
M/s. Asia Insurance Company Limited

Mr. Muhammad Ali Raza
Chief Financial Officer
M/s. Asia Insurance Company Limited

Mr. Hassan Pervaiz
Legal Advisor

Date of Order: March 26, 2019

ORDER

Under Clause 3 & 4 of S.R.O. 20(I)/2012 read with Section 156 of the Insurance Ordinance, 2000

.....

This Order shall dispose of the proceedings initiated against M/s. Asia Insurance Company Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Clause 3 & 4 of SRO 20(I)/2012 (the "Directive"). The Company, its Chief Executive/Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Insurance Ordinance, 2000 (the "Ordinance") to carry on non-life Insurance business and is authorized as window Takaful Operator in Pakistan.

3. The Commission initiated inspection of the Company vide order dated May 18, 2018 in terms of Section 59A of the Ordinance, which was concluded by the inspection team on December 26, 2018 by submitting the final inspection report. While examining the policy register and policy documents as maintained by the Company, the inspection team observed that the Company violated the provisions of the Directive and Circular 14 of 2013 (the "Circular") regarding customer/policyholder identification procedure for insurance contracts.

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4. During the course of inspection, the team advised the Company to provide written policy approved by the board of directors regarding assessment of policyholders. The Company, in response provided Standard Operating Procedures ("SOPs") for underwriting. While reviewing the SOPs, it was observed that SOPs were related to risk assessment of insured property and not to the insured itself. The Company's officials could not provide approved KYC policy as required under clause 3 of the Directive. Requirements in the said clause such as policyholders' background, country of origin, public or high profile position, nature of business, which were required in order to ascertain the identity of the beneficiary of the policy with respect to the sources of funds, were not being met under the current practice employed by the Company.

5. Furthermore, Clause 3(iii) of the Directive requires arrangement of formal training of staff in order to familiarize them and facilitate them to comply with the said Circular. However, it was noted that no such training program was held by the Company.

6. Furthermore, Clause 4 of the Directive requires companies to develop a risk profile of each client. However, no such practice was observed in place at the Company. The Company failed to provide any document to the inspection team showing practice of risk profiling.

7. In view of the above, it appeared to the Commission that the Company has failed to comply with the requirements of Clause 3 & 4 of the Directive.

8. Clause 3 and 4 of the Directive state that:

Clause 3 of the Directive:

"Internal procedure, policies and controls shall be developed by the insurer to determine the true identity of all existing policy holders and customers/potential policy holders and compliance of other anti-money laundering obligations. Following Internal procedures, policies and controls shall be developed by the insurers:

....

(iii) Policy and program for training for its employees regarding compliance of this directive and other anti-money laundering obligations;

...."

Clause 4 of the Directive:

"Every insurer shall classify the customers/ policy holders into high risk and low risk categories, based on the customer/ policy holder's profile and product profile. Insurer shall ensure implementation of guidelines for conducting Enhanced Customer Due Diligence when dealing with high-risk customers/ policy holders, business relationship or "transactions and when an existing low risk customer/policyholder becomes a high risk customer/policyholder...."

9. Accordingly, a Show Cause Notice (SCN) No.ID/Enf/Asia/2019/138 dated March 8, 2019 was issued to the Respondents, calling upon them to show cause as to



why the fine as provided under Section 156 of the Ordinance should not be imposed on them for the aforementioned alleged contraventions of the law.

10. Meanwhile, the Commission vide its letter dated March 15, 2019 bearing no. ID/Enf/Asia/2019/236 scheduled the hearing on March 22, 2019 at the Head Office of the Commission in Islamabad. The Company Secretary vide letter dated March 16, 2019 and the legal Counsel through email dated March 18, 2019 sought an additional time to respond to the SCN. However, the request for extension in the hearing date was not acceded to and the Company's legal advisor was advised that the hearing would be held as per the schedule i.e. March 22, 2019.

11. The hearing of March 22, 2019 was attended in person by CEO of the Company, Mr. Ihtsham-ul-Haq Qureshi along with other Authorized Representatives of the Respondents namely Mr. M. Ali Raza and Mr. Hassan Pervaiz at the Head Office of the Commission in Islamabad.

12. The comments submitted by the Authorized Representatives during the hearing are summarized hereunder:-

- i. The Company has prepared and enforced 'Risk Management Policy' as well as 'Know Your Customer Policy' for risk assessment of the policyholders and for their risk profiling. The Company has also taken appropriate measures to counter money laundering and terrorism financing risks in accordance with the Anti Money Laundering and Countering Financing of Terrorism Regulations, 2018. It may also be noted that the Company has been conducting regular training of its employees to ensure the implementation of the relevant policies and directions.
- ii. The KYC Directive has been repealed by the 2018 Regulations. Therefore, the SCN is liable to be withdrawn as it is based on alleged violations of the Directive, which is no more in field. The Company is committed to strictly comply with the prescriptions of the 2018 Regulations.
- iii. With regard to period prior to the 2018 Regulations, it is pointed out that the Company was compliant with all laws as per the procedures adopted and applied by all the industry. In this regard, it is specifically pointed out that the Company was conducting majority of its business through third parties i.e. financial institutions. Such financial institutions were in due compliance with the Regulations and requirements of Customer Due Diligence. Furthermore, the KYC Directive and its scope was also not very clearly evident to the industry. Therefore, it is evident that under the principles of substantial compliance, the steps taken by the Company are considered compliant to the KYC Directive.
- iv. That the Company has not committed any violation, and the Show Cause Notice is liable to be withdrawn.

- v. The Commission had, vide email dated October 22, 2018, advised the Company to provide "Company's policy and SOPs for underwriting" and the said SOPs/policy were duly provided by the Company. It may also be noted that the Company had previously shared with the Commission both 'Risk Management Policy' and 'Know Your Customer Policy' vide its letter dated September 4, 2018.
- vi. The Company has enacted a risk profiling mechanism as per law. Additionally, majority of the Company's clients come through third parties i.e. financial institution, hence Customer Due Diligence is conducted in accordance with the regulations. As noted in earlier correspondence, the Company does not have any politically exposed or high-risk customer (which require Enhanced Due Diligence).
- vii. The Company has been conducting regular trainings of its employees to ensure implementation of the 2018 Regulations and applicable policies. Additionally, the employees of the Company have also attended a conference arranged by the Commission in this respect.
- viii. The Company has not committed any violation and that the SCN may kindly be withdrawn, and no penalty may be imposed on the Company.
- ix. Even otherwise, the Company affirms that it has taken in the past and continues to take all the possible steps to ensure compliance with all the laws, rules and guidelines.
- x. During the hearing, the Authorized Representatives requested the Commission to take lenient view in the matter

13. The Respondents have stated that the Directive has been repealed by the notification of Anti Money Laundering and Countering Financing of Terrorism Regulations, 2018 (the "2018 Regulations"). Therefore, the Show Cause Notice is liable to be withdrawn as it is based on alleged violations of a Directive, which is no more in field. In this regard, attention of the Respondents is drawn towards Regulation 22 of the 2018 Regulations, which provides for the repeal of various legislative instrument including SRO 20(I)/2012 through which all the insurers were given directive to counter the potential threat of usage of their services for money laundering. However, it is important to note that 2018 Regulations apply across the regulated entities by the Commission under its administered laws. Regulation 22 provides for repeal of other legislative instruments issued earlier by the Commission for prevention of money laundering. In terms of sub-regulation (2) saving to action initiated under the repealed instruments has been provided.

14. Furthermore, as per Section 6 of the General Clauses Act, 1897, repeal shall not affect the previous operation of the enactment so repealed. It also provides that repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. It further provides that such repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege,

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obligation, liability, penalty, forfeiture or punishment as aforesaid. Section 6 of the General Clauses Act, 1897 is reproduced below:

"6. Effect of repeal – Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not- Revive anything not in force or existing at the time at which the repeal takes effect, or Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid."

15. Further protection is also provided under the Constitution of Pakistan 1973 under Article 264, which while providing effect of repeal, has provided that any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the Law had not been repealed. Article 264 is reproduced below:-

"264. Effect or repeal of laws.- Where a law is repealed or is deemed to have been repealed, by, under, or by virtue of the Constitution, the repeal shall not except as otherwise provided in the constitution

- (a) revive anything not in force or existing at the time at which the repeal takes effect;*
- (b) affect the previous operation of the law or anything duly done or suffered under the law;*
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law;*
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law; or*
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;*

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the law had not been repealed. "

16. Therefore, in light of the foregoing provisions of the General Clauses Act, 1897 and Constitution of Pakistan, 1973, the Commission may issue a show cause notice for violation of the mandatory provisions of the Directive and corresponding penalty may be imposed thereon for the period when the said Directive was in field.

17. In terms of Clause 3 of the Directive, the Company was required to develop internal procedures, policies and controls to determine the true identity of all existing policy holders and customers/ potential policy holders and to ensure compliance of the anti-money laundering obligations. At the time of inspection, the Company provided

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its underwriting SOPs. Those SOPs were related to risk assessment criteria with reference to different classes of business. The Company did not define any procedure in its underwriting SOPs regarding KYC of its policyholders. Moreover, Clause 3(iii) of the Directive required the Company to have policy and program for training of its employees regarding compliance with the Directive and other anti-money laundering obligations. At the time of inspection, it was noted that no training program had been held by the Company.

18. In addition, Clause 4 of the Directive required that every insurer shall classify the customers/ policy holders into high risk and low risk categories, based on the customer/ policy holder's profile and product profile. However, the inspection team did not find any evidence relating to risk profiling of policyholders.

19. The Company contended that it had shared with the Commission both 'Risk Management Policy' and 'Know Your Customer Policy' vide its letter dated September 4, 2018. However, the Company did not provide evidence that it had complied with the Directive during the period under review by the inspection team i.e. until December 31, 2017. During the said period, the Company was unable to fully comply with the requirements of the Directive. The Company was maintaining single page policy document without proper identification of customers. The Company was non-compliant with the Directive for the year 2017 and before that. It appears that the Company's policy was approved in September 2018; however, Directive was enforced even prior to that i.e. since 2012.

20. In view of the above discussion, the non-compliances with the Directive during the period until December 31, 2017 are summarized hereunder;

- a) The Company had no approved KYC policy in terms of Clause 3 of the Directive;
- b) No evidence was found to establish that the risk profiling of customers was carried out in terms of Clause 4 of the Directive; and.
- c) No training of staff was carried out by the Company as required under Clause 3(iii) of the Directive.

21. I have carefully examined and given due consideration to the written and verbal submissions of the Respondents, and have also referred to the provisions of the Ordinance, the Rules made thereunder and/or other legal references. I am of the view that the violations of Clause 3 and 4 of the Directive, are clearly established, for which the Respondents may be penalized in terms of Section 156 of the Ordinance.

22. Section 156 of the Ordinance provides 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, or any direction made by the Commission, the Commission shall have the power to impose fine on the insurer, 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

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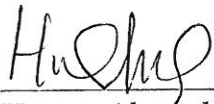
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fine which may extend to one million rupees and, in the case of a continuing default, with an additional fine which may extend to ten thousand rupees for every day during which the default continues."

23. In exercise of the power conferred on me under Section 156 of the Ordinance, I, take a lenient view and do not impose fine on Board of Directors of the Company. However, I impose a fine of Rs. 50,000/- (Rupees Fifty Thousand) on the Company under the said provision of the Ordinance, due to the non-compliances, as mentioned hereinabove. Furthermore, the Respondents are hereby warned and directed to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

24. Hence, the Company is hereby directed to deposit the applicable fine 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 date of this Order and furnish receipted vouchers issued in the name of the Commission for information and record.

25. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the CEO of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.



Hasnat Ahmad
Director/HOD (Enforcement)

