



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department- I

Adjudication Division

Before

Shahzad Afzal Khan, Director/Head of Department (Adjudication Department-I)

In the matter of

Shaheen Insurance Company Limited

| | |
|-------------------------------------|--|
| Show Cause Notice No. & Issue Date: | ID/Enf/Shahen/2019/3828 December 7, 2023 |
| Date of Hearing: | January 29, 2024 |
| Attended By: | Syed Rizwan Akhtar (CEO), Mr. Nisar Ahmed Almani (CFO), Mr. M. Asif Ramzan (DM-RJ) |

ORDER

Under Section 42(2) & (4) of the Insurance Ordinance, 2000 read with SRO 771(I)/2007 dated July 30, 2007 and Section 11(1)(d) and Section 156 of the Ordinance

This Order shall dispose of the proceedings initiated vide Show Cause Notice No. ID/Enf/Shahen/2019/3828 dated December 7, 2023 (**the SCN**) served on **Shaheen Insurance Company Limited (the Company and/or the Respondent)** under Section 42(2) & (4) of the Insurance Ordinance, 2000 (**the Ordinance**) read with SRO 771(I)/2007 dated July 30, 2007 (**SRO 771(I)/2007**) and Section 11(1)(d) and Section 156 of the Ordinance. The Company is registered under the Ordinance to undertake non-life insurance business in Pakistan.

2. Pursuant to the provisions of Section 42(2) of the Ordinance read with SRO 771(I)/2007, every insurer is required to reinsure with Pakistan Reinsurance Company Limited (**PRCL**) not less than thirty-five percent (35%) of the business, which is in excess of the aggregate of; (i) the insurer's net retention; and (ii) the sum insured otherwise reinsured with PRCL or with any other insurer in Pakistan but excluding any part reinsured outside Pakistan.

3. Summary of treaty reinsurance/re-takaful arrangements for the year 2023 was sought from the Company vide the Commission's email dated July 12, 2023, which was provided by the Company vide email dated July 17, 2023.

4. While reviewing the aforesaid information, it was observed that in case of conventional 'Terrorism QS' and 'Motor QS' treaty arrangements of the Company, no statutory share was offered to PRCL, which, *prima facie*, constitutes contravention of Section 42(2) of the Ordinance read with SRO 771(I)/2007 and Section 11(1)(d) of the Ordinance.

5. The response of PRCL was sought on the aforesaid information and PRCL vide email dated September 25, 2023 confirmed that the aforesaid treaties were not offered to it by the Company for its acceptance in accordance with the applicable provisions of the law.

6. The Commission vide email dated September 26, 2023 advised the Company to furnish its explanation on the aforesaid observation. The Company vide email dated September 28, 2023 submitted its reply in the matter as under:



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“.....Terrorism QS Treaty: This year, terrorism QS treaty leader opted not to renew the treaty, instead, they offered us an extension. Consequently, we did not approach PRCL being the extension in last year's treaty was in progress.

Motor QS Treaty: The renewal period for the Commercial Motor QS treaty is April to March and because Commercial motor treaty's timelines was not identical therefore we missed PRCL to approach in Dec, 2022. Because PRCL did not participate in the Conventional treaties therefore, we could not approach PRCL for Commercial motor treaty in March, 2023, inadvertently which may kindly be condoned.

Further it would be pertinent to mention here that PRCL had already denied to participate in Shaheen's conventional treaties therefore we opted to place our treaty with foreign reinsurers to protect SICL with appropriate RI cover.....

You are requested to please condone our inadvertent omissions and we assure that such situation will not reoccur again.....”

7. The aforesaid response of the Company was shared with PRCL for seeking its comments. PRCL submitted its response in the matter vide email dated October 12, 2023 as under:

“.....the Shaheen Insurance representative duly accepts their lack of compliance with Section 42(2) of the Insurance Ordinance 2000. I think these companies, have to understand that its their statutory duty to comply with the regulation and offer PRCL the share as prescribed in the ordinance. Failure to do so, should result in a strict penalty or fine.”

8. In view of the above, the reply of the Company is not found to be cogent as the Company was required to offer to reinsure its aforesaid business with PRCL acknowledging its first right of refusal.

9. In light of the preceding paras, the Company, *prima facie*, has failed to ensure compliance with the provisions of Section 42(2) of the Ordinance read with SRO 771(I)/2007 and Section 11(1)(d) of the Ordinance.

10. Contravention of Section 42(2) of the Ordinance attracts the penal provisions of Section 42(4) of the Ordinance and contravention of Section 11(1)(d) attracts penal provisions contained in Section 156 of the Ordinance.

11. The relevant provisions of the law are reproduced as under:

Section 11(1) of the Ordinance:

Conditions imposed on registered insurers. -(1) An insurer registered under this Ordinance shall at all times ensure that:

.....

- (d) the provisions of this Ordinance relating to the obtaining of reinsurance arrangements are complied with;

Section 42 of the Ordinance:

42. Compulsory Cession.-

(2) The Federal Government may, by notification in the official Gazette, direct that every insurer shall offer to reinsure with the Company such proportion as is determined on such basis



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as may be specified in such notification of its direct non-life insurance business which is in excess of the aggregate of:

- (a) the insurer's net retention;
- (b) the sum insured required to be reinsured under sub-section (1); and
- (c) the sum insured otherwise reinsured with the Company or with any other insurer in Pakistan but excluding any part reinsured outside Pakistan.

(3) The reinsurance set out in sub-section (2) shall for the purposes of this Ordinance constitute a treaty contract of reinsurance between the insurer and the Company, operating on a risks attaching basis.

(4) Whoever contravenes the foregoing provisions of this section shall be punishable with a fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the day on which the contravention continues.

SRO 771(I)/2007 dated July 30, 2007:

The Federal Government is pleased to notify that the right of first refusal entitlement of Pakistan Reinsurance Company Limited shall remain in force and every insurer operating in Pakistan shall continue to reinsure with Pakistan Reinsurance Company Limited not less than thirty five percent of business which is in excess of aggregate of :-

- (a) the insurer's net retention; and
- (b) the sum insured otherwise reinsured with the Company or with any other insurer in Pakistan but excluding any part reinsured outside Pakistan.

Section 156 of the Ordinance:

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.

12. The Company submitted its reply vide letter dated December 22, 2023 in response to the SCN, which is reproduced as under:

(Quote):

Pursuant to the aforementioned Show Cause Notice (SCN), we would like to submit, our reply in the following manner:

At the outset, we would like to state here that Shaheen Insurance is a law abiding Company and always be careful of its compliance responsibilities. The instances observed by SECP happened under very special circumstances. After careful consideration, we would like to provide a comprehensive response on the concerns raised as under;



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a) Terrorism Treaty

With respect to the Terrorism treaty we submit here that this year, terrorism QS treaty leader opted not to renew the treaty, instead, they offered us an extension. Consequently, we did not approach PRCL being the extension in last year's treaty was in progress. Now we decided to approach PRCL for Terrorism treaty coverage which we are hopeful that PRCL would extend its support.

b) Motor Treaty

With regard to Motor Treaty, it is respectfully stated that we are operating with 2 treaties to cover our motor portfolio. Our first treaty covers Motor Vehicle & Motor Cycles and second one in protection to the main treaty for Commercial Motor Vehicles. Our main motor treaty was due for renewal in December (starts 1 Jan) along with the main treaties renewals while the other was due in March (starts to April). At the time of our main renewals we offered PRCL our full bouquet of treaty in Nov-Dec last year but PRCL denied & opted not to participate in SICL's conventional treaties (copy of their denial/regret letter is attached). Thus we were left with no option but to place our main treaty RI program with international reinsurers abroad.

In March this year at the time of renewal of the 2nd part of Motor treaty we presumed that as the PRCL had already denied & was not interested to participate in SICL's conventional treaty therefore we presumably could not re-approach on the same account which PRCL had already denied. We, at all times remain committed to protect the SICL's interest in a timely manner. Had PRCL again opted not to participate we may have lost our international support.

We hope you may please understand our position that PRCL's non-participation in our conventional treaties for year 2023 posed a challenge, preventing us from re- seeking their consent again in March 2023. Unfortunately, this inadvertent omission & misalignment resulted in this misunderstanding which never could be posed as non-compliance of law this was never we intended to.

You will appreciate that we have also already approached PRCL for their consent for their participation in our conventional treaty for upcoming year 2024 and for which we have already submitted the requisite renewal data to PRCL for their consideration and which we are hopeful that PRCL would extend its usual support.

In the light of special circumstances, dynamic nature of Reinsurance markets, complex and inflexible decision making at PRCL and our commitment to protect the interest of SICL, we were not at fault.

You will appreciate that Shaheen Insurance is a law abiding company and had never such complaints in the past then how could we do such a mistake again.

Needless to mention, Shaheen Insurance is small sized company with a clear focus on improving business performances with success.

We assure our fullest support to PRCL and that such situation will not happen again. We are looking forward that PRCL would be more gracious & supportive towards SICL as they have always been in the past.



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In view of our above submission, we, reaffirms our commitment that the Shaheen Insurance is striving hard to ensure all compliances and we assure that the same will be followed in letter and spirit and such situation will not reoccur again.

Accordingly, it is requested that a lenient view may please be taken and these inadvertent omissions under this unique situation may please be condoned, being unintentional.

(Unquote)

13. In order to provide the Respondent an opportunity of personal representation, hearing in the matter was fixed for January 29, 2024. The said hearing was attended by Syed Rizwan Akhtar (CEO), Mr. Nisar Ahmed Almani (CFO) and Mr. M. Asif Ramzan (DM-RI) as the Authorized Representatives of the Respondent (**the Authorised Representative**). During the hearing, the Authorised Representatives were advised to submit the reasons for alleged non-compliances, as narrated in the SCN. The Authorized Representatives reiterated the submissions made in the written reply dated December 22, 2023.

14. After review of the instant case, the submissions and arguments of the Respondent/Company and its Authorised Representatives may be summarized and addressed as under:

- (i) The Company has admitted that it did not offer the required 35% share to PRCL from its 'Terrorism QS' treaty arrangement for the year 2023 as the terrorism QS treaty leader offered it an extension of two months instead of renewal of the treaty. It should be noted, however, that despite the two-month extension, the Company failed to comply with legal requirements by not offering the required percentage share to PRCL, thus constituting a violation of provisions of the law.
- (ii) In addition, the Company has also admitted that it did not offer the required 35% share to PRCL from its 'Motor QS' treaty arrangement for the year 2023. This decision was based on the presumption that PRCL had already declined and expressed no interest in participating in a conventional treaty the previous year. Consequently, the Company chose not to re-approach PRCL on the same matter, assuming the prior denial. However, in compliance with the mandatory provisions of the law, the Company should have offered the required percentage share to PRCL from its treaty, rather than opting not to do so, which constitutes a violation of mandatory provisions of the law.

15. I have examined the facts of the case in light of the applicable provisions of the law and have given due consideration to the written as well as verbal submissions and arguments of the Respondent and its Authorised Representatives. I am of the considered view that the Respondent has admitted to have failed to offer the required 35% share to PRCL from its 'Terrorism QS' and 'Motor QS' treaty arrangements for the year 2023, which constitutes non-compliance of the requirements of Section 42(2) read with SRO 771(I)/2007. In addition, the Company has failed to comply with the requirements of Section 11(1)(d) of the Ordinance as the provisions of the Ordinance relating to the reinsurance arrangements have not been complied with. Contravention of Section 42(2) of the Ordinance attracts the penal provisions of Section 42(4) of the Ordinance and contravention of Section 11(1)(d) attracts penal provisions contained in Section 156 of the Ordinance.



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16. In exercise of powers conferred under Section 42(4) and Section 156 of the Ordinance, I, hereby, impose an aggregate penalty of **Rs.50,000/- (Rupees Fifty Thousand Only)** on the Respondent on account of established default as narrated above.

17. The Respondent is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty (30) days from the date of this Order and furnish receipted voucher issued in the name of the Commission for information and record.

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

A handwritten signature in blue ink, appearing to read 'Shahzad Afzal Khan', is positioned above the printed name and title.

Shahzad Afzal Khan
Director/Head of Department
(Adjudication Department-I)

Announced:
February 01, 2024
Islamabad.