



# SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

[Islamabad]

Before Tahir Mahmood, Executive Director (Enforcement)

*In the matter of*

Asia Insurance Company Limited

Under Section 492 read with Section 476 of the Companies Ordinance, 1984

Number and date of show cause notice	EMD/233/34/08-1375-1382 dated January 14, 2009
Date of hearing	March 30, 2009
Present	Mr. R. Zahick, Executive Director Mr. M. Daoud, Mr. Zeeshan Chishti, Chief Financial Officer (Authorized Representative of Directors of Asia Insurance Company Limited)
Date of Order	April 30, 2009

## ORDER

This Order shall dispose off the proceedings initiated against Asia Insurance Company Limited (hereinafter referred to as (the "Company"), its Directors and Chief Executive for alleged misstatement punishable under Section 492 of the Companies Ordinance, 1984 (the "Ordinance").

2. The facts leading to this case, briefly stated, are that the Enforcement Department of the Commission examined the annual audited accounts for the period ended December 31, 2007 ("Accounts") submitted by the Company pursuant to the provisions Section 233(5) of the Ordinance and observed that in Profit and Loss Account the amount of net commission is not in confirmation with figure stated in Statement of Expenses as follows:

### **Net Commission as per Profit & Loss Account**

Net commission **Rupees**  
1,038,229

### **Net Commission As per Statement of Expenses**

Commission from reinsures **Rupees**  
4,361,905  
Net commission expenses (5,665,481)  
Net commission (1,303,576)

**Difference** **(2,341,805)**



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3. The Commission vide its letter dated July 22, 2008 sought comments from the Company on the above observation. The Company there against replied vide its letter dated August 04, 2008 as follows:

"As per expense statement for the year ended December 31, 2007, we took the aggregate amount of Gross Commission received from Reinsurers amounting to Rs. 4,361,905/- instead of the net amount of commission income due to an oversight of excel link and could not be highlighted while finalization of accounts. The actual figures are Rs. 4,254,785/- for Fire Rs. 1,489,480/- for Marine and Rs. 959,445/- for Misc. and the total would come to Rs. 6,703,710/-".

For further analysis the Company was requested vide letter dated September 17, 2008 to submit its trial balance with accounts grouping for the year ended December 31, 2007 and ledger account of commission received from reinsurer for the year ended December 31, 2007. In response, the Company vide its letter dated September 24, 2008 submitted the trial balance with accounts grouping, ledger account of commission received from reinsurer for the year ended December 31, 2007 and also submitted the break up of commission from reinsurer of Rs.4,361,905/- as follows:

<u>Commission Income</u>	<u>Rupees</u>	<u>Rupees</u>
Ceded commission		4,361,905
<u>Commission deferred</u>		
Opening	1,333,802	
Closing	(785,388)	475,658
Risk Inspection fee		<u>1,866,147</u>
<b>Net commission Income</b>		<b>6,703,710</b>
<b>Net commission expenses</b>		<b>(5,665,482)</b>
<b>Net commission as per P &amp; L</b>		<b><u>1,038,229</u></b>

4. The detailed analysis of trial balance and ledger of commission from reinsurers revealed that there was controversy in the submissions of the Company and appeared that the Company has overstated its profit for the year ended December 31, 2007 by Rs. 2,341,805/-.

5. Consequently, a Show Cause Notice dated January 14, 2009 under Section 492 read with Section 476 of the Ordinance ("SCN") was issued to the Company, its directors and chief executive, calling upon them to show cause in writing as to why the penalty as provided under Section 492 of the Ordinance may not be imposed on them for making false statement punishable under Section 492 of the Ordinance.

6. Replying to the SCN the Company vide its letter dated January 27, 2009 requested for opportunity to submit the details in person, in the meanwhile, the legal representative of the Company, M/s Cornelius, Lane & Mufti, on behalf of directors and the Company vide its letter dated January 28, 2009, February 13, 2009 and February 25, 2009 requested for grant of further time for reviewing and





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finalizing the reply. In order to provide the opportunity of being heard the case was fixed for hearing on March 18, 2009 and re-fixed on March 30, 2009 at the request of M/s Cornelius, Lane & Mufti, legal representative of directors and the Company.

7. The detail reply to the SCN was submitted by the Company vide its letter dated March 14, 2009 in which it was narrated that there does not appear to be any specific provision in the Insurance Ordinance, 2000 and Insurance Rules, 2002 for presentation of risk inspection fee or its adjustment against any expense. The risk inspection fee amounting to Rs. 1,866,147/- was adjusted against the commission expense and in the account commission expense of risk expense fee was reflected similarly commission from the reinsurer was reflected properly. The reconciliation statement of the figures of profit and loss account and statement of expenses for the year ended December 31, 2007 was as follows:

<u>Commission Income</u>	31-12-2007	31-12-2006
	Rupees	Rupees
Ceded commission	4,361,905	4,121,522
Commission deferred		
Opening	2,036,244	-
Closing	(1,560,586)	(2,036,245)
	475,658	(2,036,245)
<b>Net commission income ceded</b>	<b>4,837,563</b>	<b>2,085,277</b>
Risk inspection fee	1,866,147	1,655,665
<b>Net commission income</b>	<b>6,703,710</b>	<b>3,740,942</b>
<b>Net commission expenses</b>	<b>(5,665,482)</b>	<b>(2,674,764)</b>
<b>Net commission as per P &amp; L</b>	<b>1,038,228</b>	<b>1,066,178</b>

And argued that there was no overstatement of profits and further submitted that a person can only be penalized under Section 492 of the Ordinance if the false statement has been made relating information which is "material" and in the present case there was no violation of Section 492 as the materiality requirement has not been satisfied and a penalty for false statement under Section 492 can only be imposed if it is an untrue or incorrect statement, known to the farmers of the statement to be "false". Hence, no false statement was made in terms of Section 492.

8. On the date of hearing, Mr. Zeeshan Chishti, Chief Financial Officer (authorized representative), Mr. R. Zahick, Executive Director and Mr. M. Daoud, appeared and argued the case. The CFO of the Company stated that the figure of net commission in profit and loss account was not in confirmation with the statement of expenses due to an oversight of excel link. However, the figures of net commission stated in profit and loss account are true and correct and oversight of excel link could only effect the statement of expenses. The actual figures in statement of expenses are Rs. 3,863,574/- for Fire, Rs.



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1,098,270/- for Marine, Rs. 782,421 for Motor and Rs. 959,445/- for Misc. and the total of net commission from reinsurer would come to Rs. 6,703,710/-".

9. I have thoroughly considered the submissions made in response to the SCN, record of the Company, arguments of authorized representative and relevant provisions of the Ordinance. I am of the considered view that the Company had violated the provisions of Section 492 of the Ordinance and I hold on this issue based on the following analysis of the aforesaid arguments and submissions of the Company:

- (a) In view of the aforesaid and while reviewing the accounts it was noticed that that figures of net commission in profit and loss account was not in confirmation with figure stated in statement of expenses. However, the figure of net commission in profit and loss account was correct and true, whilst the figure of net commission stated in statement of expenses is false and incorrect. The Company has made statement of expenses which is false and incorrect which is in contravention of Section 492 of the Ordinance.
- (b) The directors, chief executive and chief financial officer are supposed to be well aware of their legal and professional obligations in the aforesaid matter and consequences of the said false statement, therefore, it could be legitimately inferred that they were responsible for making a false statement.
- (c) The statement of expenses is an integral part of financial statements of the Company and net commission from statement of expenses constitutes the income of the Company. Therefore, by making a false presentation of statement of expenses the shareholders of the Company may be erroneously misguided.

10. In view of the above, the default under Section 492 of the Ordinance is established and admitted. Keeping in view that false statement of expenses could not effect profit of the Company and the Company has assured that it would ensure strict compliance of the provisions of the Ordinance in future. I am inclined to take a lenient view and instead of imposing the fine under Section 492 of the Ordinance, on all the Directors hereby warn the Chief Executive, Director and Chief Financial Officer of the Company to observe the compliance of law in letter and spirit.

  
**Tahir Mahmood**  
*Executive Director (Enforcement)*

**Announced:**  
April 30, 2009  
Islamabad