



INSURANCE DIVISION
Islamabad

Before Tahir Mahmood, Commissioner (Insurance)

In the matter of

Alpha Insurance Company Limited

Show Cause Notice No. and Issue Date: ID/Enf/Alpha/2017/12838 dated
December 12, 2017

Date of Hearing: March 28, 2018

Attended By: 1. Mr. Wasqas Asad Sheikh
Advocate
2. Mr. M. Ayaz Ghori
CFO & Company Secretary
Alpha Insurance Company Limited

Date of Order: April 20, 2018

ORDER

Under Section 98 of Insurance Ordinance, 2000 read with Rule 11 and 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. Alpha 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. During examination of the Annual Audited accounts for the year ended December 3, 2016, the Commission vide letter dated September 8, 2017, advised the Company to provide management letter (the "ML") issued by the external auditor. The Company submitted the requisite ML along with its letter dated September 29, 2017.

4. In the ML, the external auditor highlighted the following non-compliances by the Company in respect of Section 98 of the Ordinance;

i. *The Company has not maintained Agent register in accordance with section 98(1) of the Ordinance read with rule 11 of the Rules; and*

ii. *The Company has not obtained declaration from its agents as required by Section 98(2) of the Ordinance read with Rule 12 of the Rules.*



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 2 -

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(1) of the Ordinance read with Rule 11 of the Rules. Moreover, the Company failed to obtain the declaration from the agents as required under Section 98(2) of the Ordinance read with 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



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 3 -

(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;

(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;



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 4 -

- (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;*
- (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.*



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 5 -

(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/Alpha/2017/12838 dated December 12, 2017, 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. The Authorized Representative of the Respondents, Mr. Waqas Asad Sheikh vide letter dated December 21, 2017 sought an extension of three weeks to submit reply to the aforesaid Show Cause Notice. The request of the Representative was acceded to and the Company was allowed extension until January 10, 2018.

11. Thereafter, the Authorized Representative submitted reply on behalf of the Respondents vide letter dated January 9, 2018, which is reproduced hereunder:

".....

1. *That at the very outset, we would like to deny each and every allegation contained in the show - cause notice dated 12th December, 2017 therein and further we would like to submit the following in our defense:*

(i) That it submitted the Company strongly believes in excellence and professionalism. The excellent track record of the Company pertaining to handling policyholder complaints and meeting liabilities is a manifestation of their commitment.

(ii) That in relation to the alleged violation of Section 98 of the Insurance Ordinance, 2002 it is submitted that the Company is maintaining the register of agents. Furthermore, due to the large volume [register of agents]. The Company will produce evidence of the compliance during the hearing proceedings for sake of convenience.

(iii) That the Company seeks permission to raise further grounds at the time of hearing / and permission to file written submission.

...."

12. The Commission, vide its notice no. ID/Enf/Alpha/2018/14102 dated March 20, 2018, scheduled the hearing for March 28, 2018 at the Commission's Company Registration Office Karachi.

13. Meanwhile, the Authorized Representative vide email dated March 26, 2018 submitted response on behalf of Mr. Ajaz Ali Khan, the Respondent whereby it was stated that SCN was issued on the basis of Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2016, whereas Mr. Ajaz was appointed as CEO of the Company on April 8, 2017. It was further elaborated that the Mr. Ajaz cannot be held responsible for the period prior to his appointment and therefore he is not a necessary party in the instant show cause notice.



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 6 -

14. The hearing was attended by Mr. Wasqas Asad Sheikh, Advocate along with M. Ayaz Ghori CFO & Company Secretary of the Company as Authorized Representatives, representing all the Respondents before the Commission in the instant matter.

15. During the hearing, the Representatives of the Company apprised the Commission that the Company has started maintaining register in accordance with Section 98 of the Ordinance. The Representatives submitted sample of agents' declaration and agents register for consideration of the Commission. They further maintained that discrepancies highlighted by the auditor have been removed.

16. In terms of Section 98 (2) of the Ordinance, the Company was required to obtain declaration prior to appointing an individual as its agent and at interval of no more than twelve months thereafter during the time the person continues to act as its agent. However, the auditor has observed that the Company did not obtain declaration from their certain agents under Section 98(2) of the Ordinance. The Company has stated that it has required the agents to submit declaration after every twelve months.

17. In addition to the above, Section 98 of the Ordinance read in conjunction with Rule 11 of the Rules specifies the minimum contents of agents register. However, it was noted by the auditor that the agents register maintained by the Company did not contain certain information i.e. the name of persons employed by the insurance agent, description of business carried on by the corporate body/partnership firm, names of shareholder holding more than 10% of the issued share capital in case of the company and the names of partners in the firm. It was further observed that agents register was not updated frequently and did not contain detail of all the active agents. The Company has responded that the register was not maintained properly due to frequent changes in its operations department. Subsequently, the Company has updated its agents register as per the requirement of Section 98 of the Ordinance.

18. During the hearing, the Representative furnished sample of the agents register and declaration of agent in support of its compliance subsequent to the auditor's observation. It has been requested that in view of the compliance made by the Company, the Commission may take lenient view in the matter.

19. 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.

20. 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,



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 7 -

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."

21. In exercise of the power conferred on me under Section 156 of the Ordinance read with S.R.O. 750(I)/2017 dated August 2, 2017, I, instead of imposing a fine as provided under the said provision, take a lenient view, and warn the Respondents to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

22. 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)

