



INSURANCE DIVISION
Islamabad

Before Fida Hussain Samoo, Commissioner (Insurance)

In the matter of

Shaheen Insurance Company Limited

Show Cause Notice Issue Date: May 14, 2015

Date of Hearing: August 19, 2015

Attended By: Mr. M. Javed Panni
Chief Executive Officer
M/s. MJ Panni & Associates

Date of Order: August 31, 2015

ORDER

Under Section 36 read with Section 11(1), Section 32(2), Section 32(6), Section 63(1)
and Section 156 of the Insurance Ordinance, 2000

.....

This Order shall dispose of the proceedings initiated against M/s. Shaheen Insurance Company Limited (the "Company") and its chief executive and directors for alleged contravention of Section 36 and Section 32(2) read with Section 11(1) and Section 32(6) of the Insurance Ordinance, 2000 (the "Ordinance"). The Company, its chief executive and directors shall be collectively referred to as the "Respondents" hereinafter.

A. Background

2. The Company submitted its annual audited accounts and regulatory returns (hereinafter called the "financial statements") for the year ended December 31, 2013 in pursuance of the provision of Section 46(1) and Section 51(1) of the Ordinance. While reviewing the financial statements it was observed that total liabilities of the Company exceeded its admissible assets by an amount of Rs. 71.22 million, and hence, it appeared that the Company was insolvent by an amount of Rs. 196.22 million (i.e. Rs. 71.22 million plus minimum solvency requirement of Rs. 125 million). Therefore, a Show Cause Notice (SCN) bearing number ID/Enf/Shahen/2015/1134 dated May 14, 2015 was issued to the Respondents, calling upon them to show cause as to why the direction under Section 63(1) of the Ordinance should not be issued to the Company and a fine as provided under Section 156 of the Ordinance should not be imposed on them for



the aforementioned alleged contraventions of the law. The contents of the show cause notice are reproduced below:

SUBJECT: SHOW CAUSE NOTICE UNDER SECTION 36 READ WITH SECTION 11(1), SECTION 32(2), SECTION 32(6), SECTION 63(1) AND SECTION 156 OF THE INSURANCE ORDINANCE, 2000

1. WHEREAS, M/s. Shaheen Insurance Company Limited (the "Company") has submitted its Annual Audited Accounts and Regulatory Returns (hereinafter called the "financial statements") for the year ended December 31, 2013, which are required to be submitted under Section 46(1) of the Insurance Ordinance, 2000 (the "Ordinance").

2. AND WHEREAS, from the financial statements for the year ended December 31, 2013, it appears that the Company's admissible assets net of liabilities were Rs. 71.22 million, and hence, it prima facie appears that the Company was insolvent by an amount of Rs. 196.22 million, to be calculated as under:

	$M = \text{MAX}(A, B, C)$	
Solvency Requirement (Greatest of Method A, B & C)	C	125,000,000
Solvency Calculation		
Admissible Assets as per Regulatory Returns	s1	616,049,698
Less: Total Liabilities	s2	(687,272,058)
Excess Admissible Assets over Total Liabilities	S = s1 - s2	(71,222,360)
Excess / (Shortage) Over Minimum Solvency Requirement		
	S - M	(196,222,360)

3. AND WHEREAS, in terms of Section 11(1)(c) of the Ordinance, the Company is required to ensure that the provisions of the Ordinance relating to the minimum solvency are met at all times. And, the provisions relating to the minimum solvency have been laid down under Section 36 of the Ordinance.

4. AND WHEREAS, Section 11(1)(c) of the Ordinance states that:

"Conditions imposed on registered insurers.-(1) An insurer registered under this Ordinance shall at all times ensure that:

...

(c) the provisions of this Ordinance relating to minimum solvency requirements are complied with;"

5. AND WHEREAS, the relevant provisions of Section 36 of the Ordinance state that:

"Insurers of non-life insurance business to have assets in excess of minimum solvency requirement.- (1) An insurer registered under this Ordinance to carry on non-life insurance business shall at all times have admissible assets in Pakistan in excess of its liabilities in Pakistan of an amount greater than or equal to the minimum solvency requirement.



(2) An insurer incorporated in Pakistan and registered under this Ordinance to carry on non-life insurance shall at all times have admissible assets in excess of its liabilities of an amount greater than or equal to the minimum solvency requirement.

(3) For the purposes of this section, the minimum solvency requirement is the greatest of:

- (a) such required minimum amount as may be prescribed by the Commission¹;
- (b) such percentage as may be prescribed by the Commission of its earned premium revenue in the preceding twelve months, net of reinsurance expense subject to a maximum deduction for reinsurance of fifty per cent of the gross figure²; and
- (c) such percentage as may be prescribed by the Commission of the sum of its liability for unexpired risk and its liability for outstanding claims, net of reinsurance subject to a maximum deduction for reinsurance in each case of fifty per cent of the gross figure³:

Provided that in the case of an insurer incorporated in a jurisdiction outside Pakistan the amounts set out in clauses (b) and (c) of this sub-section shall be calculated with reference to the earned premium revenue, unexpired risk liability and outstanding claims liability and related reinsurance balances of that insurer in respect of its insurance business in Pakistan only."

6. AND WHEREAS, it has also been noted that the Company has treated its investments in M/s. First Capital Equities Limited (classified as 'available for sale' investments) at market value i.e. Rs. 224.895 million instead of book value of Rs. 188 million appearing in the financial statements for the year ended December 31, 2013, which appears to be the violation of Section 34 of the Ordinance and Rule 16(1)(a) of Part B of Annexure II of the Securities and Exchange Commission (Insurance) Rules, 2002, as the Company was required to state its 'available for sale' investments at lower of cost or market value not only on the face of the balance sheet but also on the Statement of Assets for Solvency Purposes (Form G).

7. AND WHEREAS, as per Note 15.3 to the financial statements for the year ended December 31, 2013, an amount of Rs. 54.611 million on account of "Premium due but unpaid" has been outstanding for the last three years, which has been treated as admissible for the purposes of solvency in the Statement of Assets for Solvency Purposes (Form G). Hence, the Company prima facie appears to have violated the provisions of Section 32(2)(h) of the Ordinance by treating "Premium due but unpaid" which was recoverable for more than three months.

¹ Rule 13(1)(b) of the Securities and Exchange Commission (Insurance) Rules, 2002 stipulates an amount of Rs. 125 million for any date on or after December 31, 2013, but before December 31, 2014.

² Rule 13(2)(a) of the Securities and Exchange Commission (Insurance) Rules, 2002 stipulates twenty percent for an insurance company registered after the commencement date.

³ Rule 13(3)(a) of the Securities and Exchange Commission (Insurance) Rules, 2002 stipulates twenty percent for an insurance company registered after the commencement date.



8. AND WHEREAS, it has further been observed that the Company has calculated the amount of "Total Investments" for the purposes of solvency as Rs. 491,074,888/-, which, if calculated using the amounts reported on the face of the balance sheet as on December 31, 2013, should be Rs. 361,875,694/-. Hence, it also prima facie appears that the Company has not calculated the amount of "Total Investments" as defined under Section 32(6) read with Section 34 of the Ordinance. The amount calculated on account of "Total Investments" was required to be used to apply the prescribed limits as laid down under Section 32(2) of the Ordinance and Rule 10 of the Securities and Exchange Commission (Insurance) Rules, 2002.

9. AND WHEREAS, for the alleged violation of Section 32(2), Section 32(6), Section 34 and Section 36 of the Ordinance, the above-named Directors and Chief Executive Officer of the Company are liable to be penalized under Section 156 of the Ordinance, which 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."

10. AND WHEREAS, for the alleged violation of Section 11(1) read with Section 36 of the Ordinance, the Company may be directed to cease entering into new contracts of insurance, in exercise of the powers conferred under Section 63(1) of the Ordinance, which is reproduced below:

"Power of Commission to issue direction to cease entering into new contracts of insurance.- (1) The Commission may issue a direction to cease entering into new contracts of insurance if it believes on reasonable grounds that an insurer registered under this Ordinance has failed, or is about to fail, to comply with the conditions of registration set out in section 11."

11. AND WHEREAS, it would be pertinent to state that the Company has contravened the provisions of Section 36 read with Section 11(1)(c) of the Ordinance, repeatedly. Previously, an Order dated December 17, 2012 was passed by the Commission in the matter of the Show Cause Notice dated July 6, 2012 under Section 36 read with Section 11(1)(c), Section 63(1) and Section 156 of the Ordinance, whereby an overall penalty of Rs. 1,100,000/- was imposed (Rs. 300,000/- onto the Company and Rs. 100,000/- on each of its Directors & Chief Executive).

12. NOW, THEREFORE, you are hereby called upon to show cause in writing within ten (10) days from the date of receipt of this notice as to why penalty may not be imposed upon you for contravening the provisions of Section 32(2), Section 32(6), Section 34 and



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Section 36 read with Section 11(1)(c) of the Ordinance, as aforesaid. In the event that you wish to be represented by a Representative, please ensure that the authorizing instrument (a board resolution or a power of attorney as may be appropriate) is submitted to this office along with your reply to this notice. In case you decide to opt for a hearing, you may appear in person or through a Representative. Please note that any reply submitted by a Representative without an appropriate authorizing instrument may not be taken into consideration for the purposes of the proceedings. All documents submitted by you in support of the reply must be duly authenticated. Please note that you will be liable under law for any concealment of any evidence or misstatement made in response of this show cause notice. We have video link facility available in the city in which you reside. In case you wish to avail this option please inform the undersigned in writing so that appropriate arrangements may be made in this regard.

Please acknowledge the receipt of this notice through return fax at the number provided in the letterhead.

Sd./-

Fida Hussain Samoo
Commissioner (Insurance)

3. However, the Respondents failed to provide their written response to the SCN within the timeframe provided in the said SCN, hence, the Commission on its own motion, vide letter no. ID/Enf/Shahen/2015/1362 dated June 24, 2015, scheduled a hearing for July 6, 2015 at 4:00 p.m. at the Head Office of the Commission in Islamabad to provide an opportunity of being heard to the Respondents. In response to the said hearing notice, M/s. MJ Panni & Associates, while acting on behalf of the Respondents, vide their letter no. MJP/SICL/2015 dated July 2, 2015, stated that the SCN was misplaced at the Company's office due to which the Company could not respond to the SCN, and that the same has now been traced and requested for an extension of ten (10) days to submit written reply to the SCN. The said request was acceded to by the Commission, and the Company, vide letter no. ID/Enf/Shahen/2015/1441 dated July 3, 2015, was allowed to submit the written comments.

4. Subsequently, representative of the Respondents, vide letter no. MJP/SICL/2015 dated July 25, 2015, submitted the written comments, which are reproduced as under:

"1 Preliminary Objections

- (1) The show-cause notice has been served on the present Board of Directors who assumed office on June 11, 2014 and the CEO had assumed the office in April 2014.
- (2) Following persons were the directors during the period of violations and were responsible for the contraventions of the law. The names of directors with date of resignation in the year 2013 are as follows:

<u>S.No.</u>	<u>Name of Ex-director</u>	<u>Date of resignation</u>
1.	Mr. Ikramullah Bhatti	26.03.2015
2.	Mr. Shehr Yar Ali Taseer	21.06.2013



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3.	Mrs. Aamina Taseer	21.06.2013
4.	Mr. Imran Hafeez	21.06.2013
5.	Mr. Asif Suleman -Ex-CEO	Dec, 2012
6.	Mr. Zafar Iqbal Mir	26.06.2013
7.	Mr. Tanweer Muhammad Sheikh	18.04.2013
8.	Mr. Shahid Hameed	18.12.2013

(3) Since the contraventions relate to the period of the former Board of Directors, show-cause notice cannot be served on the present Board of Directors as they are not responsible for the violations.

2. COMMENTS ON VIOLATIONS OF LAW -

(i) Minimum Solvency Requirements

(a) Due to various mis-management on the part of the then Chief Executive Officer and directors representing the First Capital Group, SECP had ordered inspection had highlighted various financial irregularities and violations committed by the Company.

(b) As a result of mis-management of the affairs by the then CEO and the directors representing First Capital Group, namely Mr. Shehr Yar Taseer, Mrs Aamina Taseer and Mr. Imran Hafeez the directors had resigned on 21.06.2013 so as to escape from accountability of their misdeeds/malafide actions. In their place Air Com. (R) Shahid Jamil Hashmi, Air Com (R) Muhammad Masud Akhtar and Gp.Capt(R) Ehsan-ur-Rauf Sheikh were co-opted as directors on 16.07.2013.

...In order to address the financial crisis of the company, the new Board of Directors started taking steps to meet minimum solvency requirement since December, 2013. In this regard the Board of Directors had decided in their meeting held on December 10, 2013 to increase the Authorized Share Capital from Rs. 300 million to Rs. 450 million. After completion of the Right Issue process, the subscription of Right Shares was received in the month of March, 2014. Although, it was a lengthy process but due to vigorous efforts off Board of Directors and the management, it completed the induction of additional capital of Rs. 150 million within a short period of time. After the Right Issue, the solvency position of the company became positive and this is also evident from the regulatory return for the year 2014 and the upward gradation of PACRA Rating of the Company from BBB negative to A minus with stable outlook.

(ii) Valuation of investment at market value

In the accounts for the year ended December 31, 2013, the company had erroneously taken the market value of First Capital Equity Limited shares at Rs. 224.89 million instead of book value of Rs. 188.000 million. This mistake was later realized and rectified in the annual accounts for the year ended December 31, 2014 and value has been shown as per requirement. The violation was committed by the former Board of Directors which was



responsible for the contravention. Since the default has been rectified, the same may kindly be condoned.

(iii) **Premium due but unpaid - Rs. 54.611 million**

This violation was also committed by the former Board of Directors in which the First Capital Group was represented. It is clarified that the Company had taken only Rs 8.858 million on account of Premium due. The unpaid premium in an admissible assets and was Rs 616.049 million as of December 31, 2013. As such an amount of Rs 54.611 million was treated as inadmissible in line with the requirements of Insurance Ordinance 2000.

(iv) **Total investments valuation - Rs. 491,074,888"**

It is submitted that the only error in computing the amount of "Total Investments" was to account for "Available for Sale Investments" at market value instead of book value. Remaining computation was done as per the requirement of Insurance Ordinance 2000. Had the book value of "Available for Sale Investments" been taken for computation of admissible assets, amount of "Total Investments" would have been Rs 447.497 million instead of Rs 491.075 million. As such the provisions of sections 32(2), 32(6) 34 and section 36 of the Insurance Ordinance 2000 were not violated in respect of other investments.

Based on the above submissions, it is submitted that the various irregularities were committed during the tenure of the earlier Board which was in the hands of the former Chief Executive Officer and the three Directors representing First Capital Group. The present Board of Director has done its best to achieve insolvency and also rectified various violations in the subsequent annual accounts for the year ended December 31, 2014. Since the Company has achieved the turn around and is on path of progress, the show-cause notice may kindly be withdrawn.

Copy of letter of authority to represent the directors of the company before the Commission is enclosed."

B. Hearings

5. Thereafter, the Commission vide letter no. ID/Enf/Shahen/2015/1733 dated August 7, 2015, scheduled a hearing for August 19, 2015 at 11:00 a.m. at the Head Office of the Commission in Islamabad to provide an opportunity of being heard to the Respondents. The hearing was attended by Mr. M. Javed Panni, Chief Executive Officer of M/s. MJ Panni & Associates, who was duly authorized to represent the Respondents before the Commission in the instant matter.

6. Brief proceedings of the hearing of August 19, 2015 are as follows:

- i. The Respondent stated that the previous management exploited its powers which led to insolvency of the Company. The mismanagements were unearthed by the Commission during the onsite inspection of the



Company after which the previous management resigned from the Board of Directors of the Company;

- ii. The Respondent also stated that the paid up capital requirement was Rs. 300 million, which had already been complied with by the Company, however, for the purpose of making the Company solvent, additional capital of Rs. 150 million was injected by the present Board of Directors to increase the paid up capital of the Company to Rs. 450 million;
- iii. On the matter of inclusion of certain inadmissible assets for the purpose of calculating solvency, the Respondent mentioned that the Company removed these anomalies in the annual accounts and regulatory returns for the year 2014;
- iv. Lastly, the Respondent prayed before the Commission to take a lenient view while deciding upon the matter.

C. Issues

7. The Respondents were required to ensure compliance with the mandatory provisions of Section 11(1), Section 36, Section 32(2) and Section 32(6) of the Ordinance. Accordingly, the SCN was issued to the Chief Executive Officer and Directors of the Company, who were holding their respective positions as on December 31, 2013 till the finalization of the financial statements for the year ended December 31, 2013.

8. The Company was insolvent as on December 31, 2013, and it remained insolvent till the right shares were subscribed. Moreover, the Company treated certain assets as admissible which were not admissible as per the provisions of Section 32 and Section 34 of the Ordinance and Regulation 16 of Part B of Annexure II of the Securities and Exchange Commission (Insurance) Rules, 2002.

D. Summary of arguments and conclusions in respect of each issue

9. The Respondents' contention that the present Directors of the Company assumed the charge of their offices on June 11, 2014 and that the Chief Executive Officer of the Company assumed the charge of his office in the month of April 2014 was found to be incorrect, which was also negated by the aforesaid written submission of the Respondents in Para (2)(i)(b) thereof. The Chief Executive Officer of the Company and all the Directors, except Mr. Aamir Shahzad Mughal, addressed in the SCN as Respondents were appointed during the year 2013, who remained the Directors of the Company till finalization of the financial statements for the year 2013. However, Mr. Aamir Shahzad Mughal was appointed as Director of the Company during the month of January 2014 i.e. well before finalization of the financial statements for the year 2013. Accordingly, the SCN was very rightly served to the Respondents, who were Directors /Chief Executive Officer of the Company at the time of the violation.



10. Regarding the minimum solvency requirements, as laid down under Section 36 of the Ordinance, the Respondents stated that the Board of Directors of the Company decided in a meeting held on December 10, 2013 to increase the paid up capital from Rs. 300 million to Rs. 450 million. In this regard, the Respondents pointed out that the subscription for right issuance worth Rs. 150 million was received in the month of March 2014, after which the Company *prima facie* complied with the solvency requirements and accordingly, the Company's rating by PACRA was improved from "BBB-" to "A-". As a result of the aforesaid capital injection, apparent solvency position of the Company as on December 31, 2014 was as under:

Method A

Amount Prescribed by the Commission	A	150,000,000
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Method B

Gross Earned Premium	b1	301,858,532
Less: Reinsurance Expense (Up to 50%);	b2	(72,237,683)
<i>Net Earned Premium</i>	$B \times 5 = b1 - b2$	229,620,849
20% of the Net Earned Premium	B	45,924,170

Method C

Provision for Unearned Premium	c1	125,728,997
Provision for Outstanding Claims	c2	228,704,455
<i>Total Provisions</i>	$c3 = c1 + c2$	354,433,452
Less:		
Prepaid Reinsurance Premium (Up to 50%)	c4	(29,545,576)
Reinsurance Recoveries Against Outstanding Claims (Up to 50%)	c5	(30,089,146)
<i>Total Deductions</i>	$c6 = c4 + c5$	(59,634,722)
Net Balance	$C \times 5 = c3 - c6$	294,798,730
20% of the Net Balance	C	58,959,746

Solvency Requirement (Greatest of Method A, B & C)	M = MAX(A, B, C)	150,000,000
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Solvency Calculation

Admissible Assets as per Regulatory Returns	s1	656,624,118
Less: Total Liabilities	s2	(446,673,729)
<i>Excess Admissible Assets over Total Liabilities</i>	$S = s1 - s2$	209,950,389

Excess / (Shortage) Over Minimum Solvency Requirement	S - M	59,950,389
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11. Regarding the valuation of investments at market value, the Respondents while admitting the contravention stated that they erroneously took the market value of M/s. First Capital Equity Limited's shares at Rs. 224.89 million instead of book value of Rs. 188 million. The Respondents further stated that the mistake was later realized and rectified in the subsequent annual accounts i.e. the financial statements for the year ended December 31, 2014.

12. The Respondents also made the former directors responsible for the contravention of Section 32(2)(h) of the Ordinance concerning admissibility of the 'Premium due but unpaid'. In this regard, it is stated that the financial statements for the year ended December 31, 2013 were prepared, approved and signed by the Respondents, hence, the Respondents' contention in this regard is not accepted.

13. The Respondents submitted that the 'Total Investments' in terms of Section 32(6) of the Ordinance were overstated due to taking the market value of the 'Available for Sale Investments' in violation of Section 34 of the Ordinance and Regulation 16 of Part B of Annexure II of the Securities and Exchange Commission (Insurance) Rules, 2002. Hence, the Respondents can be held responsible for the contraventions alleged in the SCN, for which the penalty as provided under Section 156 of the Ordinance can be imposed onto them. But, the chief executive officer of the Company was essentially responsible for day to day running of the Company and he was supposed to observe compliance on behalf of the Company. Accordingly, the chief executive officer of the Company can be penalized in terms of Section 156 of the Ordinance.

14. The Respondents have made certain material misstatements in their submissions, for which the Commission can take punitive action in terms of Section 158 of the Ordinance.

E. Overall conclusion

15. 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 and the Regulations made thereunder and/or other legal references, I am of the view that the default of Section 11(1)(c), Section 36 and Section 32 of the Ordinance is established. Therefore, the fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents i.e. the Company, its chief executive and directors. However, the chief executive is the person who manages day to day affairs of a company, hence, the chief executive shares greater responsibility with regard to the compliance of the applicable laws.

16. However, before proceeding further, I find it relevant to discuss the duties of the directors who are, 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. 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, especially the Chief Executive Officer of the Company, have failed to perform their duties with due care and prudence by proactively complying with the minimum solvency requirements i.e. by taking appropriate measures (including injection of additional capital) to meet the minimum solvency requirements as laid down under the Ordinance and Rules made thereunder. As the directors (especially the Chief Executive Officer) are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Section 11(1)(c), Section 36 and Section 32 of the Ordinance, therefore, it could be legitimately inferred that the default concerning the minimum solvency and admissibility of assets for solvency purposes was committed.

F. Penalties and directions

17. In exercise of the power conferred on me under Section 63(1) and Section 156 of the Ordinance, I, take a lenient view and instead of issuing direction under Section 63(1) of the Ordinance or imposing the maximum penalty, impose a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) on the chief executive officer of the Company, due to the reasons as mentioned in the above paras hereof. The Respondents are further directed to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

18. Hence, the chief executive officer of 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.

19. Moreover, the Respondents are hereby given a stern warning for the misstatements made by them in their written as well as verbal submissions made in the instant matter. However, in case of any other misstatements found in the submissions made through written and verbal arguments, the Respondents shall be liable to be penalized in terms of Section 158 of the Ordinance.

20. The Commission may initiate proceed in terms of Section 63(2)(d) of the Ordinance in case of failure of the Company to deposit the aforesaid penalty in the designated bank account of the Commission.

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

Fida Hussain Samoo
Commissioner (Insurance)

