



SECP
INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director/HoD (Enforcement)

In the matter of

M/s. TPL Insurance Limited

Show Cause Notice No. and Issue: ID/Enf/TPL/2019/497 dated April 19, 2019
Date:

Date of Hearing: August 29, 2019

Attended By: Syed Kazim Hassan
Chief Operating Officer/CFO
M/s. TPL Insurance Limited

Mr. Danish Qazi
Group General Counsel & Company Secretary
M/s. TPL Insurance Limited

Mr. Muhammad Junaid
Financial Controller
M/s. TPL Insurance Limited

Date of Order: October 4, 2019

ORDER

**Under Section 32(2)(g), Section 32(2)(u)(ii) and Section 32(2)(u)(iii) read with
Section 156 of the Insurance Ordinance, 2000**

.....

This Order shall dispose of the proceedings initiated against M/s. TPL Insurance Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Section 32(2)(g), Section 32(2)(u)(ii) and Section 32(2)(u)(iii) of the Insurance Ordinance, 2000 (the "Ordinance"). The Company and its Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Ordinance to carry on the business of non-life insurance and general Takaful/window Takaful in Pakistan.

3. During offsite examination of the Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2017, it was observed that the Company treated few inadmissible assets as admissible for computation of the solvency margin,

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in violation of Section 32(2)(g), Section 32(2)(u)(ii) and Section 32(2)(u)(iii) of the Ordinance.

4. The Commission, vide letter dated July 18, 2018 bearing no. ID/OSM/TPLDIRECT/2018/15713, advised the Company to provide the calculation of admissible assets in formula enabled M.S. Excel format, which the Company provided vide its email dated September 25, 2018.

5. Review of the calculation of admissible assets revealed that the Company treated the following assets as admissible for calculation of the solvency margin, which were not admissible as per Section 32(2)(g), Section 32(2)(u)(ii) and Section 32(2)(9)(iii) of the Ordinance:

Table I

Asset Description	Amount in Rupees	Remarks
Prepaid advance given to TPL Trakker Ltd. (a related party) against annual monitoring and other charges*	141,497,116	Refer note # 13 of the Financial statement FTY ended December 31, 2017. As per Section 32(2)(g) of the Ordinance, "any balances with, shares in, loans to or other amounts due from anybody that is related to insurer or to any director of the insurer is inadmissible."
Prepaid advance given to TPL Properties Ltd. (a related party) against rent for principal office space of the company.*	13,041,972	Same as above
Computer Equipment	12,286,618	Refer Section 32(2)(u)(ii) of the Ordinance
Furniture & Fixtures	13,748,927	Refer Section 32(2)(u)(iii) of the Ordinance
Total	180,574,633	

**Both these advances carried markup @ 1 year KIBOR + 3.5% with floor of 10%. During the year, interest on advance to associated companies amounting to Rs. 5 million was booked in other income.*

6. Revised solvency margin of the Company, after treating the assets mentioned in Table I above as inadmissible, was as under:-

Table II

Description	Amount in Rupees
Solvency Margin as per Form GJ of the Annual Regulatory Return FTY ended December 31, 2017	309,100,701
Less: inadmissible assets taken as admissible for completion of Solvency Margin (refer Table I above)	(180,574,633)
Revised Solvency Margin	128,526,068

7. The revised solvency margin was substantially lower than the solvency margin disclosed in note # 36 of the financial statements for the year ended December 31, 2017 and in the Form GJ of the Annual Regulatory Returns for the year ended December 31, 2017.

8. Furthermore, while reviewing the 'Statement of Assets for Solvency Purposes - Form GJ of the Participant Takaful Fund (PTF)' for Window Takaful Operations,



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provided by the Company along with Regulatory Returns for the year ended December 31, 2017, it was observed that the Company treated the following asset as admissible in the PTF, which as per Section 32(2)(g) of the Ordinance was not admissible:-

Asset Description	Amount in Rupees	Remarks
Prepaid advance given to TPL Trakker Ltd (a related party) against annual monitoring and other charges	61,044,166	Refer note # 9 of the Financial statement - WTO FTY ended December 31, 2017. As per Section 32(2)(g) of the Ordinance, "any balances with, shares in, loans to or other amounts due from any body that is related to insurer or to any director of the insurer is inadmissible".

9. Revised admissible assets were calculated as under:-

Table III

Asset Description	Amount in Rupees	Remarks
Total Admissible Assets as per regulatory return	571,404,648	Refer Statement of Assets for Solvency Purposes: Window Takaful Operations - PTF
Prepaid advance given to TPL Trakker Ltd (a related party) against annual monitoring and other charges	61,044,166	Refer note # 9 of the Financial statement - WTO FTY ended December 31, 2017. As per Section 32(2)(g) of the Ordinance, "any balances with, shares in, loans to or other amounts due from any body that is related to insurer or to any director of the insurer is inadmissible".
Revised Admissible Assets	510,360,482	

10. In view of the above, it appeared that the Company failed to comply with the provisions of Section 32(2)(g), Section 32(2)(u)(ii) and Section 32(2)(u)(iii) of the Ordinance.

11. Section 32(2)(g), 32(2)(u)(ii) and 32(2)(u)(iii) of the Ordinance state that:

"(2) For the purposes of this Part, subject to sub-section (1), the following are not admissible assets:

.....

(g) balances with, shares in, loans to or other amounts due from any body that is related to the insurer or to any director of the insurer;

.....

(u)

(i)

(ii) office equipment and

(iii) fixtures and fittings which are not immovable property;

....."

12. Accordingly, a Show Cause Notice (SCN) No ID/Enf/TPL/2019/497 dated April 19, 2019 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Section 156 of the Ordinance should not be imposed on them for the aforementioned alleged contraventions of the law.



13. Thereafter, the Respondents submitted their reply vide letter dated July 8, 2019, as under:-

"... With reference to your Letter No ID/Enf/TPL/2019/497, dated April 19, 2019 on captioned subject, our response is as follows:

Admissibility of Prepaid Rent and Prepaid Annual Monitoring Charges:

Under Section 32(2)(g) of the Insurance Ordinance, 2000 (the "Ordinance"), balances with, shares in, loans to or other amounts due from anybody that is related to the insurer or to any director of the insurer" are not admissible assets for solvency purposes.

It is humbly stated that the prepaid rent and prepaid annual monitoring charges arise as a result of invoices paid in advance to TPL Properties Limited and TPL Trakker Limited respectively, for which the relevant services were to be received by the company over a one year period, and therefore represented unexpired portions of the respective invoices. The same are in the nature of prepaid expense and therefore, in our opinion, did not an amount "due from" a related party for the purposes of Section 32(2)(g) of the Ordinance.

Since the phrase / concept "amount due from a party" has not been defined under the law, we have looked at other acceptable sources for guidance and clarity in this respect, particularly the International Financial Reporting Standards, which are globally accepted.

IAS 32 - "Financial Instruments - Presentation" issued by International Accounting Standards Board, defines financial assets as follows:

"Financial asset is any asset that is:

(a) Cash

(b) An equity instrument of another entity

(c) A contractual right to receive cash or another financial asset from another entity

Further para AG 11 of Application Guidance of IAS 32 states as follows:

"Assets (such as prepaid expenses) for which the future economic benefit is the receipt of goods or services, rather than right to receive cash or another financial asset, are not financial assets....."

Based on above, since the same were not financial assets of TPL Insurance Limited, we are of the view that prepaid rent and prepaid annual monitoring fee do not fall under the ambit of Section 32(2)(g) of the Ordinance and therefore, are admissible for solvency purposes.

Accordingly, the amount of Rs. 141,497,116 and Rs. 13,041,972 would be treated as admissible assets for the period ended 31 December 2017.



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Admissibility of Computer Equipment for solvency purposes:

Under Section 32(2)(u)(ii) of the Ordinance, items of fixed assets classified as "Office Equipment" are not admissible for solvency purposes.

According to the SECP's prescribed format for financial statements for insurers, "Office Equipment" are distinct from "Computer Equipment" - In this respect, please refer to note 5 of the format of financial statements prescribed for insurers under the Insurance Rules, 2017. For the purposes of preparing our financial statements under the applicable laws, we have classified equipment, such as projectors, phones, etc, as "Office Equipment", while "Computer Equipment" includes items such as computers, printers etc. which are generally associated with and fall within the criteria of "Computer Equipment".

Resultantly, since the SECP itself classifies "Computer Equipment" to be distinct from "Office Equipment", as evident under the Insurance Rules, 2017 (highlighted above), and given that Section 32(2)(u)(ii) of the Ordinance specifies "Office Equipment" as inadmissible assets, it is humbly submitted, in our view, that "Computer Equipment" are considered admissible assets and do not fall within the ambit of Section 32(2)(u)(ii) of the Ordinance.

It is submitted that an alternative interpretation would, in itself, conflict with the provisions of the Insurance Rules, 2017 as the distinction between "Office Equipment" and "Computer Equipment" would not exist. Since the Rules are required to be read in consonance with, and as an extension of, the provisions of the Ordinance, a separate stance / interpretation cannot be adopted while applying the provisions the Ordinance (i.e. with respect to Section 32(2)(u)(ii) vis-a-vis the Rules (including for the purposes of preparing the financial statements of the company).

Admissibility of Furniture and Fixtures for solvency purposes:

Under Section 32(2)(u)(iii) of the Ordinance, fixtures and fittings which are not immovable property are not admissible for solvency purposes. We would like to state that file admissibility for solvency purposes claimed in Regulatory Return is for furniture items, such as tables, chair, etc which do not fall under the definition of and "fixtures and fittings", and therefore, in our humble view, are admissible assets. Furthermore, items in the nature of "fixtures and fittings" are classified under "Leasehold Improvements" in the financial statements, according to SECP's prescribed format, for which admissibility has not been claimed according to Section 32(2)(u)(iii).

Admissible Assets of Window takaful Operation:

As stated above, prepaid annual monitoring fee is not in the nature of amount receivable or due from a related party, rather it is in the nature of prepayment, arising as a result of accounting adjustment for unexpired portion of the service invoice. Therefore, we believe that the admissible assets of Window Takaful Operations have not been misstated.

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In light of the above, it is humbly submitted that the company has complied with all relevant laws; resultantly, no actions or penalties are warranted against the company or its directors under the provisions of Section 156 of the Ordinance.

In the event that further clarification is required by the Commission, the Company would like an opportunity of hearing, once the Commission has reviewed the contents of this response.

14. Hearing in the matter was scheduled on August 29, 2019 at the Head Office of the Commission, which was attended by the Authorized Representatives of the Respondents namely Mr. Syed Kazmi Hasan, Mr. Danish Qazi and Mr. Muhammad Junaid, connected through video link from the Commission's Karachi Office.

15. Arguments presented by the Authorized Representatives are summarized hereunder:-

- i. That the Company treated the amount of Rs. 141,497,116 and Rs. 13,041,972 as admissible assets for the period ended December 31, 2017.
- ii. These prepaid amounts were for the services to be received by the company over a one-year period, and therefore represented unexpired portions of the respective invoices.
- iii. Clause (c) of the circular No. 15/2010 dated July 6, 2010 states that "..... Similarly if an insurer has any balances due from a related party in the normal course of business (including amounts receivable under coinsurance/ reinsurance arrangements) these will not be inadmissible only because such amounts are receivable from a related party."
- iv. As per note 5 of the format of financial statements prescribed for insurers under the Insurance Rules, 2017 "office equipment" is distinct from "computer equipment".
- v. Furniture items, such as tables, chair, etc., do not fall under the definition of "fixtures and fittings" therefore, the same were treated as admissible assets.

16. In terms of Section 32(2)(g) balances with, shares in, loans to or other amounts due from anybody that was related to the insurer or to any director of the insurer were not admissible assets. Therefore, rent (Rs. 13,041,972) and annual monitoring charges (Rs. 141,497,116) paid in advance to TPL Properties Limited and TPL Trakker Limited respectively were not admissible.

17. Furthermore, the Commission, vide circular No. 36 of 2015 dated September 29, 2015 regarding 'related part assets' advised the insurers as under:-

"All insurers are advised to strictly ensure compliance with the provisions of Section 32(2)(g) of the Ordinance with the effect from January 1, 2016;"

18. Moreover, Clause 3(b) of the aforesaid Circular states that;



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"As required under Section 32(8)(a) of the Ordinance, insurers seeking to obtain declaration of the Commission in respect of any asset(s) as admissible asset(s) under Section 32(l)(d) of the Ordinance should apply in writing before this office."

19. As provided in Clause 3(b) of the Circular as mentioned above, the Respondents could have sought declaration from the Commission for treating related party assets as admissible, however, in the instant case, no such declaration was sought. Accordingly, the amounts of Rs. 141,497,116 and Rs. 13,041,972 would not be treated as admissible assets for the period ended December 31, 2017.

20. Furthermore, contention of the Respondents pertaining to Circular No.15/2010 dated July 6, 2010 is invalid as the same was superseded by Circular No 21 of 2014 dated December 30, 2014 and by circular No. 36 of 2015 dated September 29, 2015.

21. Similarly, an amount of Rs. 61,044,166 was taken as admissible asset in lieu of prepaid advance given to TPL Trakker Ltd (a related party) in the Statement of Assets for Solvency Purposes - Form GJ of the PTF for Window Takaful Operations. This was not admissible as explained in the previous paras hereof.

22. Section 32(2) of the Ordinance provides list of inadmissible assets and sub section (u) explicitly disallows office equipment, fixtures and fittings, which are not immovable property, as admissible assets.

23. Contrary to the above provision, the Respondents treated movable property i.e. furniture items, such as tables, chair, etc. (Rs.13,748,927) as admissible assets in violation of Section 32(2)(u)(iii) of the Ordinance. Again, the Respondents did not seek clarification from the Commission and relied on their own interpretation of "fixtures and fittings" to treat those assets as admissible assets. Rationale provided by the Respondents to treat the office equipment as admissible is also not tenable. Formats are provided for guidance and as such do not override provisions provided in the primary law. Furthermore IAS 16 para 37 states that:

"A class of property, plant and equipment is a grouping of assets of a similar nature and use in an entity's operations. The following are examples of separate classes:

...
(h) office equipment; and
....."

24. It can be inferred that office equipment and computer equipment are assets that are similar in nature, hence, are clustered together for solvency purpose in the Ordinance.

25. In view of the above, it is abundantly clear that the Respondents treated certain inadmissible assets as admissible for the computation of solvency margin, in violation of Section 32(2)(g), Section 32(2)(u)(ii) and Section 32(2)(u)(iii) of the Ordinance in the Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2017.



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26. 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 violation of Section 32(2)(g), Section 32(2)(u)(ii) and Section 32(2)(u)(iii) of the Ordinance is established, for which the Respondents may be penalized in terms of Section 156 of the Ordinance.

27. 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."

28. In exercise of the power conferred on me under Section 156 of the Ordinance, I, instead of imposing the fine as provided under the said provision, take a lenient view, and issue a stern warning to the Company to comply with the applicable laws and that in case of similar non-compliance in future strict action against the Respondents will be taken.

29. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the CEO of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Hasnat Ahmad

Director/HoD (Enforcement)

