



SECP
INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director/HoD (Enforcement)

In the matter of

M/s. TPL Insurance Limited

Show Cause Notice No. and Issue: ID/Enf/TPL/2019/495 dated April 19, 2019
Date:

Date of Hearing: August 29, 2019

Attended By: Syed Kazim Hassan
Chief Operating Officer/CFO
M/s. TPL Insurance Limited

Mr. Danish Qazi
Group General Counsel & Company Secretary
M/s. TPL Insurance Limited

Mr. Muhammad Junaid
Financial Controller
M/s. TPL Insurance Limited

Date of Order: October 4, 2019

ORDER

**Under Rule 10(1)(k), Rule 20(1) read with Rule 20(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. TPL Insurance 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. During offsite examination of Annual Audited Accounts and Regulatory Returns of the Company's window takaful operations for the year ended December 31, 2017, it was observed that admissible assets of the Participant Takaful Fund (the "PTF") were not in excess of its liabilities in violation of Rule 10(1)(k) of the Rules.

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4. The Company, in violation of Rule 20(1) of the Rules, did not sufficiently provide the Qard-e-Hasna from its Operator's Fund to the PTF to cover its liabilities.

5. The Company, vide letter dated September 25, 2018, provided its comments by stating that:-

"Admissible assets of Participant's Takaful Fund is a deficit of 282.39 million out of which Rs. 199 million had been funded through Qard-e-Hasna by 31 December 2017. The Board of Directors in their meeting held on August 11, 2018 has approved Qard-e-Hasna of Rs. 65 million which is in process of being disbursed."

6. While reviewing the calculation of admissible assets provided by the Company, it was observed that the Company treated the prepaid advance given to TPL Trakker Ltd. amounting to Rs. 61,044,166 as admissible asset in the PTF in violation of Section 32(2)(g) of the Ordinance. Revised admissible assets were as under:-

Table I

Asset Description	Amount in Rupees	Remarks
Total Admissible Assets as per regulatory return	571,404,648	Refer Statement of Assets for Solvency Purposes: Window Takaful Operations - PTF
Prepaid advance given to TPL Trakker Ltd. (a related party) against annual monitoring and other charges	61,044,166	Refer note # 9 of the Financial statement - WTO FTY ended 31 December 2017. As per Section 32(2)(g) of the Ordinance, "any balances with, shares in, loans to or other amounts due from any body that is related to insurer or to any director of the insurer is inadmissible".
Revised Total Admissible Assets	510,360,482	

7. The deficit in the PTF after making adjustments for the inadmissible asset and Qard-e-Hasna of Rs. 199 million, was Rs. 144,536,370/- as calculated in 'Table II' hereunder. :

Table II

Description	Amount in Rupees
Revised Total Admissible Assets	510,360,482
Less: Total Liabilities excl. Qard-e-Hasna of Rs 199 million	(654,796,852)
Admissible Assets in excess of its Liabilities - Surplus / (Deficit)	(144,436,370)

8. In view of the above, it appeared that the Company failed to comply with the provisions of Rule 10(1)(k) and Rule 20(1) of the Rules, by not maintaining the admissible assets in excess of its liabilities and by not funding sufficiently the deficit by way of actual transfer of funds in the form of Qard-e-Hasna, respectively.

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

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"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. Section 32(2)(g) of the Ordinance states that:

"(2) For the purposes of this Part, subject to sub-section (1), the following are not admissible assets:

....
(g) balances with, shares in, loans to or other amounts due from any body that is related to the insurer or to any director of the insurer;"

12. Therefore, a Show Cause Notice (SCN) No.ID/Enf/TPL/2019/495 dated April 19, 2019 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.

13. Thereafter, the Respondents submitted their reply vide letter dated July 8, 2019, as under:-

"... ..

With reference to your Letter No. ID/Enf/TPL/2019/495 dated April 19, 2019 on captioned subject, our response is as follows:

Admissibility of Prepaid Annual Monitoring Charges:

It is submitted that under Section 32(2)(g) of the Insurance Ordinance, 2000 (the "Ordinance"), "any balances with, shares in, loans to or other amounts due from anybody that is related to the insurer or to any director of the insurer" are not admissible assets for solvency purposes.

It is humbly stated that the prepaid annual monitoring charges arose as a result of invoices paid in advance to, inter alia, TPL Trakker Limited, for which the said service was to be received over a one year period, and accordingly represented unexpired portion of that



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invoice. In light of the same, this was in the nature of prepaid expenses and therefore, in our opinion, did not amount "due" from a related party for the purposes of Section 32(2)(g) of the Ordinance.

Since the phrase /concept "amount due from a party" has not been defined under the law, we have looked at other acceptable sources for guidance in this respect, particularly the International Financial Reporting Standards, which are globally accepted.

IAS 32 - "Financial Instruments - Presentation" issued by International Accounting Standards Board, defines financial assets as follows:

"Financial asset is any asset that is:

- (a) Cash
- (b) An equity instrument of another entity
- (c) A contractual right to receive cash or another financial asset from another entity

Further para AG 11 of Application Guidance of IAS 32 states as follows:

"Assets (such as prepaid expenses) for which the future economic benefit is the receipt of goods or services, rather than right to receive cash or another financial asset, are not financial assets "

Based on above, since the same were not financial assets of TPL Insurance Limited, we are of the view that prepaid annual monitoring fee does not fall under the ambit of Section 32(2)(g) of the Ordinance, and therefore, are admissible for solvency purposes.

Accordingly, the amount of Rs. 61,044,166 would be treated as admissible assets for the period ended 31 December 2017.

Disbursement of Qard-e-hasna

While, we agree with the SECP's view that as at 31 December 2017, the admissible assets of the Participants' Takaful Fund had a deficit, it is humbly submitted that the same was an inadvertent and technical non-compliance. The said deficit was, therefore, funded by way of disbursement of additional amount of Qard-e-Hasna of Rs. 47.9 million, the disbursement of which was made in September 2018. As a result, as of 31 December 2018, the Participant's Takaful Fund had a surplus of Rs. 27.7 million as disclosed in note 27 to the audited financial statements of Window Takaful Operations for the year ended 31 December 2018. It is pertinent to note that steps were taken in a timely manner in order to rectify the non-compliance; in fact, it is always the company's intent to ensure compliance with all applicable laws.

It is added here that for the purposes of determining whether an offence has been committed by the Company, it is necessary to demonstrate that such non-compliance was intentionally carried out. As seen from the contents of the notice under response, as well as the material herein, it is submitted that there was no malafide intent on the part of the Company or its directors to breach the provisions of the law; and that steps were taken to rectify the non-compliance.

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It is further added here that the company has already put systems in place to ensure that such technical non-compliance is not repeated. The company strives to be known as a prominent insurer in the country and it is pertinent to note that the company's directors are well-placed members of society and have been rendering their valuable services in the corporate industry for over a period of more than thirty years.

In light of the above, although there was delay in disbursement of Qard-e-Hasna, we request the Commission to condone this default and show leniency towards the company and its directors. We will ensure that said default does not occur again in future.

In the event that further clarification is required by the SECP, the company would like an opportunity of hearing."

14. Hearing in the matter was scheduled on August 29, 2019 at the Head Office of the Commission, which was attended by the Authorized Representatives of the Respondents namely Mr. Syed Kazmi Hasan, Mr. Danish Qazi and Mr. Muhammad Junaid, connected through video link from the Commission's Karachi Office.

15. During the hearing, the Authorized Representatives reiterated their written comments and stated that transfer of funds through Qard-e-hasna was delayed, therefore, the Company could not comply with Rule 10(1)(k) and Rule 20(1) of the Rules. They claimed that the Company met the aforesaid requirement in the Financial Statements for the year ended December 31, 2018.

16. The Respondents in their reply dated July 8, 2019 concurred with the Commission's observation that as at December 31, 2017, admissible assets of the PTF were less than its liabilities, however, they maintained that this was due to inadvertent and technical non-compliance. During the hearing, the Respondents apprised that the Company transferred an additional amount to the PTF as Qard-e-Hasna in September 2018 resulting in a surplus of Rs. 27.7 million in the PTF for the year ended December 31, 2018.

17. As mentioned in the preceding para, the Respondents claimed to have taken steps to fund the deficit in the PTF in the year 2018. However, they failed to comply with the regulatory requirement for the year ended December 31, 2017 as the Qard-e-Hasna provided by the Company from the Operator's Fund to the PTF to cover its liabilities was not sufficient.

18. It was further observed that the Company included prepaid advance of Rs. 61,044,166/- given to TPL Trakker Ltd. (a related party) as admissible assets in the PTF in violation of Section 32(2)(g) of the Ordinance. The Company argued that the advance represents prepaid annual monitoring charges for which service was to be received over a one year period, therefore in their opinion, the amount could not be considered as "due" from a related party for the purposes of Section 32(2)(g) of the Ordinance. According to the Respondents, since the phrase "amount due from a party" was not

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defined under the Ordinance, they treated the said amount as per International Financial Reporting Standards and IAS 32 in particular. It is explained that the said amount cannot be treated as admissible asset as per Section 32(2) (g) reproduced below:-

“(2) For the purposes of this Part, subject to sub-section (1), the following are not admissible assets:

....

(g) balances with, shares in, loans to or other amounts due from any body that is related to the insurer or to any director of the insurer;”

19. Hence the total deficit in the PTF as on December 31, 2017 was Rs. 144,536,370/- after taking into account Qard-e-Hasna of Rs. 199 million and excluding the related party advance of Rs. 61,044,166/-. The Company did not make actual transfer of funds for the said amount as required by Rule 20(1) of the Rules and therefore its admissible assets in PTF were not in excess of its liabilities.

20. Furthermore, the Company could have sought clarification from the Commission as provided in circular No. 36 of 2015 dated September 29, 2015 regarding 'related part assets'. Clauses 3 (a) & (b) of the circular state that:-

Clause 3(a)

“All insurer are advised to strictly ensure compliance with the provisions of Section 32(2)(g) of the Ordinance with the effect from January 1, 2016;”

Clause 3(b)

“As required under Section 32(8)(a) of the Ordinance, insurers seeking to obtain declaration of the Commission in respect of any asset(s) as admissible asset(s) under Section 32(l)(d) of the Ordinance should apply in writing before this office.”

21. The Company in the instant case did not seek such declaration as provided in Clause 3(b) of the Circular. Therefore, the amount of Rs. 61,044,166 would not be treated as admissible asset for the period ended December 31, 2017.

22. 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, 2017. 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.

23. 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) and Rule 20(1) of the Rules are established, for which



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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.

24. 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."

25. 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;"

....."

26. 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.

27. 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.

Hasnat Ahmad

Director/HoD (Enforcement)

