



INSURANCE DIVISION
Islamabad

Before Tahir Mahmood, Commissioner (Insurance)

In the matter of

Pak Qatar General Takaful Limited

Show Cause Notice No. and Issue ID/Enf/PQGTL/2018/13556 dated
Date: February 6, 2018

Date of Hearing: March 7, 2018

Attended By: 1. Mr. Farrukh V. Junaidy
Consultant
2. Mr. M. Kamran Saleem
CFO & Company Secretary
Pak Qatar Family & General Takaful Ltd.

Date of Order: March 16, 2018

ORDER

Under Rule 10(1)(k) of the Takaful Rules, 2012 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. Pak Qatar General Takaful Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Rule 10(1)(k) 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 General Takaful in Pakistan.

3. As per Rule 10(1)(k) of the Rules, each Participant Takaful Fund (PTF) in case of General Takaful, must have admissible assets in excess of its liabilities at all times.

4. During examination of the annual audited accounts and regulatory returns of the Company for the year ended December 31, 2016, it was observed that admissible assets of the Company's PTF were less than the liabilities as highlighted in the table hereunder:-

	Amount (Rupees in Thousand)
Total Admissible Assets of Participant Takaful Fund	416,638
Less: Total Liabilities of Participant Takaful Fund	(565,335)
Excess/ (Shortfall)	(148,697)



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5. The requirement of having admissible assets in excess of its total liabilities in each of the PTF is applicable to the Takaful companies. Hence, it appeared to the Commission that the Company failed to comply with Rule 10(1)(k) of the Rules.

6. Rule 2 of the Rules provides the definitions of Operator, Takaful Operator and Window Takaful Operator as follows:

“(viii) “Operator” means a Takaful Operator or a Window Takaful Operator, authorized under these Rules;

(xxii) “Takaful Operator” means a Registered Insurer who is authorized by the Commission to carry on Takaful business and not Conventional Insurance business;

(xxiv) “Window Takaful Operator” means a Registered Insurer authorized under these Rules to carry on Takaful business as window operations in addition to Conventional Insurance business.”

7. 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.”

8. 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.”

9. Accordingly, a Show Cause Notice (SCN) No ID/Enf/PQGTL/2018/13556 dated February 6, 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.

10. Thereafter, the Respondents submitted their reply vide letter dated February 20, 2018, as under:-

- i. Admissible assets as calculated in the Statement of Assets for Solvency Purpose (Form GJ) under the relevant provisions of the Ordinance and the Rules are for the purpose of solvency position of PQGTL. It shows that admissible assets of the Company are in excess of Rs. 182 million over the liabilities of the Company



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and are also in excess of the minimum solvency requirement by Rs. 32 million. This compliance of excess of admissible assets over liabilities and minimum solvency requirement under the Ordinance is required on the overall balance sheet of the Company.

- ii. Admissible assets as calculated by the Company under the Ordinance are solely for the purpose of regulatory returns and to ensure compliance with solvency requirement for the Company under the Ordinance. However, admissible assets as calculated for regulatory returns has appeared to be re-used in SECP's working for evaluating compliance in PTF under Rule 10(1)(k) of the Rules which resulted in negative.
- iii. In PQGTL's working of admissible assets for the Rules, subject admissible assets have been worked out as per explanation provided as part and parcel of Rule 10(1)(k), as the Rules for General Takaful do not provide any explicit condition to infer the applicability of the provision of the Ordinance related to admissible assets.
- iv. In case of General Takaful, it is worth mentioning that Rule 10(1)(k) and Rule 20(1) have their own set of principle for calculating 'admissible assets of PTF and the said Rules have not provided any correlation with those admissible assets as calculated for solvency position in form GJ under the Ordinance for non-life insurer/General Takaful Company. Conversely, in case of Family Takaful only, the Rule 10(1)(l) & Rule 20(2) of the Rules have explicitly referred to applicability of provisions of the Ordinance.
- v. We presumed that had the lawmaker intended to make applicable the provisions of the Ordinance for compliance with Rule 10(1)(k) and Rule 20(1) in respect of General Takaful then it must had been clearly specified in the Rules as have been explicitly done for Family Takaful.
- vi. In view of transfer of Qard-e-Hasna of Rs. 127.9 million by Operator Fund to PTF under Rule 10(1)(k) and 20(1) and significant excessive admissible assets over liabilities by Rs. 330 million in SHF, we humbly submit that this clearly shows the capacity, ability and honest intention on the part of Operator Fund to provide further Qard-e-Hasna of Rs. 148 million to meet the deficit in the PTF; had this been explicitly required by the Rules for General Takaful to calculate the admissible assets as per the Ordinance.
- vii. Qard-e-Hasna has been provided in financial statements to make admissible assets of PTF in excess of its liabilities in line with requirement of the Rules and is appearing on face of the balance sheet as line items; whereby our external auditors had not expressed any reservation in audit report for either of the year ended 2015 or year ended 2016 in respect of compliance with Rule 10(1)(k) and Rule 20(1) of the Rules.



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- viii. Shariah compliance audit as required under Rule 30 of the Rules had also been performed by external Shariah compliance auditor whereby no adverse opinion or reservation has been reported in Shariah audit report for either of the year ended 2015 or year ended 2016 in respect of compliance with Rule 10(1)(k) and Rule 20(1) of the Rules.
- ix. Our Shariah Advisory Board's audit report also did not contain any reference with respect to non-compliance with any requirement of the Rules in general and with PTF solvency requirement in particular.
- x. Similar compliance statement/working for the year ended 2015 was submitted by us through letter dated October 13, 2016 in response to observation number (x) of letter dated September 20, 2016 from your esteemed office whereby no further query/observation was raised at that time which further caused us to believe that our practice and understanding of measuring the admissible assets of PTF under the relevant Rule is appropriate.
- xi. We seek guidance as to the interpretation of the relevant rules for compliance in future. We assure you that in future we will take additional due care to avoid any similar incurrence.
11. The Commission, vide its notice no. ID/Enf/PQGTL/2018/13878 dated March 2, 2018, scheduled the hearing for March 7, 2018 at the Company Registration Office Karachi.
12. The hearing was attended by the authorized representatives of the Respondents namely Mr. Farrukh V. Junaidy and Mr. M. Kamran Saleem representing all the Respondents before the Commission in the instant matter.
13. During the hearing, the Representatives stated that admissible assets as calculated for regulatory returns have been re-used in SECP's working for evaluating compliance in PTF under Rule 10(1)(k) of the Rules, which resulted in negative solvency margin. The Representatives further explained that similar compliance statement/working for the year ended 2015 was submitted by the Company in 2016 to the Commission, which caused them to believe that their practice and understanding of measuring the admissible assets of PTF under the relevant Rule was appropriate. The Representatives assured the Commission that funds will be moved to make PTF solvent and the Company will ensure future compliance.
14. 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 i.e. a shortfall of Rs. 148.697 million. It is pertinent to mention Rule 2 of the Rules explicitly states that:



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"(2) Words and expressions used but not defined in these Rules shall, unless there is anything repugnant in the subject or context, have the same meaning as are assigned to them in the Ordinance."

15. It can be inferred that solvency of PTF shall be calculated in accordance with provisions of the Ordinance for compliance in PTF under Rule 10(1)(k) of the Rules. As per Section 32(2)(h) of the Ordinance, contributions due and payable to the Takaful Operator but not paid for more than three months from the date due and payable are not admissible for the purpose of solvency.

16. Needless to say that 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.

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."

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;"

....."



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20. In exercise of the power conferred on me under Section 156 of the Ordinance read with S.R.O. 750(I)/2017 dated August 2, 2017, I, instead of imposing the fine as provided under the said provision, take a lenient view, and issue a stern warning that in case of similar non-compliance in future a stronger 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)

