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SECP
INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director (Enforcement)

In the matter of

M/s. Asia Insurance Company Limited

Show Cause Notice No. and Date : ID/Enf/Asia/2019/133 Dated March 08, 2019

Date of Hearing: April 23, 2019

Attended By:

1. Mr. Ihtisham-ul-Haq Qureshi
Chief Executive Officer
M/s. Asia Insurance Company Limited.
2. Mr. Muhammad Ali Raza
Chief Financial Officer
M/s. Asia Insurance Company Limited.
3. Mr. Rashid Sadiq
Authorized Representative

Date of Order: July 3, 2019

ORDER

Under Rule 34, Rule 35 and Rule 36 of the Insurance Rules, 2017, Section 97, Section 98 and Section 99 of the Insurance ordinance, 2000, Para 18 of the International Accounting Standard 24 and Regulation 3(2) of the Insurance Accounting Regulations, 2017 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 Rule 34, Rule 35 and Rule 36 of the Insurance Rules, 2017 (the "Rules"), Section 97, Section 98 and Section 99 of the Insurance Ordinance, 2000 (the "Ordinance"), Para 18 of the International Accounting Standard (the "IAS") 24, Regulation 3(2) of the Insurance Accounting Regulations, 2017 (the "Accounting Regulations"). The Company and its Directors shall be referred to as the "Respondents" hereinafter.

2. The Company is registered with the Securities and Exchange Commission of Pakistan (the "Commission") under the Ordinance to carry on general/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 under Section 59A of the Ordinance, which was concluded by the inspection team on December 26, 2018 by submitting the final inspection report. The inspection team observed various issues pertaining to agency and insurance commission.

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4. The inspection team identified several instances, where the Company collected premium from the agents net off commission. According to sub-section (1) of Section 99 of the Ordinance, any sum received by an agent from a policyholder is considered to be held on trust for the insurer. The agents violated their fiduciary relationship as agents of the Company by failing to pass on the entire premium to the Company received from the policyholders in violation of sub-section (1) of Section 99 of the Ordinance. Sub-section (4) of Section 99 of the Ordinance prohibits deduction of commission from the premium received by the agent from the policyholders. An agent Mr. Muhammad Jameel withheld entire amount of the Commission; whereas in two other instances, part of the Commission was withheld by the agent and the remaining commission was paid later.

5. While examining the registers maintained by the Company, it was observed that there were number of persons shown as agents in premium register, however their names did not appear in the agents register. Hence, it appeared that the Company contravened the provisions of Section 98(3) of the Ordinance, which states that it shall be an offence for an insurer to use an agent who has not been included on the agents register.

6. Moreover, the agents register of the Company was examined in light of the provisions under Section 96 to 98 of the Ordinance read with the Rules. It was observed that the dates of appointment or registration of agents was not mentioned in the register as required under the Rules. Further, it was also observed that there were some body corporates appearing in the agents register i.e. EFU Sialkot Main BR, ROMA F, Security F, Atlas F, Alfalah F; the details of such body corporates, however, were not disclosed in the agents register. Therefore, it appeared that the Company violated the provisions of Section 98(1) of the Ordinance read with the Rules by maintaining agents register in an incomplete manner.

7. In addition to the above, the minimum qualification for agents has been prescribed under Rule 34 of the Rules read with Section 97 of the Ordinance. The inspection team selected ten files of the agents as sample from all the files provided by the Company. The Inspection Team thereby observed that evidence of prescribed minimum qualification attained by the agents was not available in the following files, in contravention with Rule 34 of the Rules:-

Sr. #	Agent Name	Date of Appointment
1	Hina Rizvi	01.01.2017
2	Muhammad Akram	17.06.2017
3	Ghazal Nisar	24.03.2017
4	Muhammad Sanaullah	02.07.2014
5	Ahmed Ali Solangi	01.01.2017
6	Abida Zia	13.01.2017
7	Batool Fatima	16.09.2017
8	Muhammad Musab Sharif	21.10.2017

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8. It was also observed by the inspection team that Agents Foundation Course Certificates were not available with the Company for the entire selected sample. Hence, the Company violated Rule 34 of the Rules read with Section 97 of the Ordinance. Following is the list of all ten sample cases wherein no evidence of completion of Agents Foundation Course was given.

Sr. #	Agent Name	Date of Appointment
1	Hina Rizvi	01.01.2017
2	Muhammad Akram	17.06.2017
3	Ghazal Nisar	24.03.2017
4	Bushra Shakeel	01.04.2017
5	Muhammad Sanaullah	02.07.2014
6	Ahmed Ali Solangi	01.01.2017
7	Abida Zia	13.01.2017
8	Batool Fatima	16.09.2017
9	Muhammad Musab Sharif	21.10.2017
10	Mrs. Amna	04.08.2018

9. Further, the Company in Note 35 to the financial statements for the year 2017 (Related Party Transactions) disclosed payment of commission of Rs. 20.6 million to related parties of the Directors. The inspection team, however, observed that payment of Rs. 23.8 million was made as commission to the related parties, indicating understatement of commission payment to the related parties of the directors in the financial statements. Moreover, the Company did not record payment of commission amounting to Rs. 1.172 million to an agent Mr. Rana Faisal Iqbal. The Company understated the payment of commission to related parties and did not record payment of commission to an agent in violation of disclosure requirement of para 18 of IAS 24 read with Regulation 3(2) of the Accounting Regulations.

10. During the course of inspection, it was observed that vouchers provided with the claim files and the commission payment evidences were not signed by the authorized persons. Detail of some of the vouchers is given below:

- i. BP/35/03/01/001607/2017 dated 20.03.2017 amounting to Rs. 57,297/-
- ii. BP/35/01/01/001479/2017 dated 11.03.2017 amounting to Rs. 101,546/-
- iii. BP/35/05/01/002575/2017 dated 09.05.2017 amounting to Rs. 769,767/-
- iv. BP/35/05/01/002587/2017 dated 10.05.2017 amounting to Rs. 117,084/-
- v. BP/48/01/01/000002/2017 dated 19.01.2017 amounting to Rs. 4,000,000/-
- vi. BP/48/01/01/000031/2017 dated 07.08.2017 amounting to Rs. 5,202,309/-

11. The inspection team also observed that the vouchers were not supported by complete details in case of commission payments. The details of policies, against which commission payment was made, were missing. Some of the instances observed by the inspection team are given below:-

- i. BP/35/03/01/001479/2017 dated 11.03.2017 amounting to Rs. 101,456/-
- ii. BP/35/05/01/002587/2017 dated 10.05.2017 amounting to Rs. 117,084/-

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iii. BP/35/04/01/001901/2017 dated 04.04.2017 amounting to Rs. 64,795/-

12. In view of the above, it appeared that the Company failed to comply with the provisions of Rule 34, Rule 35 & Rule 36 of the Rules, Section 97, Section 98 & Section 99 of the Ordinance, Regulation 3(2) of the Accounting Regulations and para 18 of the IAS 24.

13. Rule 34¹ of the Rules states that:

"Qualifications required of insurance agents.- For the purposes of Section 97 of the Ordinance, the following shall be the prescribed qualifications, namely:-...

(b) for persons entering into agency contracts after commencement of the Ordinance, the minimum qualification shall be Matriculate or Secondary School Certificate, and in the case of a natural person, that person, or in the case of a body corporate, each director, or in the case of a partnership, each partner, shall have the said qualification, and -

(i) agents operating in the non-life insurance business shall be required to complete the foundation course of the Pakistan Insurance Institute or a foundation course of thirty days' duration, to be organized in-house by the concerned insurance company, subject to that insurance company having prior approval of the course syllabus by the Commission..."

14. Rule 35² of the Rules states that:

"Registration of insurance agents.- Every insurer shall, in the register required to be kept by it for the purposes of sub -section (1) of section 98 of the Ordinance, maintain the following details in respect of each insurance agent, namely:

(a) For a natural person:

- (i) his name;*
- (ii) his date of birth;*
- (iii) his residential address;*
- (iv) his postal address (if different);*
- (v) the names of persons employed by the insurance agent for the purpose of carrying out the business of an insurance agent;*
- (vi) the date of appointment and his registration; and*
- (vii) such other particulars as may be specified by the Commission.*

(b) For a body corporate:

- (i) its name;*
- (ii) the address of its registered office;*
- (iii) its postal address (if different);*
- (iv) a description of the business carried on by it (other than insurance agent);*
- (v) the names of shareholders holding more than ten per cent of the issued share capital;*

¹ Rule 26 of the Securities and Exchange Commission (Insurance) Rules, 2002

² Rule 11 of the Insurance Rules, 2002

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- (vi) the date of appointment and its registration; and
- (vii) such other particulars as may be specified by the Commission.

(c) For a firm:

- (i) its name;
- (ii) the address of its principal office;
- (iii) its postal address (if different);
- (iv) a description of the business carried on by it (other than insurance agent);
- (v) the names of the partners in the firm; and
- (vi) the date of appointment and its registration."

15. Rule 36³ of the Rules states as follows:

"Statement and declaration required of insurance agents.- (1) Every insurer shall, before appointing an insurance agent, and thereafter at intervals of not less than twelve months, obtain from every insurance agent continuing to be appointed by it a statement of the information required under Rule 35 to be held by it in its register.

(2) Every statement obtained under sub-rule (1) shall be accompanied by a declaration by the insurance agent stating that –

- (a) the information given by him in accordance with sub-rule (1) is complete and correct;
- (b) he has complied with the requirements of the Ordinance and the rules made thereunder concerning the required qualifications of an agent;
- (c) he is (in the case of an existing agent) engaged or (in the case of an agent seeking appointment) proposes to engage bona fide in obtaining insurance policies for the insurer to whom the declaration is made;
- (d) he undertakes to comply, and (in the case of an existing agent) declares that he has during the previous twelve months complied with the relevant provisions of the Ordinance and the rules made thereunder concerning the conduct of an agent; and
- (e) he, or, in the case of a body corporate, any director of the body corporate, or officer of the body corporate engaging in the business of insurance agency, or, in the case of a firm, any partner of the firm, or officer of the firm engaging in the business of insurance agency, is not disqualified from acting as an insurance agent by virtue of:-
 - (i) being a minor;
 - (ii) having been found of unsound mind by a Court of competent jurisdiction;
 - (iii) having been found guilty, within the five years preceding the date of the declaration, of criminal misappropriation or criminal breach of trust, cheating or forgery or an abetment of or attempt to commit any such offence by a Court of competent jurisdiction;

³ Rule 12 of the Insurance Rules, 2002

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- (iv) *having served any custodial sentence imposed by a Court of competent jurisdiction, ending within the five years preceding the date of the declaration;*
- (v) *having been found guilty by a Court of competent jurisdiction of any offence involving insurance; or*
- (vi) *having been otherwise declared as disqualified by the Insurance Tribunal, other than for a term which had expired prior to the date of the declaration..."*

16. Section 97 of the Ordinance states that:

"Minimum qualifications for agents.- The Commission may prescribe minimum qualifications for persons appointed as insurance agents, which may extend to educational requirements, experience in the industry and membership of an approved trade or professional organisation."

17. Section 98(1) & (2) of the Ordinance provides as stated hereunder:

"Insurer to maintain register of agents.- (1) An insurer shall maintain a register of all agents employed by the insurer, containing such particulars as may be prescribed..."

(2) Prior to appointing a person as its agent, and at intervals of not more than twelve months thereafter during the time the person continues to act as its agent, an insurer shall obtain from that person in such form as may be prescribed, a declaration in respect of the following matters:

- (a) the information provided by him for inclusion in the register referred to in subsection (1) is complete and correct;*
- (b) he has complied with the requirements of the Ordinance concerning the qualifications of agents; and*
- (c) such other matters as may be prescribed."*

18. Section 99 of the Ordinance states as under:

"Payments by and to insurance agents.- (1) Any sums received by an insurance agent from a policy holder or an insurer, other than remuneration payable to the agent by the insurer, shall be deemed to be held on trust for the insurer. Payment by a policy holder to an insurance agent shall be deemed to constitute payment to the insurer.

(2) Any payment to which sub-section (1) applies shall be passed on to the insurer or the policy holder (as the case may be) as soon as practicable and in any case not later than two weeks from receipt by the agent.

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(3) No insurance agent shall, except with the approval of the insurer who is the agent's principal, pay to or receive from a policy holder or intending policy holder any sums in relation to a contract of insurance:

Provided that this sub-section shall not operate to relieve any person from a liability to which that person is otherwise subject by the operation of this Ordinance.

(4) It shall be unlawful for an agent to deduct from premiums paid by and received from a policy holder any sums on account of commission due to the agent.

(5) No payment of commission or other remuneration to an insurance agent shall be made otherwise than by a crossed cheque, pay order or electronic funds transfer or in such other manner as may be prescribed: *Provided that this sub-section shall not apply to payments to an agent which do not in the aggregate in one year exceed the sum of five thousand rupees.*"

19. Para 18 of the IAS 24 states that:

"If an entity has had related party transactions during the periods covered by the financial statements, it shall disclose the nature of the related party relationship as well as information about those transactions and outstanding balances, including commitments, necessary for users to understand the potential effect of the relationship on the financial statements. These disclosure requirements are in addition to those in paragraph 17. At a minimum, disclosures shall include:

- (a) *the amount of the transactions;*
- (b) *the amount of the outstanding balances, including commitments, and:*
 - (i) *their terms and conditions, including whether they are secured, and the nature of the consideration to be provided in settlement; and*
 - (ii) *details of any guarantees given or received;*
- (c) *provisions for doubtful debts related to the amount of outstanding balances; and*
- (d) *the expense recognized during the period in respect of bad or doubtful debts due from related parties"*

20. Regulation 3(2) of the Accounting Regulations state as follows:

"Every insurer shall comply, so far as concerns recognition and measurement of assets, liabilities, expenses and revenues, with International Financial Reporting Standards which are adopted by the Institute of Chartered Accountants of Pakistan and notified by the Commission."

21. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/Asia/2019/133 dated March 08, 2019 was issued to the Respondents, calling upon them to show cause as to

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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.

22. Thereafter, the Commission, vide its notice no. ID/Enf/Asia/2019/237 dated March 15, 2019, scheduled the hearing for March 22, 2019. The said hearing was adjourned on the request of the Authorized Representative and therefore was rescheduled for April 23, 2019 at Head Office of the Commission.

23. Meanwhile, the Company vide letter dated April 19, 2019 submitted the reply in respect of the aforesaid SCN through its Authorized Representative, which is reproduced below:

"...

- i) *Para 1 of the Notice is by way of introduction of the Company and therefore needs no reply.*
- ii) *Para 2 to Para 9 of the Notice reproduce the various provisions of law under which the Commission wishes to proceed against the Company and its directors and, therefore, needs no reply.*
- iii) *Para 10 of the Notice records the fact of initiation of inspection under Section 59A of the Ordinance through the order of the Commission dated 18 May, 2018 and the conclusion thereof on 26 December, 2018 by submission of the final inspection report. In relation to this observation you will appreciate that:*
 - a) *The Company acknowledges the position as noted by the Commission and asks the Commission to appreciate the willingness of the Company to comply with the findings of the Commission as communicated to the Company vide the Letter of Findings dated 02 November, 2018.*
 - b) *Through the reply of the Chief Executive Officer (the 'CEO') of the Company dated 04 December, 2018, that the Company welcomes the supervision of the Commission through inspection to better enable it to remain compliant with the requirements of the law and is more than willing to acknowledge the possibility of lapses with legal compliance and assures the Commission that any such lapses are a result of inadvertent oversight which will not be repeated once rectified under the guidance of the Commission.*
- iv) *Para 11 of the Notice relates to the observation of the Commission that the Company was collecting premium from its agent net of commission contrary to the provisions of Section 99 of the Ordinance. In relation to this observation you will appreciate that:*
 - a) *The Company has formulated policy in respect of collection of premium and has clearly mentioned on the policy document that full amount of premium through crossed cheque in favour of the Company should be paid by the client either directly to the Company or through the agent of the Company and that ordinarily the Company receives the full payment.*

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- b) *There are rare instances, due to general market practices, where the full premium amount is not received by the Company. In such cases the shortfall is duly recovered by the Company.*
- c) *It may also be appreciated that the law recognizes the insurer as the beneficiary of all sums received by its agent who is in turn to hold such sums in trust for the insurer. In the circumstances, you will appreciate that the Company cannot be found in violation of the provisions of Section 99 of the Ordinance but is in fact entitled to relief pursuant to such provisions where an agent may be found in violation of its fiduciary duty and the Company wished to pursue legal remedies available to it under the Ordinance.*
- v) *Para 12 of the Notice observes that, while examining the register of policies maintained by the Company, certain persons were listed in the 'premium register' as agents yet the register of agents to be maintained pursuant to Section 98(1) of the Ordinance read with Rule 35 of the Rules bore no details in relation to such persons. In relation to this observation please note as under.*
- a) *The Company maintains a register of agents as required by law and in accordance with the provisions of the applicable law.*
- b) *The availability of this internal document has no bearing on the contents of the register of agents which the Company asserts is the true reflection of agents employed by the Company.*
- c) *Accordingly, it is reasserted that only those persons who are listed in the agents register are actual agents of the Company entitled to payment of commission if and when payable.*
- vi) *Para 13 of the Notice observes that the agents register has not been properly maintained where the register does not document the dates of appointment or registration of agents and that, additionally, there are some corporates appearing in the agents register, i.e. EFU Sialkot Main BR, ROMA F, Security F, Atlas F, Alfalah F, the details of which have not been disclosed in the agents register. In this respect, the Company assures the Commission that the agents register contains all the requisite details of all agents whether they be corporate or natural persons. A copy of the agents register has been shared by the Company with the Commission and reflects the true picture with regards to all agents employed by the Company and the Commission will be pleased to note that the requisite disclosures as to corporate agents have been made.*
- vii) *Para 14 of the Notice observes that evidence of the minimum qualification prescribed under Rule 34 of the Rules read with Section 97 of the Ordinance is not available in the files of the eight agents listed hereunder. In relation to this observation please note the response of the Company in relation to each agent as under:*

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Sr. No.	Name of Agent	Date of Appointment	Current Status	Company Response
1.	Hina Rizvi	01 January, 2017	Contract not renewed	The agency was established through and on request of branch of Mr. Iqbal Macha and due to his death on 6 September, 2017 the required documents could not be provided to the head office, and subsequently agency closed in the start of 2018, due to failure to provide documents.
2.	Mohammad Akram	17 June, 2017	Active Agent	The CV of Mr. Akram is in his file mentioning his qualification as FA.
3.	Ghazala Nisar	24 March, 2017	Contract not renewed	She was agent for short time and qualification documents were requested, however, she did not provide the same and, therefore, the contract was not renewed.
4.	Muhammad Sanaullah	02 July, 2017	Active Agent - Contract renewed on 20 April, 2018	His qualification documents are in his file.
5.	Ahmed Ali Solangi	01 January, 2017	Contract not renewed	His qualification is FA, however, qualification documents were requested but he failed to provide the same and therefore his contract was not renewed.
6.	Abida Zia	13 January, 2017	Contract not renewed	She is MA B.Ed, however, requisite documents were not provided and therefore her contract was not renewed.
7.	Batool Fatima	16 September, 2017	Contract not renewed	Her CV is in her file showing her qualification as MA, however, due to failure to provide requisite documentation her contract has not been renewed.
8.	Muhammad Musab Sharif	21 October, 2017	Active Agent	Qualification documents are available in his file. He is an A level graduate.

a) You will appreciate that since promulgation of the Rules on 9 February, 2017, no person who has not provided evidence in support of the qualifying criteria has been retained as an agent of the Company thereby indicating the intent of the Company to remain compliant with the most recent applicable law.

viii) Para 15 of the Notice observes that the Agent Foundation Course Certificates were not available with the Company for the following ten agents of the Company in contravention of the provisions of Rule 34 of the Rules read with Section 97 of the Ordinance. The Company responds to the observation as under;

Sr. No.	Name of Agent	Date of Appointment	Current Status	Company Response
1.	Hina Rizvi	01 January, 2017	Contract not renewed	She is no longer an agent of the Company.
2.	Mohammad Akram	17 June, 2017	Active Agent	This inadvertent lapse may please be excused. The Company is in the process of securing his certification.
3.	Ghazala Nisar	24 March, 2017	Contract not renewed	She was agent for short time and qualification documents were requested, however, she did not provide the same and, therefore, the contract was not renewed.
4.	Bushra Shakeel	01 April, 2017		Qualification documents as well as the requisite Agent Foundation Course Certificate is in her file.
54.	Muhammad Sanaullah	02 July, 2017	Active Agent - Contract renewed on 20 April, 2018	His qualification documents as well as the requisite Agent Foundation Course Certificate is in his file.

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6.	Ahmed Ali Solangi	01 January, 2017	Contract not renewed	He is no longer an agent of the Company.
7.	Abida Zia	13 January, 2017	Contract not renewed	She is no longer an agent of the Company.
8.	Batool Fatima	16 September, 2017	Contract not renewed	Her contract of agency ended before conclusion of a year due to failure to produce the requisite documentation.
9.	Muhammad Musab Sharif	21 October, 2017	Active Agent	He was registered with the Lahore Insurance Institute for purposes of completing the requisite certification, however, we have been informed that he was absent on the day of the exam. The requisite measures are being taken to rectify.
10.	Mrs. Anna	04 August, 2018	Active Agent - Contract of agency valid up to 04 August, 2019	It may be noted that, as per the provisions of Rule 34(c) of the Rules, an allowance of a year from the date of agency contract for completion of the requisite course for persons employed after 30 June, 2017 has been provided and for the agent in question that year will expire on 04 August, 2019. The Company assures the SECP that all measures will be taken to have the agent certified as required within the stipulated time.

ix) Para 16 of the Notice relates to observations of the inspection team in relation to commission paid out to agents and related parties in violation of disclosure requirements of para 18 of IAS 24 read with Regulation 3(2) of the Regulations. In this regard please note as under;

(a) The figures for the related party transaction are calculated manually, through the conversion of reports generated in PDF by our ERP system, which then again is converted in excel format and processed it seems that somewhere in the process figures went wrong. There was no intent of misquoting the figures and the difference is rather nominal. The mistake was unintentional and inadvertent.

In light of above, it is requested that the worthy Commission may take lenient view against the Company and withdraw the SCN.

(b) Payment of commission to Mr. Rana Faisal Iqbal: The Ordinance and Rules do not compel the payment of the commission to the agents on each and every policy. The decision to make payment of the commission are made by the management of the Company on a case to case basis. In light thereof, payments of the commission have not been understated by the Company.

a. Para 17 of the Notice relates to observations of the inspection team that vouchers provided with the claims files and commission payment evidences were not signed by authorized persons. In this regard, please note the response of the Company in relation to each mentioned voucher as under:

Sr. No.	Voucher No. and amount	Company Response
i)	BP/35/03/01/001607/2017 dated 20.03.2017 amounting to Rs. 57,297/-	The voucher has duly been signed by the preparer and the CFO.
ii)	BP/35/01/01/001479/2017 dated 11.03.2017 amounting to Rs. 101, 546/-	The voucher has duly been signed by the preparer and the CFO.



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iii)	BP/35/05/01/002575/2017 dated 09.05.2017 amounting to Rs. 769, 767/-	The voucher has duly been signed by the preparer, the CFO and also by the CEO.
iv)	BP/35/05/01/002587/2017 dated 10.05.2017 amounting to Rs. 117,084/-	The voucher has duly been signed by the preparer and the CFO.
v)	BP/48/01/04/000002/2017 dated 19.01.2017 amounting to Rs. 4,000,000/-	The voucher has duly been signed by the preparer, checker, the CFO and also by the CEO.
vi)	BP/48/08/01/000031/2017 dated 07.08.2017 amounting to Rs. 5,202,309/-	The voucher has duly been signed by the preparer, checker and also by the CEO

We wish to state that the Company has stringent controls over the payments. All vouchers are signed by the authorized personnels, and approval is granted by CFO or CEO.

All voucher generated are duly supported by working / evidence / supporting / details / summaries and other relevant documents necessary for making the payment either in soft form or hard form. The working / evidence / supporting / details / summaries and other relevant documents of mentioned vouchers were in soft form. Sometimes the working / evidence / supporting / details / summaries consists of number of pages and are not printed to save the cost as it is available electronically.

However, these documents are available electronically and easily accessible. Furthermore, hard copies of these documents can be generated at any time. In this regard, please note that there is no clarity as to which provision of law has been violated as a result of this perceived lapse in procedure.

- b. Para 18 of the Notice relates to the observation of the inspection team in relation to commission payments and lack of complete details of the same in support of vouchers. Details of policies against which commission was paid was found missing. The following instances have been cited in the SCN against which the Company's response may be noted:

Sr. No.	Policy No. and Amount	Company Response
i)	BP/35/01/01/001479/2017 dated 11.03.2017 amounting to Rs.101,546/-	Supporting printed from soft copy available in the system for your kind perusal.
ii)	BP/35/05/01/002587/2017 dated 10.05.2017 amounting to Rs. 117,084/-	Supporting printed from soft copy available in the system for your kind perusal.
iii)	BP/35/04/01/001901/2017 dated 04.04.2017 amounting to Rs.64,795/-	Supporting printed from soft copy available in the system for your kind perusal.

- c. Para 19 of the Notice reproduces the text of Section 156 of the Ordinance after listing the provisions of the law which the Commission perceives have been violated. It is, however, contended that none of the directors has either knowingly or willingly permitted or contravened the requirements of the applicable provisions and, therefore, it is respectfully submitted that the provisions of Section 156 of the Ordinance are not attracted.

..."

24. The hearing of April 23, 2019 was attended by Mr. Ihtisham-ul-Haq Qureshi (Chief Executive Officer), Mr. Muhammad Ali Raza (Chief Financial Officer) and Mr. Rashid Sadiq (the Authorized Representative) at the Head Office of the Commission. The arguments presented by the Authorized Representative are summarized below;

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- i. The Authorized Representative reiterated his comments submitted vide letter dated April 19, 2019 and contended that complete inspection report should have been provided to the Company as it is the legal right of the Company to have access to the said document.
- ii. Further, he also argued that provisions of Section 99 of the Ordinance can be invoked against the agent and not the Respondents as the said violation was committed by the agent in his individual capacity and the Respondents did not reap any benefit from it.
- iii. While discussing the matter of obtaining annual declaration from the agents as required under Rule 36 of the Rules, the Authorized Representative and the Respondents apprised that said declaration is obtained at the time of initial appointment but not on subsequent annual basis.
- iv. They further contended that all the agents employed by the Company meet the qualification criteria as set out under Rule 34 of the Rules and that all such agents have also completed the Agents Foundation Course (AFC).
- v. Regarding unsigned or unsupported vouchers in respect of claim files and commission payments, the Authorized Representative as well as the Respondents held that all the vouchers related to claim payments and commission payments were duly signed by the authorized officials.

25. I have perused the written comments and arguments presented by the Respondents and the Authorized Representative during the hearing. As per the requirements of Section 99(1) of the Ordinance, the agents of the Company were required to pass on the entire premium to the Company received from the policyholders; however, they violated their fiduciary relationship as agents of the Company by failing to execute the aforesaid transaction in true letter and spirit. Further, the cases where agents passed on premiums to the Company after deduction of their commissions either partially or wholly also tantamount to violation of Section 99(4) of the Ordinance. The Company in its comments to the inspection team stated that it has a formulated policy in respect of premium collection whereby the mechanism has clearly been mentioned, however if in rare cases the full premium amount is not received, the same is duly recovered by the Company. The Company termed the highlighted instances by the inspection team as 'rare circumstances' and attributed them to general market practice, which is not a prudent approach and establishes contravention of Section 99 of the Ordinance.

26. As regards the issue related to payment of commission to the agents whose names did not appear in the "Agents Register", the Company was required to comply with the provisions of Section 98(3) of the Ordinance that prohibits an insurer to use an agent who has not been included in the register. The Respondents argued that the names were not included in the Agents Register, however, the same were included in

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the "Premium Register" for its internal record keeping only whereas no basis/logic for their inclusion in the Premium Register was provided.

27. Moreover, the Company was required to maintain a proper "Agents Register" as per the provisions of Rule 35 of the Rules read with Section 98(1) of the Ordinance; however, the inspection team identified several such instances whereby details like date of appointment of the agent etc. as required under the aforesaid provisions of law were not mentioned in the "Agents Register". The Authorized Representative of the Company in his written response submitted that requisite disclosures with respect to corporate agents were made in the Agents Register furnished to the Commission; whereas the inspection team rebutted the said statement and maintained that the said register was not maintained as per related provisions of law for the period under review.

28. In addition to the above, the Company was required to ensure that its appointed agents meet the minimum qualification criteria and also complete the Agents Foundation Course (AFC) as prescribed under Rule 34 of the Rules read with Section 97 of the Ordinance. Nonetheless, the inspection team did not find any evidence of requisite qualification documents or the AFC certificates in the agency files selected as sample. The Company in its comments to the inspection team stated that it appoints its agents after assessment of personal conduct in addition to verification of qualification from original documents. Further, in the written response of the Company, it was submitted that contracts of majority of the agents selected as samples have not been renewed. However, the Company could not substantiate its aforesaid claims either by producing the requisite qualification documents or the AFC certificates of the appointed agents.

29. Furthermore, it was also mandatory for the Company to disclose all the related party transactions in its financial statements as per the requirements of para 18 of IAS 24 read with Regulation 3(2) of the Accounting Regulations. However, the inspection team identified that the Company misreported the commission payment to related parties of Directors in its financial statements, thereby indicating understatement of commission payment leading to violation of disclosure requirement of para 18 of IAS 24. One such instance as identified by the inspection team was payment of Rs. 14.19 million as commission to the father of Chief Financial Officer (CFO) namely, Mr. Amin ur Rashid and the Company violated the disclosure requirements of IAS 24 by not reporting the said payment in the related party transaction note to the financial statements for the year ended 2017. The Company's stance that CFO and his father do not fall in the definition of related party under IAS 24 and that the said transaction was made at an arm's length approach is not tenable as CFO is a key managerial position as defined in the 'Explanation' section to clause 2(1)(iii) of the Insurance Companies (Sound and Prudent Management) Regulations, 2012. Moreover, the Company could not corroborate its claim of making aforesaid transaction at an arm's length approach with any relevant evidence.

30. In another such instance, the inspection team observed that the Company did not record the commission of an agent namely, Mr. Rana Faisal Iqbal against 120

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policies amounting to Rs. 1.2 million. The Company stated that provisions of relevant laws and regulations do not compel the payment of commission in each and every policy rather it is decision of the management to take on case to case basis. Nevertheless, the Company could not validate its aforesaid statement by producing any such evidence of management's decision. Therefore, the Company failed to establish through any documentary evidence that it did not understate the commission in financial statements for the year ended 2017 either in case of commission payment to related parties of Directors or non-recording of commission in case of its agent namely, Mr. Rana Faisal Iqbal.

31. As regards the matter of unsigned and unsupported vouchers, the Company was required to maintain proper records as per Section 45 of the Ordinance, however the inspection team in many cases observed that vouchers provided with claim files and commission payment evidences were neither signed by the authorized officials nor supported by the complete details in respect of commission payments. The Company in its comments claimed that all vouchers were signed by the authorized officials and that the supporting documents were not printed in order to save the cost. On the other hand, the inspection team maintained that certain vouchers were only signed by the individual preparing them and vouchers for commission payments were not authorized as well as lacked any supporting evidence. Had the Company intended to validate its aforesaid claims, it would have presented the signed vouchers and supporting evidences to the inspection team or during the hearing proceedings but it failed to do so.

32. 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 violations of Rule 34, Rule 35 and Rule 36 of the Rules, Section 45, Section 97, Section 98 and Section 99 of the Ordinance, para 18 of the IAS 24 and Regulations 3(2) of the Accounting Regulations, are clearly established, for which the Respondents may be penalized in terms of Section 156 of the Ordinance.

33. 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 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."

34. In exercise of the power conferred on me, I, take a lenient view and do not impose fine on the Board of Directors of the Company. However, I impose a fine of Rs. 200,000/- (Rupees Two Hundred Thousand only) on the Company under Section 156

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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.

35. 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.

36. 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)

