



INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director (Insurance)

In the matter of

M/s. Atlas Insurance Limited

Show Cause Notice Issue Date: October 23, 2014

Date of Hearing: March 24, 2015

Attended By:

1. Mr. Arshad P. Rana,
Chief Executive
M/s. Atlas Insurance Ltd;
2. Mr. Rashid Amin,
Chief Financial Officer,
M/s. Atlas Insurance Ltd;
3. Mr. Asim Gul
Executive Director,
M/s. Atlas Insurance Ltd;

Date of Order: April 7, 2015

ORDER

Under Section 99(5) read with Section 156 of the Insurance Ordinance, 2000.

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This Order shall dispose of the proceedings initiated against the chief executive and directors of M/s. Atlas Insurance Ltd Limited ("the Company") for alleged contravention of Section 99(5) read with Section 156 of the Insurance Ordinance, 2000 (the "Ordinance"). The chief executive and directors of the Company shall be referred to as the "Respondents" hereinafter.

A. Background

2. An onsite Inspection of M/s Atlas Insurance Limited (the "Company") was conducted on the order dated March 05, 2014, under Section 59A of the Ordinance, during which the following observations were made:

- a) The Company made payments on account of the commission to its agents through bearer or open cheques instead of crossed cheques in violation of Section 99(5) of the Ordinance. This observation was also





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raised by the internal auditor of the Company in the audit report of 2013, and thus the Board of Directors of the Company was aware of this non-compliance;

- b) In view of the above observation, the Chairman of the Board of directors of the Company directed the chief executive of the Company to ensure payment of commission to agents through crossed cheques.
- c) Despite the above said direction, it was observed that many payments on account of commission were made to the agents through open or bearer cheques.

3. In view of the violation highlighted at para 2 above, the Commission initiated penal action by issuing a Show Cause Notice dated October 23, 2014 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 violating Section 99(5) of the Ordinance.

4. In response to the said Show Cause Notice, the Respondents, vide their letter dated November 08, 2014 stated that:

"We would like to submit that the Company as a matter of policy always makes payment of commission to agents through crossed cheque. Company's policy in this regard is very clear which is communicated to our branches who disburse this commission to their gents, on regular basis to ensure that this practice is adhered to by all the braches.

However, regrestfully some of the branches violated the company policy and actions were taken by the head office against these branches which included explanation from the respective branch for such violation and disciplinary actions too. As a result of these efforts payment of commission other than cross cheque was stopped subsequently.

We deeply regret for this violation on our part, we request your good office to kindly take a lenient view as we have always tried our best to ensure compliance with the law and in this case the intention was not deliberate and pervasive. In the meantime we assure you that no such deviation from the provisions of Section 99(5) of the Insurance Ordinance, 2000 will take place in future.

We would also request you to please provide us the opportunity to be heard in person and /or through our counsel to further clarify our point of view."

B. Hearings

5. Through the abovementioned response, the Respondents requested for a hearing to defend their stance, and accordingly the Commission, vide its notice no.





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ID/Enf/Atlas/2014/21638 dated January 01, 2015, scheduled the hearing for January 13, 2015 at 11:30 a.m. The hearing was attended by Mr. Rashid Amin, Chief Financial Officer and Mr. Muhammad Afzal, Company Secretary, for and on behalf of the Respondents.

6. The Respondents gave their arguments to defend the proceedings of the Show Cause Notice during the hearing of January 13, 2015. However, the matter could not be decided on the basis of the arguments and submissions made by the Respondents. Therefore, another opportunity was provided to the Respondents, vide notice no. ID/Enf/Atlas/2015/399 dated February 26, 2015, through which hearing was scheduled for March 24, 2015 at 11:30 a.m. through video link connecting the Head Office with the Lahore Office of the Commission. The hearing was attended by Mr. Arshad P. Rana, Chief Executive, Mr. Rashid Amin, Chief Financial Officer and Mr. Asim Gul, Executive Director of the Company, for and on behalf of the Respondents.

7. Brief proceedings of the hearing of March 24, 2015 are as follows:

- a. Prior to the start of the hearing proceedings, the Respondents handed over the Power of Attorney in favor of Mr. Arshad P. Rana, Chief Executive of the Company to the Commission;
- b. The Respondents were asked to present their stance, to which they stated that the Respondents have already submitted their contention before the Commission vide their letter dated November 08, 2014;
- c. The Respondents stated that, in fact, the Board of directors of the Company delegated its power to its branches, enabling them to make payments on account of commission to the agents up to the limit fixed by the Board. However, as per the delegation, the Board of Directors did not allow at any stage to any branch to make payment of commission to agents through open or bearer cheque;
- d. The Respondents admitted that three branches of the Company made payments on account of the commission to its agents through bearer cheques. The management took action against officials of the respective branches when this violation was highlighted by the internal audit team. Thereafter, all branches complied with Section 99(5) of the Ordinance while making payments to the agents through crossed cheques;
- e. Lastly, the Respondents requested the Commission to take lenient view as the Company has already complied with Section 99(5) of the Ordinance.





C. Issues

8. The Respondents were required to ensure compliance with Section 99(5) read with Section 156 of the Insurance Ordinance, 2000.

Section 99(5) of the Ordinance, 2000 provides that:

"(5) No payment of commission or other remuneration to an insurance agent shall be made otherwise than by a crossed cheque, pay order or electronic funds transfer or in such other manner as may be prescribed: Provided that this sub-section shall not apply to payments to an agent which do not in the aggregate in one year exceed the sum of five thousand."

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."

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

9. It is the responsibility of the Respondents to have effective control over operations of the Company including operations of its branches. The argument that Board of directors did not allow any branch to make payment to agents on account of commission through open or bearer cheques is not valid. In the instance case, the Company failed to supervise its branches effectively as the branches made payments to its agents in violation of Section 99(5) of the Ordinance for which the Respondents can be penalized under section 156 of the Ordinance. However, the Respondents have stated that the Company has already complied with Section 99(5) of the Ordinance and currently all payments are being made through crossed cheques.

E. Overall conclusion

10. 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 and other legal references, I am of the view that there has been an established default of the Section 99(5) of the Ordinance. However, the Company has confirmed that it has complied with Section 99(5) of the Ordinance.





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11. I find it relevant to discuss the duties of the directors whom are required to be vigilant and perform their duties with due care. The directors are supposed to be well aware of their legal obligations in connection with the requirement of the Rules and Regulations as are applicable to an insurer, registered under the Ordinance.

F. Penalties and directions

12. In exercise of the power conferred on me under Section 156 of the Ordinance, I, take a lenient view by not imposing the penalty as provided under the said Section of the Ordinance, and thus condone the Respondents for the reasons and circumstances as mentioned in the foregoing paras hereof. The Respondents are warned that in case of similar non-compliance in future, the Commission shall take stern action against the Company. Further, the Respondents are hereby directed to observe strict compliance with the provisions of the Ordinance, Rules and Regulations in future.

13. 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.


Hasnat Ahmad

Director

