



SECP
Insurance Division
Karachi

[Karachi]

Before Mohammed Asif Arif, Commissioner (Insurance)

In the matter of

Takaful Pakistan Limited

Show Cause Notice Issue Date: March 11, 2013

Date of Hearing: April 29, 2013

Attended By: Mr. Taimur Mirza
Advocate
M/s Mohsin Tayebaly & Co.

Date of Order: September 4, 2014

ORDER

(Under Rule 10(1)(k) Read with Rule 12(1)(d) of the Takaful Rules, 2012)

.....

This Order shall dispose of the proceedings initiated against M/s Takaful Pakistan Limited ("the Company") for not complying with the provisions of Rule 10(1)(k) of the Takaful Rules, 2012 (the "Rules").

Background Facts

2. The Company had provided the Statement of Assets & Liabilities as on January 31, 2013 through their letter of February 25, 2013, which was in response to the Commission's letter dated February 4, 2013.

3. On perusal of the said Statement of Assets & Liabilities, it appeared that the Company has not complied with the provision of Rule 10(1)(k) of the Takaful Rules, 2012 (the "Rules") which relates to the 'Conditions applicable to operators'.

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4. Rule 10(1)(k) of the Rules states that:

"Conditions applicable to Operator.- (1) An Operator,-

...

(k) shall ensure that in case of General Takaful each Participant Takaful Fund, at all times, has admissible assets in excess of its liabilities:

..."

5. As per the Statement of Assets & Liabilities as on January 31, 2013, the Total Assets and Total Liabilities of the Participants' Takaful Fund (PTF) were as follows:

Total Assets (PTF)	Rs. 311,588,681
Total Liabilities (PTF)	Rs. 320,375,839

6. The Total Liabilities of the PTF have surpassed the Total Assets of the PTF by an amount of Rs. 8,787,158/-.

7. In this view, even if the Total Assets of the PTF would have been taken as admissible, the PTF would stand insolvent.

8. In view of the above, it appeared that the provisions of Rule 10(1)(k) of the Rules have been violated to a greater extent, which attract penal action against the Company as provided under Rule 12(1)(d) of the Rules.

Show Cause Notice

9. Accordingly, the Show Cause Notice was issued on March 11, 2013 under Rule 10(1)(k) read with Rule 12(1)(d) of the Rules to the Company, its Chief Executive and the Directors, calling upon them to show cause as to why the penalty, as provided under Rule 12(1)(d), should not be invoked against the Company for not complying with the provisions of Rule 10(1)(k) of the Rules.

Company's Response to the Show Cause Notice

10. In response to the said Show Cause Notice, M/s Mohsin Tayebaly & Co., vide their letter no. IM894/TKPL/01/538/13 dated March 22, 2013, mentioned that they have been instructed by the Company to submit reply to the Show Cause Notice, and further stated that the Hon'ble High Court of Sindh has made the Rules unenforceable and inapplicable as the Commission was ordered to maintain status quo. Moreover, they further argued that the Rules are not in the field in the light of the stay granted by the Court in Constitutional Petition No. D-2791 of 2012. Therefore, the Commission may not enforce the Rules at the very first instance.



11. In this regard, it would be important to state that the Order of the Hon'ble High Court of Sindh, whereby all parties were required to maintain status quo, does not set the Rules aside, hence, the Rules are very much in field and are applicable.

12. And, in view of the preceding para, it is quite evident that the Company has contravened the provisions of Rule 10(1)(k) of the Rules by not maintaining excess admissible assets over liabilities of the Company's Participants' Takaful Fund (PTF).

Hearing of the Case & Subsequent Developments

13. Although the Company, either itself or through its counsel, had not requested for a hearing in the matter, the Commission, on its own motion, had scheduled the hearing in the matter for April 29, 2013, which was communicated vide the Commission's hearing notice no. ID/Enf/TakafulPK/2013/16303 dated April 8, 2013.

14. The hearing of April 29, 2013 was attended by Mr. Taimur Mirza of M/s Mohsin Tayebaly & Co., who, prior to the start of the hearing proceedings, handed over the Power of Attorney to the Commission, whereby he was authorized to appear before the Commission for presentation of the Company's stance in relation to the aforementioned Show Cause Notice. Mr. Mirza shall be referred to as the Company's representative hereinafter

15. Brief proceedings of the hearing of April 29, 2013 are as follows:

- a. The Company's representative was asked to present the stance of the Company, on which the Company's representative stated that the Constitutional Petition No. D-2791 of 2012 is still pending before the Hon'ble High Court of Sindh and the Court's Order of August 1, 2012, requiring the Commission to maintain status quo, is still intact, therefore, the Rules are inoperative and the repealed Takaful Rules, 2005 are in field, and as per the repealed Takaful Rules, 2005, the Company is solvent;
- b. The Company's representative was clarified that the Rules have not been made inoperative by the Court in the light of its Order, these Rules are still in the field. Then, the Company's representative was advised to seek clarification from the Court on the operability of the Rules (Takaful Rules, 2012);
- c. The Company's representative kept on insisting that the Rules are not in the field, so there is no question about the aforementioned Show Cause Notice.



Consideration of Company's Submissions

16. 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 Rules. I am of the view that there has been an established default of Rule 10(1)(k) of the Rules, as the Company was required to maintain excess admissible assets over liabilities in its Participants' Takaful Fund at all times, which was not adhered to by the Company as on January 31, 2013.

17. However, 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 Company and its Directors have failed to maintain excess admissible assets over liabilities in its Participants' Takaful Fund of the Company at all times, as aforesaid, therefore, it could be legitimately inferred that the default was committed.

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 Rule 10(1)(k) of the Rules is established. Therefore, the penalty as provided under Rule 12(1)(d) of the Rules can be invoked against the Company.

19. Rule 12(1)(d) of the Rules states that:

"Revocation of Authorization.- (1) The Commission may by order suspend or revoke the authorization of an Operator either wholly or in respect of a class of business, as the case may be, if it is satisfied that,-

...
(d) the Operator has failed to maintain a surplus of admissible assets over liabilities in each Participant Takaful Fund, in case of General Takaful business in accordance with the provisions of these Rules;

..."



Order

20. In exercise of the power conferred on me under Rule 12(1)(d) of the Rules, I, instead of imposing the penalty, take a lenient view, and thus, condone the Company due to fact that the Company has agreed to ensure compliance with the requirements of the Rules, and that the requirements of the Rules are quite stringent compared to those of the repealed Takaful Rules, 2005, for which more time shall be required to deploy additional resources for ensuring compliance with these requirements. Moreover, the act of the Company has not harmed the interests of the policyholders / participants of the Company. However, the Company is hereby advised to ensure compliance with the provisions of Rule 10(1)(k) of the Rules by March 31, 2015.

21. 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.

Mohammed Asif Arif
Commissioner (Insurance)