



SECP
Insurance Division
Karachi

[Karachi]

Before Tariq Hussain, Director (Insurance)

In the matter of

Takaful Pakistan Limited

Show Cause Notice Issue Date: February 13, 2013
Date of Hearing: April 4, 2013
Attended By: Mr. Taimur Mirza
Advocate / Legal Counsel
M/s Mohsin Tayebaly & Co.
Date of Order: June 28, 2013

ORDER

(Under Section 2(ixiv) Read with Section 156 of the Insurance Ordinance, 2000)

.....

This Order shall dispose of the proceedings initiated against M/s Takaful Pakistan Limited ("the Company") for not complying with the principles of Islamic Shariah, thereby violating the definition of "takaful" business as laid down under Section 2(ixiv) of the Insurance Ordinance, 2000 (the "Ordinance").

Background Facts

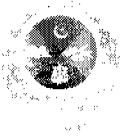
2. Takaful is a scheme of mutual assistance to the participants in case of occurrence of certain contingencies and the participants mutually agree to contribute to the common fund for this purpose, in compliance of the principles of Shariah. So, the prime objective of a Takaful Operator is to conduct Takaful Business based on the principles of Islamic Shariah.
3. Takaful has been defined under Section 2(ixiv) of the Ordinance, which states that:

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“Takaful” means a scheme based on mutual assistance in compliance with the provisions of Islamic shariah, and which provides for mutual financial aid and assistance to the participants in case of occurrence of certain contingencies and whereby the participants mutually agree to contribute to the common fund for that purpose;” (Underlined to put emphasis)

4. Rule 26 of the Takaful Rules, 2012 (the “Rules of 2012”) requires that each operator shall appoint a Shariah Advisor who shall be responsible for the approval of the following:

- (a) Products including all related documentation;
- (b) Participants’ Takaful Fund policy;
- (c) Investment policy;
- (d) Re-takaful arrangements; and
- (e) Distribution of surplus to the participants.

Rule 26 of the Rules of 2012 further requires that the Shariah Advisor shall ensure adherence to the conditions specified by the Commission upon advice of the Shariah Advisory Board on all matters.

Similarly, the repealed Takaful Rules, 2005 (the “repealed Rules of 2005”) required that the Shariah Board shall formulated all operational practices. As Rule 34 of the repealed Rules of 2005 required that:

“Shariah Board.-(1) Each Takaful operator shall appoint a Shariah Board (SB) of not less than three members which shall be responsible for the approval of products, documentation as well as approval of all operational practices and investment of funds which shall be filed with the Commission.”

5. In this regard, the Shariah Guidelines formulated and issued by the Shariah Supervisory Board (SSB) of the general takaful operators have allowed the co-takaful arrangements with conventional insurers subject to various conditions. These guidelines required that in the case of co-takaful arrangements with conventional insurers, the respective operator shall be required to pay its own share of claim directly to the client / participant / policyholder as well as receive its share of contribution directly from the client / participants / policyholder. This means that the Company was not allowed to receive contributions and settle claims through conventional insurers.

6. Moreover, the Company’s Shariah Board has also prescribed the Shariah Guidelines for the Company regarding Co-Takaful arrangements with the conventional insurers. Para 2(e) & (h) of the Company’s Shariah Guidelines state that:

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 2

"For Co-Takaful/Co-Insurance arrangement with conventional insurance Company, TPL must ensure compliance of the following requirements:

- ...
- e. The concerned participant should directly pay to TPL, its share of the Takaful contribution irrespective of the fact whether TPL is the leader or follow co-sharer.
- ...
- h. TPL, as lead Co-Takaful/Co-Insurance operator, may pay the 100% amount of the benefit to the concerned participant and then recover from other Co-Takaful/Co-Insurance operators, their respective shares. However, where others Co-Takaful/Co-Insurance operators are conventional insurers, then TPL should pay only its Co-Takaful/Co-Insurance share of the benefits (claim) payable.
- ..."

7. Note 1 of the said Shariah Guidelines for the Company also state that:

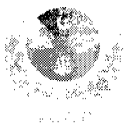
"General Guidelines for Takaful operations should also be taken into consideration by TPL when engaging in Takaful business as Co-Takaful/Co-Insurance operator."

8. However, it was observed that the Company has violated the Shariah Guidelines relating to co-takaful arrangements with the conventional insurers.

Following is the detail of the Company's business with conventional insurers during the years 2009, 2010 and 2011:

Year	Name of the Conventional Insurer	Nature of Business	Amount
2011	Adamjee Insurance Co. Ltd	Premium Collected & Paid to the Company	236,580
		Amount of Claim Paid On Behalf of the Company	-
	EFU General Insurance Ltd	Premium Collected On Behalf of the Company	863,695
		Premium Paid to the Company	555,739
		Claims Paid On Behalf of the Company	-
	Jubilee General Insurance Ltd	Claims Settled On Behalf of the Company	-
2010	Adamjee Insurance Co. Ltd	Premium Collected & Paid to the Company	38,471
		Amount of Claim Paid On Behalf of the Company	82,240
	EFU General Insurance Ltd	Premium Collected On Behalf of the Company	411,816
		Premium Paid to the Company	354,300
		Claims Paid On Behalf of the Company	231,553
	Jubilee General Insurance Ltd	Claims Settled On Behalf of the Company	-
2009	Adamjee Insurance Co. Ltd	Premium Collected & Paid to the Company	624,677
		Amount of Claim Paid On Behalf of the Company	595,639
	EFU General Insurance Ltd	Premium Collected On Behalf of the Company	1,531,986
		Premium Paid to the Company	1,163,102
		Claims Paid On Behalf of the Company	1,191,471
	Jubilee General Insurance Ltd	Claims Settled On Behalf of the Company	97,127

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9. In view of the above, it appeared that the Company has violated the basic idea and definition of Takaful scheme by acting against the principles of Shariah, as laid down under the guidelines formulated and issued by the Shariah Supervisory Board, which is detrimental to the interests of the participants of the takaful fund, and hence, attracts penal action against the Company as provided under Section 156 of the Ordinance.

Show Cause Notice

10. Accordingly, the Show Cause Notice was issued on February 13, 2013 under Section 2(ixiv) read with Section 156 of the Ordinance to the Chief Executive and Directors of the Company, calling upon them to show cause as to why the penalty, as provided under Section 156 of the Ordinance, should not be imposed upon the Company and/or its Directors for not complying with the principles of Islamic Shariah as envisaged in the Shariah Guidelines issued by the Shariah Supervisory Board of the general takaful operators, which, as of now, acts as a benchmark for adherence to the principles of Islamic Shariah, in terms of Section 2(ixiv) of the Ordinance.

Company's Response to the Show Cause Notice

11. In response to the said Show Cause Notice, the Company, through M/s Mohsin Tayebaly & Co. vide their letter no. IM894/TKPL/04/413/2013 dated February 27, 2013, stated that:

"...We have been instructed to reply to the Notice as follows:

Preliminary Objections

- a. At the very outset it is stated that the Hon'ble High Court of Sindh has vide order dated 02.08.2012, passed in Constitutional Petition No. D-2791 of 2012 filed by our Client along with four other takaful operators, directed the Commission to maintain status quo in respect of the Takaful Rules, 2012 (the "2012 Rules"). The said order stills holds and is in the field and therefore the Notice could not have been issued to our Client in the first place.
- b. No guidelines or directions have been issued by the Commission or the Takaful Industry and the terms of our Client's Shariah Guideline's for Co-Takaful / Co-Insurance cannot be deemed to have retrospective effect.
- c. In view of the above, the Notice has been issued in violation of the aforesaid order of the High Court of Sindh and is liable to be withdrawn immediately.



Serialim Reply

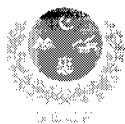
Without prejudice to the preliminary objections above, our serialim reply to the Notice is as follows:

1. That as regards the contents of paragraphs 1 and 2 of the Notice, it is stated that our Client firmly believes in and abides by the application of the principles of Shariah while conducting "Takaful Business" as defined in Rule 2(t) of the Takaful Rules, 2005 (the "2005 Rules") i.e. "business of Takaful whose aims and operations do not involve any element which is not in consonance with the injunctions of Islam as laid down in the Shariah". Any insinuation that our Client acts in any manner contradictory to the principles of Shariah are denied.
2. That in respect of the contents of paragraph 3 of the Notice it is submitted that our Client has impugned the 2012 Rules in its aforementioned petition and has prayed to the High Court of Sindh to set aside the same. It is reiterated that the High Court has directed the Commission to maintain status quo in respect of the 2012. Therefore the extracts of the provisions of the 2012 Rules mentioned in paragraphs 3 are denied as being in the field and applicable to our Client. It is further denied that the 2005 Rules have been repealed in view of the aforementioned order as status quo is to be maintained. Furthermore, as pointed out in the Notice, Rule 34 of the 2005 Rules requires the appointment of a "Shariah Board", which shall, inter alia, formulate all operation practices. It is submitted that our Client has a valid Shariah Board, comprising three distinguished Shariah Scholar and is in compliance of the requirements of the said rules.
3. That the contents of paragraph 4 of the Notice are denied as the same are misconceived and incorrect. It is submitted that the application of Takaful worldwide is still in a development phase with regard to Shariah and standardization is yet to be achieved in this respect. It is pointed out that the concerns raised in the Notice have been raised by our Client; however, there were no guidelines or directions available from either the Commission or the takaful industry to address such issues. In view of the same, the issues were extensively deliberated by our Client with its Shariah Board, which culminated with the issuance of the "Shariah Guidelines for Co-Takaful /Co-Insurance" by Our Client's Shariah Board in December 2011. Accordingly thereafter, our Client has been following guidelines, in letter and spirit.
4. That the contents of paragraphs 5 and 6 of the Notice warrant no comments, being a reproduction of our Client's Shariah Guidelines for Co-Takaful /Co-Insurance. It is highlighted that as pointed out above, the same were deliberated by our Client's Shariah Board, in its wisdom, due to the nonexistence of guidance from the Commission.



5. That the contents of paragraph 7 of the Notice are vehemently denied being unfounded and incorrect. It is submitted that since the issuance of the aforementioned guidelines in December 2011, our Client has been strictly complying with the directions contained in the same. It is emphasized that prior to December 2011, no guidelines were available in respect of co-takaful / co-insurance which is a complicated field within Takaful. It is also reiterated that since the issuance of the guidelines, our Client has followed the same in letter and spirit. Any retrospective application of such guidelines is contrary to the established principles of law.
6. In view of the above, there has been no contravention of Section 2(lxiv) of the Insurance Ordinance, 2000 and contents of paragraph 9 of the Notice are therefore denied as the same are incorrect and misconceived. Our Client has strictly abided by the terms of the aforementioned guidelines since the issuance of the same. Without prejudice to our Client's aforesaid position, it is submitted that the Shariah Guidelines for Co-Takaful /Co-Insurance did not even exist at the time of the supposed violations of the same. Therefore the question of contravention of the said guidelines cannot even arise and if any contravention has been made by our Client, which is categorically denied, the same can only be attributable to the fact that no guidance was provided by the Commission. Since no such contravention of any provision of guidelines has taken place, the Notice is liable to be withdrawn. It is also submitted that our Client has always abided by the principles of Shariah and has not in any manner carried out any acts to the detriment of the participants of the takaful fund. The assertions of the Commission are entirely baseless as our Client has not violated any guidelines.
7. That as regards the contents of paragraph 9 of the Notice and in view of the aforesaid it is submitted that no action contemplated under Section 156 of the Insurance Ordinance, 2000 or any other adverse action can be taken against our Client as our Client has not committed the contraventions alleged in the Notice.
8. It is further submitted that the Notice may kindly be withdrawn by the Commission and the Commission issue the finding that our Client has not committed the contraventions alleged in the Notice.
9. It is also submitted that our Client would like to appear before the Commission through us in order to put forth its defense to the allegations raised in the Notice against it and also produce further documents in support of its defense at such hearing, if the same is deemed necessary. (Underlined to put emphasis)

12. In the reply of the Company through M/s Mohsin Tayebaly & Co., the Company has shown concerns about the provisions of the Rules of 2012 that have been placed as supportive clauses in the Show Cause Notice dated February 13, 2013, in the light of the Order passed by the Hon'ble Court in the Constitutional Petition No. 2791 of 2012. The sole purpose of the relevance to the Rules of 2012 and the



repealed Rules of 2005 is that it has been mandatory for the takaful operators to appoint Shariah Scholars as their Advisors on Shariah matters, and that their responsibilities have been laid down in both the rules, so as to ensure that the idea and definition of Takaful business as laid down under Section 2(lxiv) of the Ordinance has been complied with by the takaful operators, in letter and spirit.

13. Furthermore, the reply of the Company also reveals that the Company admits that the Takaful business should be conducted in the light of the principles of Islamic Shariah.

14. Moreover, the Company, in its reply, has stated that the Shariah Board / Advisor of the Company had formulated the aforementioned Shariah Guidelines in December 2011, and the Company has adhered to these Guidelines, in letter and spirit, thereafter. However, prior to December 2011, there were no guidelines for the Company to follow. The Company further believes that the Commission had also not issued any guidelines for the conduct of Takaful business, and hence, the Company is not liable to be penalized.

Hearing of the Case & Subsequent Developments

15. As the Company, through M/s Mohsin Tayebaly & Co., had requested for a hearing in the matter, vide their reply to the aforesaid Show Cause Notice, as quoted hereinabove, the Commission had initially scheduled the hearing in the matter for March 15, 2013, which was communicated to the Company via the Commission's hearing notice no. ID/Enf/TPL/2013/15852 dated March 8, 2013. However, the Company, through M/s Mohsin Tayebaly & Co. vide their letter no. IM894/TKPL/01/485/2013 dated March 14, 2013 requested the Commission to adjourn the hearing with at least 10 to 15 days' notice.

16. Accordingly, the Commission had rescheduled the hearing in the matter for April 4, 2013 at 11:00 a.m., which was communicated to the Company via the Commission's hearing notice no. ID/Enf/TPL/2013/16110 dated March 22, 2013.

17. Accordingly, the said hearing, which was held on April 4, 2013 at 11:00 a.m., was attended by Mr. Taimur Mirza, Advocate, M/s Mohsin Tayebaly & Co., on behalf of the Company (who will be referred to as the "Company's representative" hereinafter).

18. Brief proceedings of the hearing of April 4, 2013 are as follows:

- a. Prior to the start of the hearing proceedings, the Company's representative handed over the undated Power of Attorney / Vakalatnama to the Commission;



- b. The said Power of Attorney / Vakalatnama was signed by Dr. Mumtaz Ahmed Hashmi, the Director of the Company, who was empowered by the Chairman of Board of Directors of the Company to appear himself, or to engage or appoint any legal practitioner to act on behalf of the Company and its Board of Directors in any legal cases, vide Circular Resolution of the Board of Directors dated January 9, 2013;
- c. The Company's representative was asked to present the stance of the Company, to which the Company's representative stated that since the matter of Takaful Rules, 2012 have been impugned under C.P. No. 2791/2012, and the Hon'ble High Court of Sindh has passed the Order in which the Commission has been directed to maintain status quo, therefore, no comments will be made;
- d. The Company's representative further stated that the matter may be decided on the basis of the written submissions of the Company.

Consideration of Company's Submissions

19. I have carefully examined and given due consideration to the written and verbal submissions of the Company (through the Company's representative, Mr. Taimur Mirza of M/s Mohsin Tayebaly & Co.), and have also referred to the provisions of the Ordinance and facts of the case. I am of the view that there has been an established default of the Shariah Guidelines, issued by the Shariah Supervisory Board of the general takaful operators read with Section 2(lxiv) of the Ordinance i.e. the idea and definition of the takaful business. However, the Shariah Board/ Advisor of the Company had issued Shariah Guidelines in December 2011, which was at the end of the year 2011.

20. However, before proceeding further, I find it relevant to discuss that the Company should at all times comply with the principles of Shariah, which is the most integral part of the Takaful business in terms of Section 2(lxiv) of the Ordinance.

Conclusion

21. 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 2(lxiv) of the Ordinance was there. Therefore, the penalty as provided under Section 156 of the Ordinance can be imposed onto the Company and/or its Directors.

22. Section 156 of the Ordinance states 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, 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.”

Order

23. In exercise of the power conferred on me under Section 156 of the Ordinance, I, instead of imposing the penalty, take a lenient view, and thus, condone the Company due to fact:

- a. THAT the Company’s management has adopted the required procedures as laid down in Shariah Guidelines issued by the Shariah Supervisory Board of the general takaful operators; and
- b. THAT prior to December 2011, there were no guidelines for the Company to follow in respect of co-insurance / facultative inward arrangements with the conventional insurers.

24. 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.

Tariq Hussain
Director