





SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Insurance Division

Continuation Sheet -2 -

(c) Section 41(2) of the Ordinance provides that *every insurer shall submit to the Commission, in the manner prescribed by the Commission and not less than one month prior to the coming into effect, or as soon as practicable thereafter, of any treaty reinsurance arrangement entered into by the insurer as cedant, such features of that reinsurance arrangement as may be prescribed by the Commission.*"

3. Pursuant to Rule 15 of The Securities and Exchange Commission (Insurance) Rules 2002 "**Requirement to effect and maintain reinsurance arrangement**" and Circular 32/2009 of 27 October 2009, the Company was required to submit to the Securities and Exchange Commission of Pakistan ("the Commission") summaries of their respective reinsurance arrangement for the year 2010 by 30 November 2009 and the certified copy of signed treaty slip/cover notes by 31 January 2010.

4. The Company failed to submit to the Commission the required summaries of its reinsurance arrangement for the year 2010 and subsequent documentation within the prescribed timelines.

5. The Commission taking suo moto action of the aforesaid contraventions vide its letter of 4 January, 2010 enquired from the Company as to the reason for non-submission of the required documents. In response the Company in its letter dated 7 January, 2010 provided a copy of treaty advice slip along with an acceptance letter from Pakistan Reinsurance Company Limited reflecting their participation to the extent of 35 percent of the business under MV Excess of Loss Treaties for the year 2010.

6. The Commission vide its letter dated 12 January 2010 directed the Company to submit evidence of remaining 65% treaty arrangements. The Company in its reply dated 18 January, 2010 stated that they were negotiating with other reinsurers for the remaining 65 percent of their business and would furnish to the Commission as soon as the treaty arrangements will be finalized.

7. Reminders of the aforesaid matter were served to the Company by the Commission on February 2, 2010 and February 26, 2010. In response, the Company filed treaty slip/cover note in respect of M/s. "Pakistan Reinsurance Co. Ltd (PRCL)" with a share of 35% and M/s. "HISCOX (USA)" with 65%, under cover of a letter Ref. AM-05/10/72 dated 2 March, 2010.

8. In order to determine the authenticity of the aforesaid information, the Commission sent an enquiry to HISCOX (USA) and HISCOX (Bermuda), but no response was received, then the Commission sent an email to HISCOX (UK), which is the main office of HISCOX (USA) and received a response from HISCOX (UK) wherein they outrightly denied in their email of 22 March 2010 of not having extended any coverage to the Company.

9. The Commission enquired from the Company on 31 March 2010 to explain as to why HISCOX UK denied having any reinsurance arrangement with the Company.

10. In its letter dated 3 April 2010, the Company stated that it has arranged this treaty contract through Mr. Hussain Shahab Aftab; Chief Executive Officer; A.R.S. Globle; 3<sup>rd</sup> Floor; Nadir House, I.I. Chundrigar Road, Karachi in the capacity of Technical Adviser M/s HISCOX International, 358 Main Street, ARMONK, N.Y. 10506 (USA).

11. The Commission sent a letter to Mr. Hussain Shahab Aftab; C.E.O. of A.R.S. Globle, to enquire whether he had arranged any reinsurance treaty arrangement between HISCOX (USA) and the Company, but the letter was undelivered stating reason "no such consignee on given address" by TCS courier service.



12. The officers of the Commission visited the office of M/s. A.R.S. Globle on 9 April 2010, to meet Mr. Hussain Shahab Aftab, Chief Executive Officer but no such office was found on the address given by the Company.

#### Show Cause Notice

13. The Company, has contravened the provisions of Section 11(1)(d), Section 41(1) and Section 41(2) of the Ordinance and it has made a false statement by providing forged material information i.e. the treaty slip/cover note, which attracts the penal action under Section 158 of the Ordinance and therefore a Show Cause Notice ("SCN") dated April 19, 2010 under Section 11(1)(d), 41(1) and 41(2) read with Section 158 of the Ordinance was served to the Chief Executive and Directors of the Company, calling upon them to explain as to why appropriate action may not be taken against the Company under the law for the aforesaid contravention.

#### Company Reply

14. Vide its letter dated April 26, 2010, the Company, in response to the SCN, stated that they have not made any false statement in respect of the treaty and since M/s HISCOX International does not have any office in Pakistan so they were unable to verify the treaty arrangement. Further, they said that this fraud has been committed by Mr. Hussain Shahab Aftab (Purported CEO of A.R.S Globle).

#### Hearing Proceedings

15. In order to provide an opportunity to the Chief Executive and Directors of the Company or their authorized representatives to clarify their position, a hearing in this matter was scheduled on May 19, 2010 at 11:00 a.m. and hearing notices were sent to the Chief Executive and Directors of the Company on May 05, 2010.

16. The said hearing was attended by the Mr. A. Rashid Mirza (Chief Executive), Mr. Asjad Saeed, Advocate (Legal Counsel for the Company). During the hearing they stated that they had made this reinsurance arrangement with HISCOX (USA) for the first time. They accepted the default and admitted that the arrangements with M/s. HISCOX (USA) through Mr. Hussain Shahab Aftab were made on the advice of their Zonal Manager, Karachi, who did not have any experience regarding reinsurance in his personal capacity. Furthermore, the Company apologized for the default and said that it was never intended to give a false statement.

#### Consideration of the Submission

17. Before proceeding further, I find it relevant to discuss the duties of the Directors. The directors, 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 and breach of these statutory duties will usually be a criminal offence, punishable by fine or imprisonment. 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 have failed to perform their duties with due care and prudence. As the directors are supposed to be well aware of their legal obligations in connection with aforesaid statutory



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
Insurance Division

Continuation Sheet -4 -

requirement of reinsurance treaty arrangements and consequences of the said default, therefore, it could be legitimately inferred that the default was committed knowingly and willfully.

**Conclusion**

18. After carefully examining the arguments and studying the facts and findings of the case as mentioned in the above paras of this Order, the default of Section 11(1)(d), 41(1) and 41(2) read with Section 158 of the Ordinance has been established. Therefore action against the Company may be taken by imposing a fine under Section 158 of the ordinance which 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, willfully makes 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."*

**Order**

19. In exercise of the power conferred on me under Section 158 of the Ordinance, instead of imposing maximum penalty, I have taken a lenient view due to the fact that:

- a) The aforesaid non-compliance has now been removed by making 65% reinsurance arrangement with PRCL and the Company has submitted the complete treaty advice slip on April 14, 2010.
- b) Additionally, during the period of non-compliance no losses were caused to the policy holders.
- c) Furthermore, the Company's book of business is restricted to only one class of insurance and the total turnover of the Company as per the audited accounts for the year ending December 31, 2009 is merely Rs.1,014,605. Consequently the overall exposure of the Company is limited.

In view of all these facts as stated above, I have decided to impose a fine of only Rs.50,000 (Rupees fifty thousand only). However, the Company is hereby issued a stern warning that in case of similar non-compliance in future a strong action against the Company will be taken.

20. *M/s. The Asian Mutual Insurance Company (Guarantee) Limited* are hereby directed to deposit the aforesaid fine of Rs.50,000 (Rupees fifty thousand only) 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 receipt of this Order and furnish receipted vouchers issued in the name of Commission for information and record.

(Nasreen Rashid)  
Executive Director (Insurance)