



SECP  
INSURANCE DIVISION  
Islamabad

Before Tahir Mahmood, Commissioner (Insurance)

*In the matter of*

Atlas Insurance Company Limited

Show Cause Notice No. and Issue ID/Enf/Atlas/2018/13201 dated January  
Date: 11, 2018

Date of Hearing: October 11, 2018

Attended By: Mr. Rashid Amin  
Chief Financial Officer  
M/s. Atlas Insurance Company Limited

Date of Order: October 24, 2018

**ORDER**

**Under Rule 10(1)(k) and 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. Atlas Insurance Company Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Rule 10(1)(k) and Rule 20(1) of the Takaful 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. While examining the financial statements of the Company for Window Takaful Operations for the year ended December 31, 2016, it was observed that neither the Company's admissible assets were sufficient to meet the liabilities nor the Operator had provided any qard-e-hasna to fund the deficit in the Participants Takaful Fund (PTF).

4. In this regards, the Commission vide letter dated September 5, 2017, advised the Company to clarify its stance over the deficit in the PTF. In response, the Company, vide letter dated September 21, 2017, replied by stating that "Atlas insurance limited started its window takaful operations from March 12, 2016 and the admissible assets of Participant Takaful Fund (PTF) are always in excess of liabilities of PTF, therefore, there is no need to obtain the qard-e-hasna from Operator Fund". In support, the Company provided calculation of the admissible assets of PTF.



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5. Review of the Company's calculation of the admissible assets revealed that the Company excluded the impact of Wakala fee (Rs. 13.926 million) payable by PTF to the Operator's Fund.

6. Wakala fee payable by PTF to the Operator's Fund should have been included in liabilities of the PTF and therefore it should have been considered for calculating excess of admissible assets over liabilities. As per explanation provided under Rule 10(1)(k) of the Rules, only receivables from Operator shall be deemed to be inadmissible for this purpose.

7. It transpired that admissible assets of the PTF as on December 31, 2016 were less than PTF's total liabilities by an amount of Rs. 6.270 million (i.e. Rs. 56.962 million – Rs. 63.232 million). Hence, it appeared to the Commission that the Company failed to comply with Rule 10(1)(k) and Rule 20(1) of the Rules.

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.”*

9. 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.”*

10. Accordingly, a Show Cause Notice (SCN) No ID/Enf/Atlas/2018/13201 dated January 11, 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 law.

11. Thereafter, the Respondents submitted their reply vide letter dated January 22, 2018, as under:-

*“.....*

*In this regard we would like to submit that full compliance with the law is of utmost importance for Atlas Insurance Limited and we always endeavor to make sure that as a responsible company we comply with all the legal requirements unless it is due to unintentional oversight or divergent interpretation of law.*



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*With regard to your above notice we would like to submit that Rule 10(1)(k) of Takaful Rules, 2012 explains that the receivable from the Operator shall be deemed to be inadmissible assets but does not mention whether to include or exclude the payable to Operator Fund in the total liabilities of the Participant Fund.*

*The reason to exclude any receivable from Operator Fund as an admissible asset of the Participant Fund is that solvency should not take into account the benefit of any receivable from Operator Fund and if there is any deficiency it should be compensated through transfer of an asset such as Qard-e-Hasna from Operator Fund to Participant Takaful Fund.*

*Similarly the reason for excluding wakala fee from liability is that as any receivable from Operator Fund is not considered as an asset for the purpose of determining solvency, any payable to the operator fund should also not be considered as a liability. If due to that liability any deficit needs to be made up by the Operator Fund it will again have to be compensated through Qard-e-Hasana. In any case it is the Operator who has to compensate for the deficit in the Participant Fund.*

*It was the accounting principal that if the assets from a specific source (Operator Fund) is not taken into account then the liability to the same source should also be treated in the same manner, therefore, the 'Wakala fee payable' to PTF was excluded from the total liabilities of the PTF for determining solvency.*

*If we exclude the wakala fee payable of Rs. 13.926 million from the liabilities of PTF of Rs. 63.232 million the liabilities of Rs. 49.306 million will be adequately met by admissible assets of Rs. 56.962 million.*

*Secondly it was our first year in which we started out Window Takaful Operations and as such we tried our best to ensure that we comply with all the relevant statutes.*

*We therefore regret this on our part and request you that a lenient view may please be taken as this was the first year of the commencement of the Window Takaful Operations and this inadvertent misunderstanding be ignored and condoned being unintentional.*

12. The Commission, vide its notice no. ID/Enf/Atlas/2018/15299 dated June 11, 2018, scheduled the hearing for June 22, 2018 at the Head Office of the Commission in Islamabad. However, the said hearing was cancelled and rescheduled on October 11, 2018.

13. The hearing was attended by the Authorized Representative of the Respondents namely Mr. Rashid Amin, Chief Financial Officer of the Company, representing all the Respondents before the Commission in the instant matter.

14. During the hearing, the Authorized Representative admitted that the Wakala fee payable by PTF to the Operator's Fund was not included in the liabilities of the PTF. He apprised the Commission that the default has been rectified in the financial statements for the year ended December 31, 2017 as the Company has prepared the accounts



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strictly in accordance with Rule 10(1)(k) of the Rules. The Authorized Representative requested the Commission to condone the omission and take lenient view in the instant matter.

15. 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 i.e. a shortfall of Rs. 6.270 million. The Company should have included the Wakala fee payable by PTF to the Operator's Fund in the liabilities of the PTF. This should have also been considered for calculating excess of admissible assets over liabilities. The Operator was required to provide qard-e-hasna to fund the deficit in the PTF as per Rule 20(1) of the Rules, which states that if at any point in time admissible assets in a PTF 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 PTF. However, the Authorized Representative has apprised that admissible assets in the PTF are in excess of its liabilities for the year ended December 31, 2017. Therefore, the Company has complied with Rule 10(1)(k) of the Rules and Rule 20(1) of the Rules .

16. 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 has failed to comply with Rule 10(1)(k) of the Rules and Rule 20(1) of the Rules.

17. 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 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.

18. 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."*





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19. 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;”*

.....”

20. 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 an Operator as provided under the said provision, take a lenient view, and issue a warning that in case of similar non-compliance in future a strict action against the Respondents will be taken.

21. 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.

  
Tahir Mahmood  
Commissioner (Insurance)

