



SECP

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 10, 2015

ORDER

Under Section 2(xxvii) read with Section 156 of the Insurance Ordinance, 2000.

.....

This Order shall dispose of the proceedings initiated against the chief executive and directors of M/s. Atlas Insurance Company Limited (the "Company") for violating the definition of the term "insurance" as laid down under Section 2(xxvii) 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 the Company was conducted on the order dated March 05, 2014, under Section 59A of the Insurance Ordinance, 2000 (the "Ordinance"), during which, it was observed that the Company insured its own assets by issuing different policies including its head office, branches, machinery





SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Insurance Division

Continuation Sheet 1

breakdown, fire, motor and health etc. to itself. These policies were issued *prima facie* in violation of the definition of insurance as laid down under Section 2(xxvii) of the Ordinance, SRO No. 149(I)2009 dated February 11, 2009 and Circular 04/2010 dated January 23, 2010.

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.

4. In response to the said Show Cause Notice, the Respondents, vide its letter no. AC/14/11/6109 dated November 08, 2014 stated that:

"We would like to submit that Atlas Insurance Limited is a law abiding corporate entity and always endeavors to comply with all the provisions of the relevant statutes.

Company complied with the provisions of SRO 149/2009 dated February 11, 2009 and Circular No. 4/2010 dated January 23, 2010 both issued by the Securities and exchange Commission of Pakistan by following the International Financial Reporting Standards (IFRS) 4, with regard to the accounts and preparation of balance sheet and profit and loss account. However, since the matter of self-insurance was not specifically addressed in the respective circular the company assumed of having compliant with the said circular. The explanation of insurance contracts with regard to insurance of the company's own assets was although explained in the examples of the said IFRS but regretfully was over looked unintentionally.

We would like to mention here that after receiving the draft inspection report wherein this issue was pointed out we started making arrangements for insurance of our assets with other insurance company as also mentioned in our comments on the report. Subsequently company arranged the insurance of its assets with another company, Security general Insurance Company Limited with effect from October 01, 2014 i.e before the issuance of the show Cause notice, hence complying with the provisions of IFRS 4.

While we regret for this overlook on our part we, in view of the above submission, request you that a lenient view may please be taken and this inadvertent violation be condoned being unintentional. In the meantime we assure you that no such deviation from the provisions of Section 2(xxvii) 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".

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Insurance Division

Continuation Sheet 2

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. ID/Enf/Atlas/2014/21637 dated January 01, 2015, scheduled the hearing for January 13, 2015 at 12:00 p.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 afforded to the Respondents through the notice no. ID/Enf/Atlas/2015/398 dated February 26, 2015, whereby hearing in the matter was scheduled for March 24, 2015 at 11:00 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.

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

- a. Prior to the start of the hearing proceedings, the Respondent 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 since the matter of self-insurance has not been specifically addressed in the Circular No. 4/2010 dated January 23, 2010, hence the Company assumed to have complied with the said Circular and thus insured its own assets. However, the explanation of insurance contract particularly with regard to insurance of Company's own assets as mentioned in IFRS was overlooked unintentionally.
- d. The Respondents further stated that when this issue was pointed out by the inspection team, we immediately started making arrangements to insure our assets with M/s. Security General Insurance Company Limited. This whole process was completed before issuance of the Show Cause Notice to the Company. Regarding health policy, the Respondents stated that the Company pays medical expenses to its employees instead of issuing health insurance policy to them.





SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 3

- e. The Respondents reaffirmed that violation highlighted in the Show Cause Notice has been regularized, therefore requested the Commission to take a lenient view.

C. Issues

8. By virtue of the Company's registration under the Ordinance, the Respondents were required to ensure that the Company complies with the requirements of the Ordinance relating to the business of insurance, which includes the core concept of insurance as laid down under Section 2(xxvii) of the Ordinance.

9. Section 2(xxvii) of the Insurance Ordinance, 2000 defines the term 'insurance' as:

"insurance" means the business of entering into and carrying out policies or contracts, by whatever name called, whereby, in consideration of a premium received, a person promises to make payment to another person contingent upon the happening of an event, specified in the contract, on the happening of which the second-named person suffers loss, and includes reinsurance and retrocession:

Provided that a contract of life insurance shall be deemed to be a contract of insurance notwithstanding that it may not comply with the definition set out in this clause;"

10. According to IFRS 4 Appendix B, Definition of an insurance contract;

"B19 The following are examples of items that are not insurance contracts:

(c) Self-insurance, in other words retaining a risk that could have been covered by insurance (there is no insurance contract because there is no agreement with another party)."

11. Further, as per definition of the "contract" under the Contract Act, 1872, a contract must be between two parties. An insurance contract is a contract between two parties, and in this view, an insurer cannot enter into a contract of insurance with itself.

12. In view of the foregoing paras hereof, the Company appeared to have violated the basic definition of insurance as stated under Section 2(xxvii) of the Ordinance, for which the Commission may take penal action(s) as provided under Section 156 of the Ordinance.

13. The provisions of Section 156 of the Ordinance state 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

14. The aforementioned provisions of the law and IFRS 4 clearly forbid an insurer to engage itself into contractual obligations concerning self-insurance. Thus, a self-insurance contract is considered to be contrary to the core principle of an insurance contract, as it can neither be termed as a contract of insurance nor it can be treated or reported in the similar fashion as in the case of any other insurance contract.

15. However, the Respondents have submitted their arguments that the Company has arranged insurance of its assets from Security General Insurance. Regarding health insurance the Company pays medical expenses and it does not issue health insurance policies to its employees.

16. Moreover, it has been put before the Commission that no other major violation has been observed by the inspection team.

E. Overall Conclusion

17. 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 references, as stated above, I am of the view that there has been an established default of the Section 2(xxvii) of the Ordinance for which the Commission may take penal action in terms of Section 156 of the Ordinance. However, it would be pertinent to mention that the Company has arranged insurance of its assets from Security General Insurance and has also discontinued its practice of offering health insurance policy to its employees.

18. Before proceeding further, 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 Ordinance, Rules and Regulations, as are applicable to an insurer, registered under the Ordinance.





F. Penalties and directions

19. In exercise of the power conferred on me under Section 156 of the Ordinance, I, instead of imposing a penalty, take a lenient view based on the grounds as mentioned in Paras 15 & 16 hereof and thus condone the Respondents of the instant Show Cause Notice. The Respondents are further directed to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

20. 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

