



SECP  
INSURANCE DIVISION  
Islamabad

Before Tahir Mahmood, Commissioner (Insurance)

*In the matter of*

Askari General Insurance Company Limited

Show Cause Notice No. and Issue Date: ID/Enf/Askari/2018/13346 dated  
January 23, 2018

Date of Hearing: October 11, 2018

Attended By: 1. Mr. Faizan Zafar  
Company Secretary  
Askari General Insurance Company  
Limited

2. Mr. Anwar Ahmed Malik  
Compliance Officer  
Askari General Insurance Company  
Limited

Date of Order: October 17, 2018

ORDER

Under Section 98 of the Insurance Ordinance, 2000 read with Rule 11 and Rule 12 of  
the Insurance Rules, 2002 and Section 156 of the Insurance Ordinance, 2000  
.....

This Order shall dispose of the proceedings initiated against M/s. Askari Insurance Company Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Section 98 of Insurance Ordinance, 2000 (the "Ordinance") read with Rule 11 and 12 of the Insurance Rules, 2002 (the "Rules"). The Company and its Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Ordinance to carry on the business of non-life insurance in Pakistan.

3. The external auditors in their management letter pointed out instances where agents' names were not included in the list of agents maintained by the Company to whom commission was being paid during the year, in violation of Section 98(3) of the Ordinance.

4. The Company in response to auditor's observation stated that "*some of our agents are working on cash and carry basis which means that they are not regular employees of AGICO. It is standard industry practice to use agents from the market that are paid commission if they bring any policy into the company.*"



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5. In view of the above, it appeared to the Commission that the Company failed to maintain the agents register as required under Section 98 of the Ordinance read with Rule 11 and Rule 12 of the Rules.

6. Section 98 of the Ordinance states that:

*“ 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:*

*Provided that in the case of an insurer deemed to be registered at the commencement date, the particulars required by section 43 of the repealed Act to be contained in the register maintained under that section of the repealed Act shall be deemed to constitute the particulars required to be maintained under this sub-section, for a period of one year from the commencement date.*

*(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.*

*(3) It shall be an offence for an insurer to use an agent who has not been included on the register referred to in sub-section 1, or to use an agent who has not made the declaration referred to in sub-section (2), or knowingly to use an agent who has made a false declaration.”*

7. Rule 11 of the Rules provides 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.*



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(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;
- (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."

8. Rule 12 of the Rules states that:

*"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;*



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(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;*

(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.*

(3) *Every statement and declaration required under this rule shall be made in writing and the declaration shall be signed –*

(a) *in the case of a natural person, by the applicant and duly attested in the presence of witnesses who shall, not be related to the applicant;*

(b) *in the case of a body corporate, by not fewer than two directors of the body corporate and duly attested; and*

(c) *in the case of a firm, by not fewer than two partners of the firm and duly attested.*

(4) *The statement and declaration shall be retained by the insurer for a period of not less than five years from the date of the declaration and shall be produced to the Commission on demand.*

(5) *An agent shall notify to the insurer of any change in the details required under sub-rule (1) within three months of that change having effect, such notification to be in writing and signed –*

(a) *in the case of a natural person, by the agent and duly attested in the presence of witnesses who shall not be related to the agent;*

(b) *in the case of a body corporate, by not fewer than two directors of the body corporate and duly attested; and*

(c) *in the case of a firm, by not fewer than two partners of the firm and duly attested.*

(6) *If an agent or, in the case of a body corporate, any director or officer of the body corporate engaging in the business of insurance agency, or, in the case of a firm, any partner or officer of the body corporate engaging in the business of insurance agency becomes disqualified for any reason from acting as an insurance agent, the agent shall within seven days notify the insurer of the disqualification and shall forthwith cease, or cause the disqualified person to cease, engaging in the business of insurance agency.*



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*(7) In addition to the statement and declaration under this rule, the insurer may, as and when it deem necessary, call for other information, documents, photographs, etc."*

9. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/Askari/2018/13346 dated January 23, 2018 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. Thereafter, the Company Secretary, Mr. Faizan Zafar submitted reply on behalf of the Respondents vide letter dated February 2, 2018, which is reproduced hereunder:

*" .....*

*Our Company ensures compliance with all the applicable laws. This includes compliance with the Insurance Ordinance, 2000 and the Insurance Rules, 2002 (Rules). With reference to the requirements of Rule 11 of the Rules, we would like to apprise the Commission that proper record of all agents, separately for confirmed and those working on cash & carry basis, is maintained at our head office. Additionally, upon appointment of each agent, and subsequently every twelve months, declarations as required under section 12 of the Rules, are also obtained and maintained by the Company.*

*Regarding the objection raised in Management Letter by the external auditors, we would like to explain that the auditors had reservations on paying commission to agents working on cash and carry basis who are not permanent employees of the Company. It was clearly explained to the auditors that cash and carry agents are hired by insurance companies and it was an established industry practice. Agents working on cash & carry basis are not employees of the Company, rather they are paid commission only in case they bring business for the Company. We explained that record of such agents was properly and separately maintained as well. Complete record of register of agents was produced to the auditors but they decided to put the observation to fulfill their obligation to inform the Management.*

*In view of the above mentioned facts it is requested to be considerate and not take any penal action towards the Company. In case required by your good-self, an authorized representative could visit your office to provide further explanation on the matter."*

11. The Commission, vide its notice no. ID/Enf/Askari/2018/15303 dated June 11, 2018, scheduled the hearing for June 21, 2018 at the Head Office in Islamabad. However, the Company Secretary requested to reschedule the hearing to another date. Considering the request of the Respondents a hearing was rescheduled on October 11, 2018, intimated through letter dated October 4, 2018.

12. The hearing was attended by Mr. Faizan Zafar, Company Secretary and Mr. Anwar Ahmed Malik, Compliance Officer as Authorized Representatives, representing all the Respondents before the Commission in the instant matter.

13. During the hearing, the Representatives stated that the auditor of the Company only sought payroll register, which only contained information of regular employees. They claimed that the register as required under Section 98 of the Ordinance was being



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maintained but the payroll register did not include cash and carry agents, which was separately maintained. The Representatives maintained that the Company has not changed any policy and same practice is being continued. They apprised the Commission that the auditor did not put the same observation in the following year's management letter of the Company. The Representatives submitted sample of the list of agents containing details of regular/confirmed agents and cash & carry basis for consideration of the Commission.

14. In terms of Section 98(1) of the Ordinance, the Company was required to maintain a register of all agents employed by it. Moreover, Section 98(3) states that it shall be an offence for an insurer to use an agent who has not been included on the register. The auditor in the management letter observed that agency names for certain agents were not included in the list of agents maintained by the company to whom commission was being paid during the year. As per the auditors, its implication was that the commission might have been paid to individuals who were not certified agents of the Company. The auditors quoted the following instances, where names of the agents were not found in the agents register:-

Agency Name	Agent Name	Payment Voucher No.
Muhammad Wahaj-ud-din	Noman Muhammad	BPV-00001597
Adeel Anjum	Mian Shahid Iqbal	BPV-00000931

15. Management's response to the aforementioned observation in the management letter is reproduced hereunder;

*"Some of our agents are working on cash and carry basis which mean that they are not regular employees of AGICO. It is standard industry practice to use agents from the market that are paid commission if they bring any policy into the Company."*

16. The Company in response to the instant proceeding has claimed that it is maintaining separate registers for both types of agents i.e. regular employees and cash and carry basis. However, the Company in its response to the management letter, did not state that separate register was being maintained for both types of agents. The regulatory framework i.e. the Ordinance and the rules made thereunder, neither provides for any distinction between the types of agents mentioned by the Company nor requires to maintain separate record. The Company should have included all the agents on the agents register regardless of their status. The Company should also have ensured compliance with the requirements prescribed under Section 98(2) of the Ordinance and Rule 11 and 12 of the Rules.

17. 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 Section 98 of the Ordinance read with Rule 11 and 12 of the Rules, are clearly established, for which the Respondents may be penalized in terms of Section 156 of the Ordinance.



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18. 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.”*

19. In exercise of the power conferred on me under Section 156 of the Ordinance I, instead of imposing the maximum fine as provided under the said provisions, impose a fine of Rs. 100,000/- (One Hundred Thousand Only) on the Company due to the default of Section 98 of the Ordinance read with Rule 11 and 12 of the Rules, as mentioned in the above paras hereof. The Respondents are hereby warned to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

20. 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.

21. 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.

  
Tahir Mahmood  
Commissioner (Insurance)

