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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/2019/137 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 18 of the Insurance Rules, 2017, Clauses 4, 5, 7 & 9 of Circular 22 of 2013 and Section 45 of the Insurance Ordinance, 2000 read with Section 156 and Section 158 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 18 of the Insurance Rules, 2017 (the "Rules"), Clauses 4, 5, 7 & 9 of Circular 22 of 2013 (the "Circular") and Section 45 of the Insurance Ordinance, 2000 (the "Ordinance"). 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. As per the provisions of Rule 18 of the Rules, facultative reinsurance business in the country is only allowed to be placed abroad after it has been determined that it cannot be suitably placed within the country and after the Commission has granted permission to the concerned company to do so. The main purpose of this provision is to ensure that all insurance business that can be suitably reinsured within Pakistan, is retained locally.

SECURITIES AND EXCHANGE  
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4. The Commission initiated inspection of the Company vide order dated May 18, 2018 in terms of Section 59A of the Ordinance, which was concluded by the inspection team on December 26, 2018 by submitting the final inspection report. During the inspection, the inspection team observed that the Company undertook a fronting transaction in the case of Coca Cola Beverages Pakistan Ltd. ("Coca Cola Pakistan"), wherein it retained only 0.1% of the total risk and placed the remaining risk with foreign reinsurers. In such cases, insurance companies usually obtain instructions regarding local retention from either the client or the broker and those are decided prior to circulation of the risk in local insurance market.

5. In the above-mentioned placement, the inspection team observed that foreign reinsurers used the Company to front the risk located in Pakistan. Since Section 165 of the Ordinance prohibits insuring any risk outside Pakistan without approval of the Federal Government, therefore, foreign reinsurers or local insureds transfer risk outside Pakistan by way of reinsurance through fronting from a local insurer.

6. Furthermore, in the case of Coca Cola Pakistan, the Company's Reinsurance Department received an email dated July 20, 2017, from the Company's executive director namely, Mr. Zain ul Haq Qureshi, that contained reinsurance slip arranged by United Insurance Brokers, London along with details of foreign reinsurers. The risk was circulated in the local market on September 06, 2017. This implied that placement of the risk was already finalized with foreign reinsurance companies before circulating the risk in the local market and obtaining the permission from the Commission in contravention of Clause 9 of the Circular. The Company applied to the Commission for approval after it had already placed the risk with foreign reinsurers, while permission to the Company was granted on January 05, 2018. Apparently, the Company violated Rule 18 of the Rules and Clause 9 of the Circular.

7. Moreover, according to Clause 5 of the Circular regarding facultative reinsurance placements, companies must apply to the Commission for permission within 30 days of the inception of the original policy. In the case of Coca Cola Pakistan, the Company failed to submit the application for permission within the stipulated time as the inception date of the policy was May 1, 2017, while the Company submitted the application for facultative permission on October 5, 2017 i.e. five months after inception of the policy.

8. The inspection team noted that the number of reinsurers appearing on the Facultative Permission Form was less than those appearing on the reinsurance slip provided by the broker. Therefore, the inspection team vide email dated October 29, 2018, advised to Company to explain the difference, however, the Company failed to provide its comments in the matter.

9. In addition to the above, the inspection team observed that the Company provided understated outstanding claims amount to reinsurers as it removed certain claims from outstanding claim registers for the year 2016 and 2017 in violation of Section 45 of the Ordinance.

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10. In view of the above, it transpired that the Company failed to comply with the requirements of Rule 18 of the Rules, Clauses 4, 5, 7, & 9 of the Circular and Section 45 of the Ordinance.

11. Rule 18<sup>1</sup> of the Rules states that:

*"Reinsurance outside Pakistan. – (1) For the purposes of sub -section (5) of section 41 of the Ordinance, no insurer shall reinsure facultatively outside Pakistan any insurance business or any part thereof underwritten by it in Pakistan without the permission of the Commission.*

*(2) The Commission may, grant permission under sub - rule (1) in any of the following circumstances, namely:*

- (a) The insurance or any part thereof is in excess of the insurer's treaty arrangements, and the Commission is provided with documentary evidence that such excess cannot be reasonably placed within Pakistan;*
- (b) the insurance business, although covered by a treaty arrangement shall be desired to be reinsured facultatively for protecting the treaty or for any other special reason, subject to satisfaction of the Commission;*

*Provided that such facultative reinsurance shall not run contrary to subsisting contractual obligations under the treaty; and*

- (c) the insurance business is of special nature and there are no treaty arrangements for it.*

*(3) No insurer in Pakistan shall accept reinsurance on facultative basis in excess of its net retention if the insurer seeking such reinsurance so indicates in the reinsurance slip, request note or otherwise in writing."*

12. Clause 4 of the Circular states that:

*"All insurers shall ensure that where foreign reinsurer(s) are used, at least eighty per cent of the total facultative reinsurance for each risk shall be placed with reinsurer(s) having "A" or above rating by Standard & Poor's (hereinafter referred as the "S&P" or equivalent rating by any other reputed international rating agency while the remaining risk may be placed with reinsurer(s) having at least "BBB" rating by S&P or equivalent rating by any other reputed international rating agency. Any part of the reinsurance placed with reinsurer(s) having rating below "BBB" by S&P or an equivalent rating by any other reputed international agency shall not be acceptable to the Commission and for which no permission shall be granted by the Commission. However, in case of captive foreign reinsurers, exception may be granted by the Commission, on case to case basis, provided satisfactory documentary evidence demonstrating the financial strength of the reinsurer and its capacity to bear the risk under consideration is submitted to the Commission."*

<sup>1</sup> Rule 7 of the Insurance Rules, 2002

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*"The offer made to local insurers/reinsurer shall be an open-ended offer such that it shall not be bounded in terms of an absolute or relative basis of pre-allocation of the portion of sum insured. ...."*

13. Clause 5 of the Circular states that:

*"The Request for the issuance of permission for the facultative reinsurance placements under Rule 7 shall be submitted to the Commission by the insurers along with fulfilling all documentary requirements no later than 30 days from the date of inception of the original insurance policy."*

14. Clause 7 of the Circular provides that:

*"All insurers shall ensure that where foreign reinsurer(s) are used, at least eighty per cent of the total facultative reinsurance for each risk shall be placed with reinsurer(s) having "A" or above rating by Standard & Poor's (hereinafter referred as the "S&P" or equivalent rating by any other reputed international rating agency while the remaining risk may be placed with reinsurer(s) having at least "BBB" rating by S&P or equivalent rating by any other reputed international rating agency. Any part of the reinsurance placed with reinsurer(s) having rating below "BBB" by S&P or an equivalent rating by any other reputed international agency shall not be acceptable to the Commission and for which no permission shall be granted by the Commission. However, in case of captive foreign reinsurers, exception may be granted by the Commission, on case to case basis, provided satisfactory documentary evidence demonstrating the financial strength of the reinsurer and its capacity to bear the risk under consideration is submitted to the Commission."*

15. Clause 9 of the Circular states that:

*".... Under Rule 7(1) it is required that an insurer shall seek permission of the Commission before reinsuring facultative outside Pakistan for any insurance business or any part thereof underwritten by it in Pakistan, and unless a permission is granted by the Commission in writing, no risk placement shall be done with foreign reinsurer(s)."*

16. Section 45 of the Ordinance states that:

*"Books and records.- (1) Every insurer, in respect of all insurance business transacted by him, and in the case of an insurer incorporated in a jurisdiction outside Pakistan in respect of the insurance business transacted by the insurer in Pakistan, shall maintain proper books and records."*

*(2) Books, accounts and records in respect of insurance business transacted in Pakistan shall be maintained in Pakistan and in either the English or the Urdu language.*

*(3) For the purposes of this Ordinance, proper books and records shall include without limitation:*

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(a) a register or record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy holder, the date when the policy was effected and record of any transfer, assignment or nomination of which the insurer has notice;

(b) a register or record of claims, in which shall be entered every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds therefor; and

(c) such other books and records as may from time to time be prescribed.

(4) For the purposes of this Ordinance, the expression "books" includes -

(a) a register;

(b) accounts or accounting records, however compiled, recorded or stored;

(c) a document; and

(d) any other record of information.

(5) A book that is required by this Ordinance or the Companies Ordinance, 1984 to be kept or prepared by an insurer may be kept or prepared:

(a) by making entries in a bound or loose leaf book;

(b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or

(c) in any other manner approved by the Commission.

*Provided that the matters recorded or stored are capable, at any time, of being reproduced in a written form or a reproduction of those matters is kept in a written form approved by the Commission.*

(6) An insurer shall take all reasonable precautions, including such precautions, if any, as may be prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or part of a book required to be kept or prepared by an insurer."

17. Accordingly, a Show Cause Notice (SCN) No.ID/Enf/Asia/2019/137 dated March 8, 2019 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Section 156 and/or Section 158 of the Ordinance should not be imposed on them for the aforementioned alleged contraventions of the law.

18. 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.

19. Meanwhile, the Authorized Representative of the Respondents submitted their comments, vide letter dated April 19, 2019, which are summarized below:

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- "...
2. Further, it is submitted that the scheme of the law envisaged by the Ordinance and the Rules entitles insurers to selection of a reinsurer for the placement of adequate reinsurance and acknowledges that the insurer is the decision maker in relation to the reinsurance to be placed and make the requisite selection through primarily ensuring that the selected reinsurer is financially stronger and of a higher standing than the cedant itself. This, we understand, is subject to mandatory restrictions imposed by the Ordinance and notifications issued by the Commission, in this regard.
  3. The requirement to effect and maintain reinsurances have been stipulate under Chapter VI (Reinsurance Arrangements) (Sections 40-44 of the Ordinance). Section 40(3) provides that the provision of this Chapter (other than Section 41) shall not have effect with respect to insurer if and to the extent that complying with that provision would cause the insurer to contravene the provision of Section 11 or Section 41. Therefore, the emphasis of the law is that the obligation of ensuring adequate reinsurances is with the insurer so that the solvent requirements stipulated under Section 11 are complied with.  
....
  5. As is evident from the provisions of Section 41(1) of the Ordinance, a strict burden is imposed on the insurer to 'maintain such reinsurance arrangements as are, in the opinion of the directors' adequate to ensure that solvency requirements prescribed pursuant to the Ordinance are met by the insurer. Thus, it is clear that the law recognizes the insurers' right to determine the reinsurance arrangements as per their own discretion and where the intent is to ensure compliance with the solvency requirements then the spirit of the law remains intact where such requirements are complied with. This view is further strengthened by the provision of Section 40(3) as discussed hereinabove which refer to Section 11 which place the burden of ensuring the minimum solvency and other requirements on the insurance companies. Needless to add that the breach of Section 11 is a serious offence under the Ordinance, which is liable to strict action - a direction can be issued by the Commission to cease entering into new insurance contracts.
  6. We also note that, as per the provisions of Section 41(5) of the Ordinance, any rules to be formulated for the governance of reinsurance outside Pakistan must be in line with the provisions of Section 41(1) of the Ordinance which means essentially that no rules may be formulated that have the effect of curtailing the decision-making powers to maintain adequate reinsurances to ensure minimum solvency requirements as stipulate under Section 11 of the Ordinance. This sole consideration is the only factor that directors are to consider when formulating policy on where to place reinsurance. The process formulated through Section 41 of the Ordinance read with Rule 7 of the Rules may therefore be summarized as under;
    - a. First: The insurance company decides to place reinsurance with a reputable company abroad, this may also be where it is approached by a project company that has special needs requiring placement of reinsurance abroad;

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- b. *Second: The insurance company approaches the Commission to seek permission to place the reinsurance abroad;*
- c. *Third: The Commission satisfies itself that the internal controls developed by it for the governance of reinsurance abroad by insurance companies have been satisfied before issuing the permission following which permission under Section 41 read with Rule 18 is granted by the Commission; and*
- d. *Fourth: The insurance company, following the permission issued by the Commission, affirms the reinsurance arrangements it had resolved to enter into in the first place in accordance with the powers vested in it by Section 41(1) of the Ordinance.*
7. *As per the provisions of the law, no rules may be issued under Section 41(5) of the Ordinance, which go against the provisions of Section 41(1) of the Ordinance. To that extent Rule 18 of the Rules may be interpreted as being consistent with the provisions of Section 41(1) of the Ordinance where it goes to establish criteria for reasonableness for placement of reinsurance abroad.*
8. *The Commission in effect plays the role of an objective overseer allowing an insurance company the benefit of questioning the reasonableness of their decision to place reinsurance abroad. However, this role of the Commission that it has assumed through promulgation of the Rules has to be subject to provisions of Section 41(1) of the Ordinance for the purposes of placement of reinsurances abroad as per the mandatory obligation to maintain adequate reinsurance so that the insurer continues to comply with the requirements of Section 11 of the Ordinance.*
9. *Where the Circular has been issued pursuant to powers of the Commission under Section 40B of the Securities and Exchange Commission of Pakistan Act, 1997 (hereinafter the 'Act'), the contents thereof would still need to comply with the requirements of Section 41(1) and 41(5) of the Ordinance since any instruction to be issued pursuant to Section 40B of the Act would need to be for the purposes of the administered legislation.*

...

18. Applicable Law:

a. *Insofar as paragraphs 2 - 7 of the Notice relate to the regime of the law as applicable to the business of the Company, the paragraphs need no response.*

b. *In relation to the observation of the Commission made in paragraph 8 of the Notice, it is acknowledged that the purpose of the Rule 18 of the Rules, as described by the Commission, may be the intent of the provision.*

c. *It is acknowledged that the Commission initiated an inspection under Section 59A of the Ordinance as indicated in paragraph 9 of the Notice, however, the Company is not aware of the submission or the contents of the final inspection report apparently submitted by the inspection team to the Commission on 26 December, 2018 as indicated in the Notice. In the circumstances, it is highly irregular and unfair that the Company be proceeded against on the basis of findings contained in*

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*a document not disclosed or provided to the Company for the purposes of informing the Company of the findings and allowing the Company the opportunity to finally address the concerns voiced in the purported final inspection report before issuance of the Notice.*

## 19. Fronting Transaction

*a. It has been observed in paragraphs 10 & 11 of the Notice that the Company transferred risk outside Pakistan through 'fronting', however, apart from a cursory reference to the requirements of Section 165 of the Ordinance, no violation of the provision which relates to placement of insurance and not reinsurance outside of Pakistan has been alleged.*

*b. You will appreciate that the Company has reinsured the risk insured by it, by placing it abroad with the permission of the Commission obtained in accordance with Section 41 of the Ordinance read with Rule 18 of the Rules.*

*c. It is added that in recent past, the reinsurance industry has severely been affected by losses emanating from Pakistan, foreign reinsurers underwriting book and spread of risk are on global basis a single territory loss is pooled from profit from other territory whereas we as an insurance company cannot afford to retain losses on larger complicated risk which could jeopardize its own book & treaty arrangement hence to follow low retention in large complicated risk is global prudent underwriting practice.*

*d. With regards to the observations of the Commission, we would like to submit that all the Company's facultative reinsurance submissions to the local markets, including to the PRCL, are in accordance with Rule 18 of the Rules and are subject to Rule 18(3) thereof Hence the Company promotes all local companies including the PRCL to retain locally as permissible under the law. All the Company's market circulations are submitted to the Commission with each and every submission.*

*e. It may also please be noted, that the Company fully complied with the requirements of Rule 18 of the Rules and that all of the Company's facultative submissions are submitted to the Commission after due compliance with Rule 18 of the Rules. The request note was sent to all co-insurers including the PRCL in accordance with the law.*

*f. In light of the above, the Company is of the considered view that it is in compliance with the provisions of the law and its actions cannot be interpreted as a violation of the provisions of Section 165 of the Ordinance or Rule 18 of the Rules. In particular, it may be noted that the provisions of Section 165 of the Ordinance must be distinguished from the special provisions regarding the reinsurance scheme of law. Where Section 165 of the Ordinance relates to direct insurance abroad by a proposed insured person, the involvement of a local insurer is neither envisaged nor accounted for in the subject provision and so the liability for contravention of Section 165 of the Ordinance may only lie with such person who seeks to be directly insured by a foreign insurer and not with the insurer who legitimately seeks to place reinsurance abroad as specifically allowed under the law.*

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20. Risk placed with reinsurer before being circulated in the market:

a. It has been alleged in paragraph 12 of the Notice that the Company placed the reinsurance, in the case of Coca Cola, before circulating the risk within the local market thereby, apparently, violating the provisions of Rule 18 of the Rules and Clause 9 of the Circular.

b. As submitted above, any discussions with reinsurers abroad in the form of finalizing the terms of the reinsurance are by way of due diligence and in preparation for the possibility of placement of the requisite reinsurance abroad. It is submitted that the terms of the reinsurance remain tentative and subject to the grant by the Commission of the requisite permission in terms of Rule 18 of the Rules in compliance with the provisions of Clause 9 of the Circular. The tentative nature of the reinsurance placement is indicated through the 20 July, 2017 email, referred to by the Commission in paragraph 12 of the Notice, by the broker approaching the Company in the following terms: "Please find attached the final draft versions of our placement slips. As mentioned yesterday, it is not signed as our cedent company is not clear yet. Once it becomes clear, we will immediately issue our Cover and debit note documents and send to you with stamped and signature."

c. You will, therefore, observe that the Company has not absolutely and irrevocably committed to placing the reinsurance abroad. Thus, the observation that the Company has violated the provisions of Rule 18 of the Rules is not sustainable. We would emphasize that the Company had only finally reinsured the portion of the risk after circulation of the same to the market as required under Rule 18 of the Rules and after duly determining that it could not be retained in Pakistan.

d. As for the requisite permission of the Commission, you will appreciate that the Company duly intimated to the Commission all facts and dates in relation to the policy. The Company applied for the permission from the Commission on the standard form designed by the Commission. The Insurance Division of the Commission granted the permission after going through all the details provided in the form and did not raise any objections on any terms and conditions mentioned in the prescribed form.

e. Accordingly, it is our submission that the assessment of the Commission that there has 'apparently' been a violation of the provisions of Rule 18 of the Rules and Clause 9 of the Circular is misplaced.

21. Facultative placement permission not sought within stipulated time limit:

a. It has been alleged in paragraph 13 of the Notice that, in the case of Coca Cola, the Company failed to apply for permission for facultative reinsurance placement within the requisite 30 days period as prescribed through Clause 5 of the Circular and is therefore to be found in violation of the provision of Clause 5.

b. It is respectfully submitted that, in the case of Coca Cola, the delay in submission of the application was inadvertent as reliance is placed on information to be gathered

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from third parties which at times is not received in time which then leads to unavoidable delays. In relation to this the Company has also previously sought an enhancement of the time prescribed in order to facilitate the insurance industry. You will also appreciate that the Company has always otherwise approached the Commission in a timely manner where there are no practical difficulties in compliance.

c. You will appreciate that the law does not encourage the imposition of penalties on a mere finding of technical contravention. In fact, it is of paramount importance that penalties only be applied upon a substantial finding of guilt as held by the Supreme Court of Pakistan in the case of SECP v. First Capital Securities Corporation Limited (2011 CLD 907) in the following terms:

...

22. Number of reinsurers appearing in Facultative Permission Form:

a. It has been observed by the Commission in paragraph 14 of the Notice that the number of insurers appearing on the Facultative Permission Form was less than that appearing on the reinsurance slip provided by the broker, however, no violation of any applicable law has been mentioned.

b. In relation to the above the Company seeks clarification as to the significance of this observation in the context of the scheme of law governing it so that it may be better able to respond.

23. Company understated its outstanding claims amount to reinsurers:

a. It has been alleged in paragraph 15 of the Notice that, in violation of the provisions of Section 45 of the Ordinance, the Company understated outstanding claims amount by removing 'certain claims' from the outstanding claims register for the years 2016 and 2017.

b. With regards to this observation, the Company has already provided its response and explanation to the satisfaction of the Commission through responses to paragraphs 8 and 9 of the letter of findings issued by the Commission and responded to by the Company through its correspondence dated 04 December, 2018 (hereinafter the 'LOF Response'). It is our understanding that no other items of outstanding claims need clarification. If the Commission were to detail the other specific instances of lapses in this regard, the Company would willingly provide a response to assuage any outstanding concerns of the Commission in this regard.

c. Accordingly, it is our submission that in the given circumstances there has been no violation of the provisions of Section 45 of the Ordinance..."

20. 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 as Authorized Representatives of the Respondents. The arguments presented by the Authorized Representatives are briefly given below:-

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- i. The Authorized Representatives reiterated their comments submitted vide letter dated April 19, 2019 and apprised that the Company's retention capacity was only 0.1%, therefore it could not retain risk more than the said capacity.
- ii. The Authorized Representatives further contended that the Company did not receive any instruction from the foreign reinsurer or reinsurance broker and the correspondence between the said parties and the Company was misinterpreted by the inspection team.
- iii. While discussing the matter related to delay in submission of documents for seeking the Commission's approval in terms of placing facultative reinsurance business abroad, he argued that the Commission did not raise any objection at the time of submission of the said documents and if there was any such issue, the Commission should not have accorded approval. However, he admitted that the delay in submission of documents with respect to Coca Cola Pakistan case was inadvertent and termed it as a technical contravention.
- iv. Further, the Authorized Representatives requested to take a lenient view in the matter based on the aforesaid facts.

21. I have perused the written and verbal comments of the Respondents and the Authorized Representatives. Before proceeding further it is clarified that although the insurer can fix any criteria for reinsurance arrangements, however, the Commission, under Section 41(4) of the Ordinance, may direct the insurer to make such modifications in its reinsurance arrangements as the Commission may specify. Furthermore, the insurer for facultative reinsurance arrangements, is required to comply with Rule 18 of the Rules read with Section 41(5) of the Ordinance

22. The Respondent's stance that Company was not aware of the submission or the contents of the final inspection report submitted by the inspection team to the Commission is not tenable. All relevant pages of the inspection report pertaining to the observations highlighted in the SCN were shared with the Respondents. The Company was aware of the findings of the inspection report, which were appropriately disclosed to the Respondents.

23. The Company was required to seek the Commission's approval prior to placement of any risk outside Pakistan under the provisions of Rule 18 of the Rules and Clause 9 of the Circular. However, in the case of Coca Cola Pakistan, the Company failed to comply with the aforesaid rule by engaging into a fronting transaction whereby it retained only 0.1% of the risk and exported the remaining risk to the foreign reinsurers before circulating the risk in the local market. The Company's stance that the email of Mr. Zain ul Haq Qureshi (an executive Director of the Company) dated July 20, 2017 to the reinsurance department of the Company only entailed the tentative terms of reinsurance placement with the foreign reinsurance broker, is not tenable. It is important to note that even if the said email and discussion was tentative in nature, the Company should have sought permission of the Commission in accordance with Rule

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18 of the Rules and Clause 9 of the Circular prior to contacting the foreign reinsurer or broker for finalization of placing the risk outside Pakistan, whereas the Company finalized risk placement with the foreign broker much before circulation of risk in the local market and obtaining permission of the Commission in this regard. Further, the aforesaid reinsurance slip also mentioned the 'reinsured' as 'TBA' indicating that reinsurance slip was arranged by the foreign broker in collaboration with the client prior to issuance of local policy from the insurer.

24. The above practice is contrary to the Respondents claim that the Company fully complied with the requirements of Rule 18 of the Rules and that all of the Company's facultative submissions were submitted to the Commission after due compliance with Rule 18 of the Rules.

25. In addition to the above, Clause 5 of the Circular required the Company to apply to the Commission for facultative risk placement outside Pakistan within 30 days of the inception of policy; nevertheless the Company failed to comply with the said provision of the law in the case of Coca Cola Pakistan and applied for permission to the Commission with a lapse of almost five (05) months from the date of inception of policy. The Company termed the lapse in filing for permission of facultative risk placement as a technical contravention and inadvertent in nature, which was caused due to delay in gathering information from third parties, however the Company failed to explain the particular instance where gathering information took such a long time of five months subsequently resulting into delay of filing the requisite approval with the Commission.

26. As per the provisions of Clause 4 of the Circular, it was mandatory for the Company to make an open-ended offer to local insurers/reinsurer such that it shall not be bounded in terms of an absolute or relative basis of pre-allocation of the portion of sum insured, however the Company in the case of Coca Cola Pakistan offered bounded share of 4% of total risk to Pakistan Reinsurance Company Limited (PRCL) to which PRCL disagreed as observed by the inspection team. The Company in its comments stated that it made this bounded offer specifically on the request of PRCL and the earlier open-ended offer was declined by PRCL. However, the Company could not validate its claim through any documentary evidence before the inspection team or afterwards as the PRCL did not express its consent or dissent on the open-ended Facultative Request Note. Therefore, it cannot not be construed from the note that PRCL did not accept any share of the risk. On the other hand, the letter declining the offer clearly mentioned offer of 4% of total risk to PRCL as 'FAC offer to PRCL' by the Company. In a nutshell, the Company should have obtained documentary evidence of dissent of PRCL to its open-ended offer in order to establish its stance, whereas the Company failed to produce any such document and thus subject to contravening the law.

27. Moreover, the Company under the provisions of Clause 7 of the Circular was required to place 80% of the total facultative reinsurance for each risk with reinsurers having "A" or above rating by Standard & Poor's ("S & P") or equivalent rating by any other reputed international rating agency, which it failed to comply with in the case of Coca Cola Pakistan. The Company's view point regarding verification of reinsurer's ratings could not be validated as the annexures provided by the Company in respect of

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evidence of compliance were taken from the 'reinsurer's website' and not from that of the rating agency. On the other hand, the inspection team provided the annexures from the relevant rating agencies, which established the Company's non-compliance with the Clause 7 of the Circular.

28. Additionally, it was mandatory for the Company to maintain proper books and records as required under the provisions of Section 45 of the Ordinance and to quote correct information in the documents related to books and records, however the inspection team observed that the Company failed to adhere to the said requirements of the law as it understated its outstanding claims amount to reinsurers after removing certain claims from outstanding claims register for the year 2016 and 2017. Further, the inspection team also observed that the number of reinsurers appearing on the facultative permission forms was less than those appearing on the reinsurance slip. The Company could not validate its claim of providing the correct information to the reinsurer despite the inspection team's call for explaining the difference. Additionally, the inspection team refuted the Company's claims regarding provision of correct information to its reinsurers by citing specific instances where the Company settled certain claims in 2017 that it had removed from outstanding claims in 2016. Moreover, it was also observed by the inspection team that the Company removed certain claims from the claims register without documenting any reason, which tantamount to violation of Section 45 of the Ordinance in respect of maintaining proper books and records.

29. 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 18 of the Rules and Clauses 4, 5, 7 and 9 of the Circular and Section 45 of the Ordinance are clearly established, for which the Respondents may be penalized in terms of Section 156 and/ or Section 158 of the Ordinance.

30. 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."*

31. Section 158 of the ordinance states that:

*"Penalty for false statement in document.- Except as otherwise provided in this Ordinance, whoever, in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Ordinance, wilfully makes*

*Handwritten signature in blue ink.*



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*a statement false in any material particular, knowing it to be false, shall be punishable by the Commission with fine which may extend to one million rupees."*

32. However, upon assurance by the Respondents for their compliance and adherence to the aforesaid provisions of the law, I instead of imposing any penalty under Section 156 and Section 158 of the Ordinance, take a lenient view, and thus condone the Respondents for the reasons and circumstances as mentioned in the foregoing paras hereof. However, the respondents are hereby strictly warned and directed to take immediate steps to comply with the clauses of the Circular as well as the Ordinance and the Rules made thereunder for placement of facultative risks abroad and maintenance of books and records.

33. 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)

