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SECP

INSURANCE DIVISION  
Islamabad

Before Shaukat Hussain, Commissioner (Insurance)

*In the matter of*

M/s. Premier Insurance Limited

Show Cause Notice No. and Date : ID/Enf/Premier/2018/17560 dated  
December 20, 2018

Date of Hearing: April 25, 2019

Attended By: Mr. Rashid Sadiq  
Authorized Representative

Date of Order: May 07, 2019

**ORDER**

Under Rule 10(1)(k) & Rule 20(1) read with Rule 12(1)(d) of the Takaful Rules, 2012  
and Section 156 of the Insurance Ordinance, 2000

.....

This Order shall dispose of the proceedings initiated against M/s. Premier Insurance Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Rule 10(1)(k), Rule 20(1) read with Rule 12(1)(d) of the Takaful Rules, 2012 (the "Rules") and Section 156 of the Insurance Ordinance, 2000 (the "Ordinance"). The Company and its Directors shall be referred to as the "Respondents" hereinafter.

2. The Company is registered with the Securities and Exchange Commission of Pakistan (the "Commission") under the Ordinance to carry on general insurance business in Pakistan.

3. Rule 10(1)(k) of the Rules requires that in case of General Takaful, in each Participant Takaful Fund (PTF), admissible assets must be in excess of its liabilities at all times. However, review of the aforesaid statement/ calculation submitted by the Company and annual audited accounts of the Company for year ended December 31, 2017 revealed that the admissible assets of the Company's PTF were less than the PTF liabilities as shown in the table below:



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	Amount (Rs. in thousand)
Total admissible assets of the PTF as per regulatory returns	197,734
Less: Total liabilities of the PTF	(202,463)
Excess/(Shortfall)	(4,729)

4. The statutory auditor of the Company in its 'Independent Assurance Report on the Compliance with Shariah Rules and Principles' also highlighted as under:

*"... During the year, PTF did not have admissible assets in excess of its liabilities at all times as required under sub-clause (k) of clause (10) of the Rules."*

5. The Company, in response to the query raised by the Commission, provided its comments vide letter dated August 27, 2018 as under:-

*"We have noted the same and will ensure compliance in future."*

6. In view of the above, it appeared that the Company *prima facie* contravened the provisions of Rule 10(1)(k) and Rule 20(1) of the Rules for which the Respondents are liable to be penalized under Rule 12(1)(d) of the Rules and Section 156 of the Ordinance.

7. Rule 2 of the Rules provides the definitions of Operator, Takaful Operator, and Window Takaful Operator as stated below:

*"(via) "Operator" means a Takaful Operator or a Window Takaful Operator, authorized under these Rules;*

*(xxii) "Takaful Operator" means a Registered Insurer who is authorized by the Commission to carry on Takaful business and not Conventional Insurance business;*

*(xxiv) "Window Takafut Operator" means a Registered Insurer authorized under these Rules to carry on Takaful business as window operations in addition to Conventional Insurance business"*

8. 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:*

*Explanation: For this purpose any amount receivable from the Operator shall be deemed to be inadmissible."*



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9. Rule 20(1) of the Rules provides as follows:

*“Qard-e-hasna.- (1) In the case of a General Takaful if, at any point in time admissible assets in a Participant Takaful Fund are not sufficient to cover liabilities, the deficit shall be funded by way of actual transfer of funds as qard-e-hasna (interest free loan) from the Operator’s Fund to that Participant Takaful Fund.”*

10. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/Premier/2018/17560 dated December 20, 2018 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Rule 12(1)(d) of the Rules and Section 156 of the Ordinance should not be imposed on them for the aforementioned alleged contraventions of the law.

11. Thereafter, the Respondents vide letter dated January 10, 2019 submitted the reply in respect of aforementioned SCN, which is reproduced hereunder in brief:

“ ...

*(1) There was a deficit of PKR 4.729 million in admissible assets as of 31 December, 2018 due to the exclusion of contributions overdue beyond 90 days. Such deficit is to be funded by the Takaful Operator by way of actual transfer of funds as Qarz-e-Hasna (interest-free loan) from Operators’ Fund to that of Participant Takaful Fund (hereinafter ‘PTF’).*

*(2) As of 31 December, 2017, the amount due and payable to the same Window Takaful Operator was PKR 15.101 million - i.e., net due amount after deduction of non-admissible assets of PKR 4.729 million was PKR 10.372 million. As on that date, the PTF has adequate liquidity to pay this amount. Therefore, the Company is not in default on this account as it could be simply a payment of liability by PTF and receipt of funds as Qarz-e-Hasna from PTF.*

*(3) We also refer to rule 20(4) which allows PTF to continue operations for a period of three years even if there is a deficit, therefore, in our view, the authorization can only be suspended or revoked after three years consecutive years.*

*(4) The Company has already deposited a sum of PKR 13.4 million to cover the deficit and as of December 31, 2018 there is no deficit of admissible assets. A copies of the cheques PKR 13.4 million and copy of bank statement of PTF showing receipt of PKR 13.4 million is attached herewith as Annex].*

*(5) The purpose of admissible assets as mentioned in rule 20 of the Rules is to cover liabilities and when the PTF has a liability towards Operator then the deficit may be allowed to be adjusted against this liability.*

....”

12. Subsequently, the Commission, vide letter dated April 16, 2019, scheduled the hearing on April 23, 2019 at the Head Office of the Commission in Islamabad; however, the said hearing was rescheduled to April 25, 2019 and the Company was



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accordingly informed vide the Commission's letter dated April 19, 2019. The Authorized Representative of the Company while attending the other hearings in respect of different show cause notices against the Company, requested to hold the hearing on April 24, 2019 and the said request was acceded to.

13. The hearing of April 24, 2019 was attended by the Authorized Representative of the Respondents namely, Mr. Rashid Sadiq in person, for and on behalf of the Respondents, at the Commission's Head Office.

14. During the hearing, the Authorized Representative reiterated the comments submitted vide the Respondents' reply to the SCN dated January 10, 2019. He contested that the Company was never in deficit and as on December 31, 2017, the PTF had adequate liquidity to pay the amount of Rs. 15.101 million i.e. net due amount after deduction of non-admissible assets of Rs. 4.729 million was Rs. 10.372 million. He also argued that the Company was not in default on this account as it could simply be considered as a payment of liability by PTF and receipt of funds as Qard-e-Hasna from Operator's Fund.

15. In terms of Rule 10(1)(k), the Company was required to maintain the admissible assets in excess of its liabilities at all times in each PTF. However, it was observed that admissible assets of the Company's PTF were less than the liabilities i.e. a shortfall of Rs. 4.729 million.

16. Furthermore, it can be inferred that solvency of PTF shall be calculated in accordance with the provisions of the Ordinance for compliance in PTF under Rule 10(1)(k) of the Rules. As per Section 32(2)(h) of the Ordinance, contributions due and payable to the Takaful Operator but not paid for more than three months from the date due and payable are not admissible for the purpose of solvency. Therefore, the Company's stance with regards to considering the amount of Rs. 10.372 million as a payment of liability by PTF and receipt of funds as Qard-e-Hasna from Operator's Fund is not tenable.

17. It is also pertinent to mention that the Company also admitted the fact regarding the admissible assets being not in excess of its liabilities as on December 31, 2017 that had been raised by the auditors in their report. Needless to say that admissible assets of the Company's PTF were less than the liabilities based on the annual audited accounts and regulatory returns of the Company for the year ended December 31, 2017. The arguments and documents, which have been submitted by the Respondents so far have been found to be evidencing the fact that the Company has failed to comply with Rule 10(1)(k) of the Rules.

18. In addition to the above, the Company's statement that revocation of authorization can only be made if the PTF remains in deficit for three consecutive year, is also not justifiable. The provisions of Rule 12(1)(d) of the Rules provide that the Commission may suspend or revoke authorization of an Operator if the Operator fails to maintain a surplus of admissible assets over its liabilities in each



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PTF in case of General takaful business in accordance with the provisions of the Rules.

19. 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, the Rules made thereunder and/or other legal references. I am of the view that violations of Rule 10(1)(k) and Rule 20(1) of the Rules are clearly established, for which the Respondents may be penalized in terms of Section 156 of the Ordinance and/or punitive action against the Company under Section 12(1)(d) of the Rules may be taken.

20. 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;*  
...”

21. Section 156 of the Ordinance provides 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.”*

22. In exercise of the power conferred on me under Section 156 of the Ordinance and Rule 12(1)(d) of the Rules, I, instead of imposing the fine and revoking the authorization of the Company as a window takaful operator as provided under the said provision, take a lenient view, and issue a stern warning to the Company to comply with the Rules and that in case of similar non-compliance in future a strict action against the Respondents will be taken.

Shaukat Hussain  
Commissioner (Insurance)

