



SECP
INSURANCE DIVISION
Islamabad

Before Shaukat Hussain, Commissioner (Insurance)

In the matter of

M/s. Asia Insurance Company Limited

Show Cause Notice No. and Issue ID/Enf/Asia/2018/13377 dated
Date: January 24, 2018

Date of Hearing: April 25, 2019

Attended By: Mr. Ali Raza
Chief Financial Officer
M/s. Asia Insurance Company Limited

Mr. Muhammad Daoud
Partner, Amin Mudassar & Co
(Authorized Representative)

Date of Order: May 7, 2019

ORDER

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

.....
This Order shall dispose of the proceedings initiated against M/s. Asia Insurance Company Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Rule 10(1)(k) and Rule 20(1) of the Takāful Rules, 2012 (the "Rules"). The Company and its Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Insurance Ordinance, 2000 (the "Ordinance") to carry on the business of non-life insurance and general Takaful/window Takaful in Pakistan.

3. During examination of financial statements of the Company for the year ended December 31, 2016, it was observed that the Company did not properly disclose the Qard-e-hasna by way of actual transfer of funds from Operator Fund (OPF) to Participant Takaful Fund (PTF) in the statement of cash flows and other financial statements.

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4. The Company, in response the query raised by the Commission, provided its comments vide letter dated November 17, 2017, as under:-

“

- a. Disclosure of Qard-e-Hasna: As there are no pattern of accounts or guidelines for preparation of financial statements for window takaful operations, we used our best judgement for disclosures.
- b. Qard-e-Hasna : Qard-e-Hasna has been duly disclosed in cash flow. The outflow from OPF is shown in 'Other takaful payments' and inflow in PTF is shown in 'Direct, general and administrative expenses receipt/ (paid)'

Sr. No.	Particulars	Amount in Rupees	Description
1.	Foreign Re-Insurance Payment	7,705,500	Amount transferred for foreign remittance
2.	Foreign Re-Insurance Payment	7,705,500	Amount transferred for foreign remittance
3.	Wakala Fee	4,768,639	The amount is payable by PTF to OPF. It is only payable and receivable between funds. The amount is not transferred as the PTF fund was solvent and did not require the funds to be transferred, as the transfer is only required if PTF is insolvent.
	Total	21,179,639	

....”

5. The Company was required to disclose the Qard-e-hasna as part of the equity (Waqf/PTF). However, the Company disclosed it as a liability and that too under the head 'Other Creditors and Accruals' and did not disclose it as a separate line item in the balance sheet.

6. Upon perusal of the Company's response, it was noted that the transfer of Qard-e-hasna, amounting to Rs. 20,179,639/-, was not made by way of actual transfer of funds from the OPF to the PTF, as required under Rule 20(1) of the Rules. The Company only settled the reinsurance liability of the PTF by way of two payments, amounting to Rs. 7,705,500/- each, and offset the wakala fee receivable from the PTF, amounting to Rs. 4,768,639/-.

7. As per Rule 10(1)(k) of the Rules, admissible assets in each PTF of general/window takaful operator must be in excess of liabilities at all times and in case, at any point in time, admissible assets fall below the liabilities, then the deficit should be funded by way of actual transfer of funds as Qard-e-hasna (interest free loan) from the OPF to that PTF as required under Rule 20(1) of the Rules. However, the Company did not fund the deficit in PTF by way of actual transfer of funds from OPF to PTF, as the amount of Rs. 20,179,639/- could not be termed as Qard-e-hasna.

8. Accordingly, total liabilities of the PTF (Rs. 25,477,318/-) were in excess of the admissible assets (Rs. 17,022,870/-) as at December 31, 2016, in contravention of Rule



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10(1)(k) of the Rules. Furthermore, the Respondents failed to fund the deficit in the PTF by way of actual transfer of funds in violation of Rule 20(1) of the Rules.

9. 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."

10. Rule 20(1) of the Rules states that:

"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."

11. Accordingly, a Show Cause Notice (SCN) No ID/Enf/Asia/2018/13377 dated January 24, 2018 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 and/or action under Rule 12(1)(d) of the Rules may not be taken for the aforementioned alleged contraventions of the Rules.

12. Thereafter, the Respondents submitted their reply vide letter dated February 15, 2018, as under:-

"... ..

a. Disclosure in Balance Sheet and Statement of Cash Flows of Qard-e-Hasna:

The company has disclosed the Qard-e-Hasna under the head "Other Creditors and Accruals", as resultantly the outflow of the Qard-e-Hasna from OPF in Statement of Cash Flows was shown in "Other takaful payments" and inflow in PTF is shown in "Direct, general and administrative expenses receipt/(paid)". The said classification of Qard-e-Hasna was done on management best judgement, as there was no pattern or guidelines for preparation of financial statements of Window Takaful Operations. But as guided by your good self in the letter mentioned above, the company has henceforth changed the disclosure of the Qard-e-Hasna as line item in Equity in Annual Financial Statements for the year ended December 31, 2017 and resultantly the inflow and outflow of the Qard-e-Hasna will be shown as line item in Statement of Cash Flows as well.

b. Transfer of Qard-e-Hasna:

As required by Rule 20(1), reproduced as follows;



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"20. 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. "

The OPF has paid off the liability of PTF, payment to Reinsurers, amounting to Rs. 15.411 million directly from OPF. The company raised receivable by OPF and payable by PTF as Qard-e-Hasna on account of Re-insurance payment and wakala fee. The direct payment by OPF on behalf of PTF was done erroneously and it was a procedural lapse. The payment by OPF was done with the true spirit of Qard-e-Hasna, and as the disclosure requirements in this respect was not clear.

For current period and future we have taken care of as advised by your good self, the company has changed the disclosure of the Qard-e-Hasna as line item in Equity in Annual Financial Statements for the year ended December 31, 2017 and the inflow and outflow of the Qard-e-Hasna have been shown as line item in Statement of Cash Flows as well and also transferred the amount of Qard-e-Hasna as required for the year ending December 31, 2017. The management always endeavor to comply with all rules and regulations to achieve the objects of the company. A minor deviation, if any, may please be condoned. We assure you compliance of all provisions of relevant rules and regulations in future.

You are also requested to accord us approval for representation in person by us, so that we can present our stance to your good self. Also please find attached the extracts of BOD resolution for authorization of the reply and presentation in person.

...."

13. The Commission, vide its notice no. ID/Enf/Asia/2018/16638 dated October 4, 2018, scheduled the hearing for October 17, 2018 at the Head Office of the Commission in Islamabad. However, neither the Respondents nor any Authorized Representatives appeared before the Commission. Subsequently, the Company vide email dated January 4, 2019 requested to provide another hearing opportunity in the matter. Accordingly, a hearing was fixed on April 25, 2019 at the Head Office of the Commission.

14. The hearing of April 25, 2019 was attended by the Authorized Representatives of the Respondents namely Mr. Ali Raza and Mr. Muhammad Daoud, connected through video link from the Commission's Lahore Office.

15. During the hearing, the Authorized Representatives reiterated their written comments and stated that in the absence of any prescribed format for disclosure of the Qard-e-hasna and transfer of funds from the OPF to the PTF, the Company disclosed the said amount under the head "Other Creditors and Accruals". They maintained that the Company disclosed the transaction of Rs. 20.179 million in the Notes to the Financial Statements for the year ended December 31, 2016. The Representatives were of the view that the year 2016 was the first year of window takaful operations of the Company, whereas in the year 2017, the Company properly disclosed the said amount. They requested the Commission to take lenient view in the matter.



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16. In terms of Rule 10(1)(k) of the Rules, the Company was required to have 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 for the year ended December 31, 2016. The Company was required to provide Qard-e-hasna to fund the deficit in the PTF as per Rule 20(1) of the Rules.

17. The Representatives argued that the Company disclosed Qard-e-hasna under the head "Other Creditors and Accruals". The outflow of Qard-e-hasna from OPF in Statement of Cash Flows was shown in "Other takaful payments" and inflow in PTF was shown in "Direct, general and administrative expenses receipt. The Respondents are of the view that this was due to non-availability of guidelines for preparation of financial statements for Window Takaful Operations. However, the Respondents have admitted that direct payment by OPF on behalf of PTF was done erroneously and it was a procedural lapse. The Respondents have elaborated that the payment by OPF was done with the true spirit of Qard-e-hasna, but the disclosure requirements in this respect was not clear.

18. Nonetheless, the Respondents have apprised the Commission that admissible assets in the PTF are in excess of its liabilities for the year ended December 31, 2017. The Company has now properly disclosed the Qard-e-hasna as line item in Equity in Annual Financial Statements for the year ended December 31, 2017 and the inflow and outflow of the Qard-e-hasna have been shown as line item in Statement of Cash Flows as well and also transferred the amount of Qard-e-hasna as required for the year ending December 31, 2017. Therefore, the Company has complied with Rule 10(1)(k) of the Rules and Rule 20(1) of the Rules.

19. Needless to say that the 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, 2016. The arguments, documents and evidences which have been submitted by the Respondents so far have been found to be evidencing the fact that the Company failed to comply with Rule 10(1)(k) of the Rules and Rule 20(1) of the Rules.

20. 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 the violations of Rule 10(1)(k) of the Rules is 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.

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

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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. Rule 12(1)(d) of the Rules which provides 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;"

....."

23. 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)

