



SECP

Insurance Division  
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

*In the matter of*

The Asian Mutual Insurance Company (Guarantee) Limited

Show Cause Notice Issue Date: June 19, 2014

Date of Hearing: August 25, 2014

Attended By:

1. Mr. Irfan Ilyas, FCA  
Partner  
Ilyas Saeed & Co.
2. Mr. A. Rashid Mirza  
Chief Executive Officer  
The Asian Mutual Insurance Co. (Gte) Limited
3. Mr. Zafar Iqbal  
Chief Financial Officer  
The Asian Mutual Insurance Co. (Gte) Limited
4. Mr. Mubashir Raza  
Ilyas Saeed & Co.

Date of Order: December 19, 2014

**ORDER**

(Under Section 59A(3) Read with Section 45 and Section 156 of  
the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s The Asian Mutual Insurance Company (Guarantee) Limited ("the Company") and its Directors for not complying with the provisions of Section 59A(3) and Section 45 of the Insurance Ordinance, 2000 (the "Ordinance").

SECURITIES & EXCHANGE  
COMMISSION OF PAKISTAN

Insurance Division, State Life Building-2  
4th Floor, Wallace Road, Karachi, Pakistan

Tel: +92-21-32461053, +92-21-32465469 Fax: +92-21-32423248 Web: www.secp.gov.pk

*Ali*



### Background Facts

2. An Onsite Inspection of the Company was conducted on the order of the Commissioner - Insurance dated February 1, 2013, under Section 59A of the Ordinance.

3. However, Section 59A(3) of the Ordinance requires that:

*"All officers and agents of the company, including lawyers auditors and actuaries shall supply all information, documents and assistance that may be required by the Commission in the course of the inspection."*

4. During the course of the onsite inspection of the Company, the Commission's inspection team requested the Company to provide various information / documents, ledgers and registers, as mentioned in the Onsite Inspection Report, which were not provided to the inspection team thereby the provisions of Section 59A(3) of the Ordinance appeared to have been contravened.

5. Moreover, by virtue of the provisions of Section 45 of the Ordinance, the Company was required to maintain proper books and records, which may include, without limitation to, registers or record of the policies, claims etc. And, the said Section further prescribes that books that are required by the Ordinance or the Companies Ordinance, 1984, should be guarded against damage to, destruction of, or falsification of or in any book or part thereof required to be kept or prepared by an insurer.

6. Had the Company maintained proper books and records, the same would have been provided to the inspection team in compliance of the provisions of Section 59A(3) of the Ordinance.

7. In view of the foregoing paras hereof, the Company appeared to have violated the provisions of Sections 45 and 59A (3) of the Ordinance for which the Commission may take action as provided under Section 156 of the Ordinance.

### Show Cause Notice

8. Accordingly, the Show Cause Notice was issued on June 19, 2014 under Section 59A(3) read with Section 45 and Section 156 of Ordinance to the Chief Executive and Directors 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 and the Chief Executive Officer for not complying with provisions of Section 59A(3) of the Ordinance.

*Ala*



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

9. In response to the said Show Cause Notice, the Company, vide their letter no. AM-05/14/148 dated July 26, 2014, stated that:

*"...It is humbly submitted that the Company had provided every requisite details / documents / records available with the Company to the inspection Team during their visit as required by them under Section 59A(3) read with Section 45.*

*All the requisite books of accounts / information / documents were made available for inspection in one form or the other. It is not clear under this show cause notice that which of the books / documents were not provided during the inspection..."*

### Hearing of the Case & Subsequent Developments

10. Although, the Company had not requested for hearing in the matter vide his letter dated July 26, 2014, the Commission, on its own motion, had scheduled the hearing in the matter for August 25, 2014 at 11:30 a.m., which was communicated to the Company via the Commission's hearing notices no. ID/ENF/AMICL/2014/20405 dated August 8, 2014.

11. The hearing of August 25, 2014 was attended by the following persons:

1. Mr. Irfan Ilyas of M/s Ilyas Saeed & Co., Chartered Accountants;
2. Mr. A. Rashid Mirza, Chief Executive of the Company;
3. Mr. Zafar Iqbal, Chief Financial Officer; and
4. Mr. Mubashir Raza of M/s Ilyas Saeed & Co., Chartered Accountants

12. However, right at the start of the said hearing, Power of Attorney in favor of M/s Ilyas Saeed & Co., Chartered Accountants was submitted, and hence, the representatives from M/s Ilyas Saeed & Co. will be referred to as the "Company's Representative" hereinafter.

13. Brief proceedings of the hearing of August 25, 2014 are as follows:

- a. The Company's Representatives stated that the Company had provided all the information to the Onsite Inspection Team which they had requested to the Company;
- b. The Company's Representatives stated that the Company is maintaining all of its record appertaining to the years after 2011, on which it was stated

*Ms,*



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Insurance Division

Continuation Sheet 3

that the findings of the Onsite Inspection Report show that the Company does not have the record of 2011 and also that the 2012's record was also not proper and complete;

- c. Thereupon the Information Request Memorandums (IRM's) No. 7 & 8, which were issued by the Onsite Inspection Team to the Company, were shown to the Company's Representatives along with the respective responses to these IRM's, dated March 11, 2013. The Company's response to IRM No. 7 has been reproduced as follows, for the purpose of ready reference:

*"...we have tried our best to find out any record of stationery for the year 2010 and 2011, it is submitted that it included the other valuable items we lost in a theft incident occurred in the night of 28<sup>th</sup> Nov, 2011..."*

*It is sincerely hoped you will be kind enough to excuse us for being unable to produce the requisite record..."*

- d. The Company's Representatives, while admitting that some of their record was not available with the Company, provided a copy of an F.I.R concerning theft of the Company's record;
- e. Thereupon the attention of the Company's Representatives was drawn towards the provisions of Section 45(6) of Ordinance that it is the responsibility of an insurer to ensure protection of its own record, which has also been violated by the Company, as it appeared. Additionally, the Director (Insurance) pointed out that the Companies Ordinance, 1984 requires that a company should maintain its record at least for a period of 10 years;
- f. Lastly, the Company's Representatives requested the Commission to take a lenient view in the instant matter.

**Consideration of Company's Submissions**

14. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the Company's Representatives, M/s Ilyas Saeed & Co., Chartered Accountants), and have also referred to the provisions of the Ordinance and the findings of the Onsite Inspection as laid down in the Onsite Inspection Report. I am of the view that there has been an established default of Section 59A(3) and Section 45 of the Ordinance, as the Company was required:

*Mi*



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Insurance Division

Continuation Sheet 4

- a. to ensure protection of its record by virtue of the provisions of Section 45(6) of the Ordinance; and
- b. to provide all the documents, information and assistance to the Onsite Inspection Team in pursuance of the provisions of Section 59A(3) of the Ordinance.

15. However, 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 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 Section 59A (3) and Section 45(6) of the Ordinance, as aforesaid, therefore, it could be legitimately inferred that the default was committed knowingly and willfully.

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 on Section 45 and 59A(3) of the Ordinance is established. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed on the Company and/or its Directors.

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, 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."*

*Ali*



**Order**

18. In exercise of the power conferred on me under Section 156 of the Ordinance, a fine of Rs. 200,000/- (Rupees Two Hundred Thousand Only) is imposed on the Company based on the grounds as stipulated in the above paras hereof.

19. M/s. The Asian Mutual Insurance Company (Guarantee) Limited is hereby directed to deposit the aforesaid fine of Rs. 200,000/- (Rupees Two Hundred 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.

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

19/12/14