



INSURANCE DIVISION
Islamabad

Before Tahir Mahmood, Commissioner (Insurance)

In the matter of

M/s. Adamjee Insurance Company Limited

Show Cause Notice No. & Issue ID/Enf/Adamjee/2018/13200
Date: Dated January 11, 2018

Date of Hearing: May 14, 2018

Attended By: Mr. Rashid Sadiq
M/s. RS Corporate Advisory (Pvt.) Ltd.
(for and behalf of the Respondents)

Date of Order: June 4, 2018

ORDER

Under Rule 28 of the Takaful Rules, 2012 read with Section 156 of the Insurance Ordinance, 2000.

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This Order shall dispose of the proceedings initiated against the Chief Executive and Directors of M/s. Adamjee Insurance Company Limited (the "Company") for alleged non-compliance with Rule 28 of the Takaful Rules, 2012 (the "Rules"). The Chief Executive and Directors of the Company shall be referred to as the "Respondents" hereinafter.

2. During examination of the Annual Audited Accounts and Regulatory Returns for the year ended December 31, 2016, it was observed that the Company did not conduct training for its management and sales force, including CEO & CFO, on the concept and operational aspects of Takaful, as required under Rule 28(1) & 28(3) of the Rules. The Company, though provided in-house training for few of its staff but that too without getting the in-house training program (course outline) approved from the Commission, as required under Rule 28(2) of the Rules.

3. The external auditors in their Management Letter (ML) for the year 2016 also reported this observation. In response to the auditors' observation, the Company in para 4.2 of the ML provided its comments, which are reproduced as follows:-

"various training sessions were conducted in respect of the Company's WTO through the Company's appointed Shariah Advisor. Though the contents of these trainings were not approved by the SECP, these were extensive trainings covering all the aspects of the Takaful operations. However, we have noted the contents of the training be approved by the SECP and will comply with the requirements of the training in future."



4. Hence, it appeared to the Commission that the Company failed to meet the mandatory requirements under Rule 28 of the Rules.

5. Rule 28 of the Rules requires that:

“Training.- (1) Each Operator shall provide training to all its managerial level personnel and entire sales force on the concept and operations of Takaful.

(2) The operator may arrange an in house training program with prior approved training course outline from the Commission and the Operator can also get their managerial level personnel and sales force trained through institutions approved by the Commission to provide this training.

(3) Such training course shall be conducted for a minimum of twenty hours duration.

(4) The training course referred in sub rule (1) should be completed within one year, in case of existing employees and from the date of notification of these Rules and in case of new employees from the date of their induction..”

6. In view of the violations highlighted in the preceding paras, the Commission initiated penal action by issuance of a Show Cause Notice (SCN) on January 11, 2018 bearing No. Id/Enf/Adamjee/2018/13200 to the Respondents, calling upon them to show cause as to why the fine, as provided under Section 156 of the Insurance Ordinance, 2000 (the “Ordinance”) should not be imposed for non-compliance with Rule 28 of the Rules.

7. In response to the said SCN, Mr. Rashid Sadiq, CEO, M/s. RS Corporate Advisory (Pvt.) Ltd.(the “Authorized Representative”), vide email dated January 26, 2018 sought an extension of two weeks to submit the comments. The request was acceded to and the Respondents were allowed to submit their response until February 9, 2018.

8. Subsequently, the Authorized Representative vide letter dated February 8, 2018 submitted response to the SCN, which is reproduced below:

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6. At the outset, it is submitted that the Company was granted authorization to undertake Takaful Window Operations only on 23 December, 2015. The Company is fully aware of the provisions of Rule 28 of the Rules which requires that Takaful training be undertaken by the Company's all its managerial level personnel and entire sales force on the concept and operations of Takaful. In pursuit of fulfilment of the requirement for Takaful training as envisaged under rule 28 of the Rules, the Company engaged the services of renowned Shariah Scholar Mufti Muhammad Hassaan Kaleem who holds the position of Shariah Advisor of the Company. He is one of the earliest proponents of Takaful and Islamic Banking in Pakistan and has also remained Chairman of the Sharia Committee of the Commission.



7. The Company has imparted Takaful training in the year 2016 on the concept and operational aspects of Takaful in accordance with the course outline developed by our Shariah Advisor on the basis of the standard course outline pre-approved by the Commission through its Circular No. 37 of 2015 dated 7 October, 2015 (hereinafter the "Circular").

8. The external auditors of the Company in their Management Letter (hereinafter "ML") have observed at Para # 4.2 that the Company has got in-house training of its staff without getting course outline prior approved by the ID of the Commission. It is this observation in the ML, in our view, that SECP has issued SCN to our clients without first making inquiries as to the compliance of the rule 28 of the Rule. The management's comments to the observation of auditors have also been reproduced in the aforesaid para which states that various training course were conducted in respect of the Company WTO through the Company's appointed Shariah Advisor.

9. Subsequently, the Company (Window Takaful Operations) (hereinafter the "Company WTO") has also been enlisted as an approved institute for in-house training of managerial level personnel and sales force of general takaful operators through the Commission (Insurance Division) letter dated 8 August, 2017 bearing reference no. ID/PRDD/Takaful Training/2017/0540 (attached hereto as Annex3).

10. Pursuant to the Company's enlistment as an in-house training center and in accordance with the standard course outline approved by the Commission through the Circular, two further sessions of in-house Takaful training have been conducted in the year 2017 which were attended by managerial and sales personnel including the Chief Executive Officer, Mr. Muhammad Ali Zeb and the Chief Financial Officer, Mr. Muhammad Asim Nagi. Copies of certificates of participation issued to both the CEO and CFO are attached hereto as Annex4 for your reference and record.

11. In light of the above background, we respectfully submit that the relevant approvals are in place for conduct by the Company WTO of in-house training and that Takaful training has been obtained by all relevant personnel of the Company, including the CEO and CFO (as evidenced by the certificates of participation attached hereto), in fulfilment of the requirements of Rule 28 of the Rules.

12. By way of elaboration of the above submission, in the first instance, it is respectfully submitted that with the issuance of the Circular, the requirement of Rule 28(2) for a 'prior approved training course outline from the Commission' has been met. You will appreciate that the Circular specifically applies to 'operators arranging in house training program' and directs that such Takaful Operators 'follow the minimum standardized course outline' as prescribed in the Circular.

13. Where a course outline has already been approved through prescription by the Commission, the requirement for submission for approval of a course outline, in our views, is not required in terms of rule 28 of the Rules. If the intent of the Commission is that an operator seeks approval of the course to be taught in order for it to be ascertained whether or not it complies with the prescribed course outline then, respectfully, the Rules do not provide for such an interpretation. Clearly the intent of rule 28(2) of the Rules is not to seek a submission of the course content of the Takaful training for the approval of the



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Continuation Sheet - 4 -

Commission since it requires only a course outline which, in terms of the Circular, is the standardized course outline prescribed by the Commission.

14. In relation to enlistment of the Company as an approved institute for in-house training, it is respectfully submitted that there is no requirement in law for seeking enlistment as an institute for in-house training by a company wishing to conduct in-house Takaful training for its work force. Rule 28(2) of the Rules specifically provides that a company may either train their personnel in-house in accordance with the pre-approved course outline or send its personnel for Takaful training to one of the institutes approved by the Commission to impart such training. Rule 28(2) of the Rules is reproduced hereunder for ease of reference:

.....

You will appreciate that the aforesaid rule provides for alternate arrangements. Where a company is providing in-house training, it need only comply with the requirements of the standardized course outline prescribed through the Circular. It need not seek approval to become enlisted as an institution to impart such education before such training is to be imparted.

15. Without prejudice to the submissions abovementioned and without in any way admitting any violation on the part of the Company and its directors, it is submitted that the imposition of any penalty under Section 156 of the Ordinance is subject to the determination that the default was made 'knowingly'. Thus, the directors/officers not having express actual knowledge of default would not be held liable. This interpretation has prevailed with the Commission when deciding matters that require a willful, deliberate and intentional default on part of the directors/officers and matters have been dismissed with a warning where no willful and deliberate intention of the directors/officers could be established. There is also abundant case law available on the legal development of the term "knowingly" and the Commission itself has taken guidance from such case law when establishing the state of mind of the person thought to have violated a provision of the law under its administration. In re: Next Capital Limited vs. Director (MSRD) Appeal NO. 26 of 2015 dated 24 July 2015, it was held by the Appellate Bench that:

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16. The SCN is also liable to be withdrawn as mandated under Section 20(6)(c) of the Securities and Exchange Commission of Pakistan Act, 1997 for maintaining uniformity in exercise of its powers in cases having identical and indistinguishable set of circumstances. In aid of our submission on uniformity, we refer to the landmark ruling of honorable Appellate Bench dated 22 May, 2015 the relevant part of which is reproduced hereunder for ease of reference:

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17. It is submitted that our clients are law-abiding persons who endeavor to remain in regulatory compliance as is evidenced by their outstanding compliance record in the past. Our client remains genuinely committed to complying with all relevant and applicable laws, rules and regulations and in the current circumstances where in fact no violation of the law may be established, an imposition of a penalty or even a warning would be unjustifiable.

....."



9. Thereafter, the Commission vide letter dated May 9, 2018 scheduled the hearing on May 15, 2018 at 11th Floor, NIC Building, Jinnah Avenue, Blue Area, Islamabad. However, the hearing was rescheduled on the request of the Authorized Representative and was held one day earlier i.e. on May 14, 2018. The said hearing was attended by the Authorized Representative for and behalf of the Respondents.

10. During the hearing, the Authorized Representative stated that the Commission, vide letter dated August 8, 2017, has enlisted the Company as an approved institute for in-house training for managerial level personnel and sales force of general takaful operators. He maintained that pursuant to the Company's enlistment as an in-house training center and in accordance with the standard course outline issued by the Commission vide Circular No. 37 of 2015, two further sessions of in-house Takaful training for managerial and sales personnel including the Chief Executive Officer and the Chief Financial Officer were conducted in the year 2017 .

11. In terms of Rule 28 of the Rules, the Company was required to provide in-house training with prior approved training course outline from the Commission or through institutions approved by the Commission to all its managerial level personnel and entire sales force on the concept and operations of Takaful. However, it was observed that Company did not conduct the said training for its management and salesforce as required under Rule 28(1) and 28(3) of the Rules.

12. The Authorized Representative has argued that there is no requirement in law for seeking enlistment as an institute for in-house training by a Company wishing to conduct in-house Takaful training for its work force. This argument of the Authorized Representative appears reasonable in light with the interpretation of Rules 28 of the Rules.

13. The Authorized Representative has apprised the Commission that the Company was enlisted as an approved institute for in-house training by the Commission vide letter dated 8 August, 2017 and in the year 2017, trainings were conducted, which were attended by the managerial and sales personnel. The Commission has noted that the statutory auditors highlighted some other issues in their management letter as well in addition to seeking approval from the Commission. Relevant paras from the management letter is reproduced below;

"It was observed that the Company is in non-compliance with training requirements under Takaful Rules, 2012 as mentioned below:


- (a) 20 hours training on the concept & operational aspect of Takaful was not found conducted for the complete management team and entire sales force of the Company (including Chief Executive and Chief Financial Officers) for its Takaful Operations as required by the Takaful Rules 2012 in its clause 28 (i) and (iv).*
- (b) The Company has got in-house trainings for few of its staff but without getting training course outline prior approved by the Insurance Division of SECP as required by Takaful Rules 2012 in its clause 28 (ii)."*



14. As per Circular 37 of 2015, the Company was required to conduct 20 hours training on the concept & operational aspect of Takaful. However, this training was not conducted for the entire management team and sales force of the Company including Chief Executive and Chief Financial Officer for its Takaful Operations, in violation of Rule 28(1) and 28(4) of the Rules. It is pertinent to mention here that the Company has subsequently conducted in-house training for all relevant personnel of the Company, including the CEO and CFO. In this regard, the Company has furnished training certificate evidencing participation of CEO and CFO in fulfilment of the requirements of Rule 28 of the Rules.

15. I have carefully examined and given due consideration to the written and verbal submissions of the Respondents, and have also referred to the Rules, Ordinance and other legal references, I am of the view that the element of default of Rule 28 of the Rules, is there, as in 2016 the Company did not conduct the training for entire sales force and also the duration of 20 hours for training was not followed in accordance with the requirement of Circular 37 of 2015 and Rule 28 of the Rules. However, keeping in view the fact that the Company has complied with the aforesaid requirements in year 2017, I instead of imposing the penalty, hereby warn the Respondents to be careful in future whilst complying with the requirements of the Ordinance, Rules, Regulations and directives of the Commission.

16. 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.



Tahir Mahmood
Commissioner (Insurance)

